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Individual rights in a group-based society

A case study on the consociational state of Lebanon as a human rights protector

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1 Introduction

The consociational state of Lebanon has been pictured as a Middle Eastern haven for religious coexistence and applauded by the UN for its ability to promote freedom of religion and non-discrimination in a demographic context broad as few.¹ As a society consisting of 18 different religious groups², Lebanon has a challenging point of departure for coexistence and democracy, and has consequently introduced a political system tailored to divide power and rights more or less equally between the different segments. Hence, Lebanon is apparently a deeply divided nation where *individual* human rights are to be implemented by the *group-based* political system of consociationalism. From a human rights perspective, this is where something seems amiss. How can a nation, whose political idea is based on the rights and duties of religious groups, protect its citizens' human rights, in line with an international system made up of universal rights of individuals?

Protection of individual rights in autocratic or repressive states is a frequently discussed subject in the field of human rights. I find that country-specific research of such societies is usually pointed towards specific rights violations, as the systemic aspect may seem less important in societies where the government has no intention of establishing democratic rule nonetheless. However, in a state such as Lebanon – termed a consociational democracy³ and party to all relevant human rights treaties – the systemic element of human rights protection is particularly interesting. May a democratic system in itself be an impediment to individual human rights protection? And if so, how does it affect and potentially legitimize discrimination in the other layers of society? These questions both point to what I find to be the very dilemma of the

¹ The Special Rapporteur also criticizes Lebanon, for example in terms of lack of a civil marriage alternative (art. 99) or the failure of abolishing sectarianism (art. 97). These factors also have a negative impact on both freedom of religion and non-discrimination, but it is nevertheless a positive report (UN Human Rights Council (2015): *Report of the Special Rapporteur on freedom of religion or belief on his mission to Lebanon*, 30 November 2015, A/HRC/31/18/Add.1, art. 5, 9, 13, 84-85)

² Maronites, Sunnis, Shiites, Alawites, Ismaili Shiites, Maronites, Greek Orthodox, Greek Catholics, Armenian Orthodox, Armenian Catholics, Syriac Orthodox, Syriac Catholics, Nestorians Assyrians, Chaldeans, Copts, Roman Catholics, Evangelicals, Druze, Jews

³ Lebanon's reputation as a democracy is a separate discussion, and I acknowledge that many would regard the country as undemocratic. I choose to view Lebanon as a democracy - although one with many challenges – as it is ruled upon a Constitution acknowledging several of the democratic “conditions”, such as free elections, pluralism and a range of other freedoms. Whether these are administered in a satisfactory way can also be discussed. I also observe that the Economist Intelligence Unit ranked Lebanon as 4th in the Middle East and North Africa, in their Democracy Index from 2018, and Freedom House characterizes Lebanon as “partly free” (Freedom House (2018): *Freedom in the World 2018*, “Lebanon” - United States, 16 January 2018, available at: <https://www.refworld.org/docid/5a5e11f626.html>, accessed 16.04.2019”; The Economist Intelligence Unit (2019): “Democracy Index 2018: Me Too?”, *The Economist Intelligence Unit*, https://www.eiu.com/public/topical_report.aspx?campaignid=Democracy2018, accessed 15.05.2019)

Lebanese democracy, where a political idea meant to establish harmony and equal rights between societal *groups* may impede the government from ensuring the equality of *individuals*.

1.1 Introducing the case and research question

The Arab spring in many ways introduced a new era in the Middle Eastern region, where widespread uprisings among the people led to the fall of many authoritarian regimes. Today, we see that new problems have replaced the former, and few of the countries are in a better place than before the revolts. Some important changes has nevertheless managed to settle. Among these are the sudden upsurges of sectarian, communal and religious identities, opposed to the nationalistic, state-loyal affiliation.⁴

The Lebanese nation already has a long history of strong communal relations, but in contrast to its neighbours affected by the Arab spring, the sectarianism of Lebanon is not only reflected in personal loyalties among the citizens, but officially institutionalized as a harmonizing strategy after several stages of war⁵, by many scholars termed as consociationalism.⁶ Salloukh et al. argues that this has led to a redirection from national citizenship as the primary identity marker and towards family and sect as increasingly important.⁷ A potential weakening role of citizenship is an important point of departure for the dilemma of individual rights in a group-based society, as citizenship may be said to be the very backbone of the relationship between individual and state. Citizenship is not just a membership or an affiliation, it is also the “right to have rights”⁸, as quoted by Hannah Arendt.

Arendt’s view of the connection between citizenship and rights is interesting in a group-based society like Lebanon. Do the Lebanese citizens have an equal right to rights? Do they have the right to *all* rights? And if not, can the system be regarded as the impediment to the realization of these rights? Bantekas and Oette argue that “systemic and institutional

⁴ Salloukh, Bassel F. et al. (2015): *The Politics of Sectarianism in Postwar Lebanon*, London: Pluto Press, 2

⁵ Ibid.

⁶ Hanf, Theodor (1981): "The "Political Secularization" Issue in Lebanon", in *The Annual Review of the Social Science of Religion*, vol. 5, Amsterdam: Mouton; Lijphart, Arend (1995): “Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems”, in Kymlicka, Will (ed.) (1995): *The Rights of Minority Cultures*, USA: Oxford University Press; Nagle, John and Tamirace Fakhoury (2018): "Between Co-Option and Radical Opposition: A Comparative Analysis of Power-Sharing on Gender Equality and LGBTQ rights in Northern Ireland and Lebanon" in *Nationalism and Ethnic Politics*, 24:1; Hudson, Michael (1976): “The Lebanese Crisis: The Limits of Consociational Democracy” in *Journal of Palestine Studies*, Vol. 5, No. 3/4

⁷ Salloukh et al. 2015, 3-4

⁸ Arendt, Hannah (1958): *The Origins of Totalitarianism*, Cleveland: The World Publishing Company, 296

shortcomings” are often among the reasons for State parties failing to implement their human rights obligations.⁹ Drawing from these issues, I wish to explore to which degree the consociational system of Lebanon may be such a systemic and institutional shortcoming for the protection of human rights. Henceforth, the main research question that will guide my thesis is as follows:

How may the consociational system of Lebanon be an impediment to the protection of human rights?

As the question is particularly broad, some delimitation is necessary to narrow the scope of the study. First and foremost, instead of tackling the topic of human rights as a whole, I have chosen to look at one right in particular, namely the human right to non-discrimination. Non-discrimination is not only a rights principle itself, but also represents a political system’s ability to apply human rights on an equal basis. In a consociational context, where the group-based system is seen as an incentive to create harmony and equal representation¹⁰, it appears particularly interesting to look at non-discrimination, as equality on group-level might not lead to the same on the individual level. However, as I take a systemic approach, the ability to be a protector of the human right to non-discrimination is naturally linked to the ability to be a human rights protector overall. Therefore, several of the arguments throughout the study will apply to both, as the principle of non-discrimination is an inherent element in the very human rights idea.

The articulation of the research question mainly addresses the systemic impediment to human rights – namely, how the formation of a political system is potentially unable to be a duty-bearer in terms of the international human rights system. However, I will also analyse the potential consequences of the systemic shortcomings, namely to what extent it opens up to discriminatory practice through the group relations that have an elevated position in consociational Lebanon. The group relations I will explore are the ones of sect and family, as these are most frequently referred to in the case-specific source material. My assumption is that these could be viewed as two “layers” of discrimination, where citizenship make out the first layer, and family and sect make out the second, strongly related to the outcome of the first.

⁹ Bantekas, Ilias and Lutz Oette (2016): *International Human Rights Law and Practice*, 2nd ed., UK: Cambridge University Press, 26

¹⁰ Nagle and Fakhoury 2018, 84-86

1.1.1 Structure

The remainder of this chapter will introduce the methodology for the study, before moving on to the theoretical and conceptual framework. The latter will be divided among human rights theory and political theory, before non-discrimination and citizenship will be explored as separate concepts. Chapter 3 introduces the political history of Lebanon in brief terms, to trace the sectarian development throughout the last century. Chapter 4 will provide an analysis of the consociational elements found in historical and contemporary Lebanon, in accordance with the political theory introduced in chapter 3, as well as the role of citizenship in the Lebanese political system. Chapter 5 and 6 will analyse the group memberships of sect and family as an assumed second layer of discrimination. Lastly, chapter 7 will provide a conclusive discussion – tying the political- and human rights theory together with the analysed citizenship regime and the sectarian and familial relations.

1.1.2 Central terms

Most terms will be defined through the course of the text. However, some key expressions will be used interchangeably and will therefore be addressed already at this point.

Consociationalism is the name of the political system based on elite cooperation between a set of groups in a deeply divided society, as defined by Arend Lijphart. The Lebanese version of consociationalism is often referred to as sectarianism or confessionalism. I will apply consociationalism and sectarianism interchangeably for the Lebanese case, but only consociationalism for the theoretical part, as sectarianism is seen as a specific version of consociationalism. The groups in a consociational society are by Lijphart referred to as segments, but for the Lebanese case, I will also apply sect, confession or simply group as parallel terms. Further on, the personal status system is a distinctive part of the Lebanese consociational system, where judicial, family-related questions are covered by sectarian courts. I will refer to this as both personal status system, personal status laws and sectarian courts. Lastly, “familial” as a term is frequently used by Suad Joseph in her studies. It is referred to as “of, relating to, or suggestive of a family” in the Merriam-Webster dictionary.¹¹ I will apply it interchangeably with “family-based” as descriptive of the important group affiliation in Lebanese life.

¹¹ Merriam-Webster Dictionary: “Familial”, <https://www.merriam-webster.com/dictionary/familial>, accessed 13.05.2019

1.2 Methodology

When conducting research on human rights protection in Lebanon, several methodologies may be considered. A quantitative case study could take a descriptive approach, mapping out the different human rights violations to be experienced in consociational Lebanon, or the citizens' degree of trust in the state to protect against discrimination. A mixed method of document- and discourse analysis could explore the potential divergence between constitutional rights and political statements on human rights, or a comparative case study could uncover the regional impact on different consociational states' ability to be human rights protectors.

Hence, the opportunities are many. However, as I wish to take a systemic approach, a theory-driven, qualitative case study is preferable, as it allows for exploring a consociational democracy's systemic impact on the protection of citizens' human right to non-discrimination. Hence, the essence lies in the balance between theory and case, how the theory guides the exploration of Lebanon's consociational elements, and how these work in contrast to human rights protection.

Even though the thesis is theory-guided, it will also lean on the single-unit case study method. The qualitative case study method opens up to a holistic research of a contemporary phenomenon, when you have little or no influence over the behavioral events.¹² The studies may be different in aim, variables and research design, but a common feature is a “why”- or “how”-question guiding the research.¹³ Thus, when I am exploring *how* the consociational system of Lebanon can be an impediment to human rights protection, an explorative case study approach serves the aim of the study well, as it allows me to take an intensive approach¹⁴, discussing the different causal relations between political system and human rights protection.¹⁵

However, as Gerring points out, a country-specific case study should be able to say something about a topic broader than what actually goes on in the specific country – thus, putting it into a larger context.¹⁶ Yin also addresses this, by stating that case studies “are generalizable to theoretical propositions and not to populations or universes.”¹⁷ This is where the theoretical dimension is important, as the theory will guide the analysis of the empirical data and

¹² Yin, Robert K. (2014): *Case Study Research. Design and Methods*. 5th ed., USA: Sage Publications, 2, 4

¹³ *Ibid.*, 8

¹⁴ Hellevik, Ottar (2002): *Forskningsmetode i Sosiologi og Statsvitenskap*, 7th ed., Norway: Universitetsforlaget, 97

¹⁵ *Ibid.*

¹⁶ Gerring, John (2017): *Case Study Research. Principles and Practices*, 2nd ed., USA: Cambridge University Press, 30

¹⁷ Yin 2014, 21

discuss to what extent theoretical concepts are operational for the empirical sources, which will be introduced in the following sub-chapter.

1.3 Introduction of sources¹⁸

The empirical sources used in the thesis mainly consists of secondary literature on the topics of Lebanon's political system, consociationalism and sects- and family relations, as well as official and governing documents from the UN and the Lebanese legal corpus.

The official sources of the contemporary sectarian policy are to be found in the National Pact, the Ta'if Accords and the Constitution. I will make use of the English translation of the Constitution from *Arab Law Quarterly*¹⁹ and of the Taif Agreement from United Nation's official documents.²⁰ The National Pact is an unwritten agreement, but I will use Centre for Lebanese Studies' informing account of the pact.²¹ I will also get familiar with reports from Human Rights Watch and the UN, such as the Special Rapporteur of Freedom of Religion and Belief's report from Lebanon in 2015 and UN's concluding observations after periodic reports.²² As these sources provide information more related to specific human rights violations, than the actual systemic prerequisites, they will not be central sources. However, some of the reports, especially the one from the UN Special Rapporteur, provide some general views of the system as well, and will therefore be of more relevance.

The choice of secondary literature will be covering topics like Lebanon's political system, consociationalism and sect- and family relations. The political system is thoroughly covered in Salloukh et al.'s informing book on Lebanese sectarianism, as well as in book-chapters by e.g. Hourani, Cobban and el-Sohl, and in Butenschøn et al.'s book on power-sharing.²³ These authors also give good historical accounts, which is essential to understand the origin of the

¹⁸ This account only lists the empirical sources. The theoretical sources will be introduced in chapter 2.

¹⁹ Brill (1997): "The Lebanese Constitution", in *Arab Law Quarterly*, Vol. 12, No. 2

²⁰ United Nations: "The Ta'if Accords" https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_taif_agreement_english_version_pdf, accessed 14.05.2019

²¹ El-Khazen, Farid (1991): "The Communal Pact of National Identities: The Making and Politics of the 1943 National Pact" in *Lebanese Papers 12*, Oxford: Centre for Lebanese Studies

²² UN Human Rights Committee (2018): *Concluding observations on the third periodic report of Lebanon*, CCPR/C/LBN/CO/3, C; HRC 2015

²³ Salloukh et al. 2015; Cobban, Helena (1987): *The Making of Modern Lebanon*, London: Hutchinson Education; Hourani, Albert (1981): *The emergence of the modern Middle East*, London: Oxford University Press; El-Sohl, Raghid (2004): *Lebanon and Arabism: national identity and state formation*, London: I.B. Tauris, 208-9 (reference from Butenschøn 2015, 110); Butenschøn, Nils (2015): "Lebanon", in Butenschøn, Nils et al. (ed.): *Power-Sharing in Conflict-Ridden Societies Challenges for Building Peace and Democratic Stability*, 1. ed, Taylor & Francis Ltd

sectarian system. Further on, Suad Joseph will make out an important source to understand the “political familism” in Lebanon.²⁴ She brings forward the question of citizenship and the constitutional favorizing of family and sect, rather than the individual.²⁵ She is also an important source when discussing sectarian affiliation, together with scholars like Jaulin, Maktabi, Hanf, Khatib and Ludsin.²⁶

1.3.1 Reliability and validity

When making use of empirical sources, a set of “criteria of excellence” should be taken into consideration, to secure the cogency and quality of the sources, in relation to the aim of the study.²⁷

In terms of reliability, the central question is whether the collected data proposes an accurate picture of the Lebanese case. The chosen sources are meant to constitute the grounds for the set of variables that we consider when exploring the case, and therefore, one must carefully evaluate whether the sources contribute to a construction of correct, operational measures. Thus, do they reflect Lebanon “as it is”, and would the findings be different if collected at a different time or by different researchers?²⁸

The secondary sources that make out the empirical material are all written by renowned scholars, and there are many cross-references to be found. Additionally, I have tried to detect several sources on each subject, as well as critiques and reviews of some of the more dominating views, to avoid being affected by biased scholars. This is always important when discussing country-specific human rights protection, as local sources may view the topic differently than international ones. The reliability of the sources is also connected to their age – a challenge that is specifically relevant for this study. The Lebanese system has been researched for decades, but the interest was larger during and right after the civil war (1975-1990) than we see now.

²⁴ Joseph, Suad (2011): “Political Familism in Lebanon”, in *The Annals of the American Academy of Political and Social Science*, vol. 636, Sage Publications; Joseph, Suad (1999): “Descent of the Nation: Kinship and Citizenship in Lebanon”, in *Citizenship Studies*, 3:3; Joseph, Suad (1994): “Problematizing Gender and Relational Rights: Experiences from Lebanon”, in *Social Politics*, vol. 1(3)

²⁵ Joseph 2011, 160

²⁶ Jaulin, Thibaut (2014): “Citizenship, Migration, and Confessional Democracy in Lebanon”, in *Middle East Law and Governance*, vol. 6; Salloukh et. al. 2015; Hanf, Theodor 1981, 249 (reference from Lijphart 1995, 285); Maktabi, Rania (2000): «State Formation and Citizenship in Lebanon”, in Butenschön, Nils et. al. (eds.) (2000): *Citizenship and the State in the Middle East: Approaches and Applications*, Syracuse University Press; Khatib, Lina (2008): ”Gender, Citizenship and Political Agency in Lebanon”, in *British Journal of Middle Eastern Studies*, 35(3); Ludsin, Hallie (2008): "Relational Rights Masquerading as Individual Rights", in *Duke Journal of Gender Law and Policy*, no. 195

²⁶ Joseph 2011, 151

²⁷ Stausberg, M. and Steven Engler (eds.) (2012): *The Routledge Handbook of Research Methods in the Study of Religion*. London: Routledge, 7

²⁸ Ibid., 7-8

This is also related to the validity of the thesis, and my ability to be sufficiently critical in these terms. To deal with the age challenge, I have crosschecked information used from sources older than 2008. This is the year the Doha agreement had been reached and the 2006 war ended. Thus, few significant changes to the Constitution or the political sphere have been made after this. Nevertheless, it should be mentioned that older sources by renowned academics may give very valuable accounts of historical aspects, as well as political and societal reflections relevant for a certain time. One example is Helena Cobban's book from 1987, which is a valued source in terms of history, but also as a view of Lebanon in a regional context. Another example is Suad Joseph's many articles and book chapters on family relations in Lebanon. Some of her most relevant accounts were written in 1994 and 1999, which I make use of, because she has also described the same elements in newer articles from 2011, as well as being quoted and referred to by scholars like Salloukh et al., who's book is from 2015.

2 Theoretical and conceptual framework

In this study, the central question is whether a consociational power-sharing system may work as an impediment to the country's human rights protection, with the right to non-discrimination as a focus point. The purpose of the sub-chapters on human rights theory and non-discrimination is to establish the theoretical basis for the second part of the research question. Most importantly, I will introduce the relationship between duty-bearer and rights-holder as the foundation of human rights protection. Moving to the first part of the research question, I will introduce the political theory on consociationalism as a power-sharing system and the so-called plural societies where such a system arises. This is fundamental to be able to analyse the Lebanese model as a systemic basis for human rights protection. Lastly, I will also discuss the role of citizenship, drawing on both political and human rights theory, as this telling for the dynamic between duty-bearer and rights-holder.

2.1 Human rights theory

The organizing of the international human rights system is closely tied to the modern nation state, with the state as the duty-bearer and the individual as the rights-holder. Citizenship could therefore be said to be the link between the individual claiming one's right, and the state, bearing the duty to protect the citizens against violations to this right.²⁹ In a liberal democracy, this is a vital part of the society, and is therefore also crucial for a study where we are to discuss whether the system in a consociational democracy is designed to uphold this same dynamic between state and individual.

The Universal Declaration of Human Rights (UDHR) from 1948 – the cornerstone of the international system and the worldwide human rights norms of today – refer to this dynamic in several articles, and it has become an inherent part of the very system of human rights.³⁰ In the following sub-chapters, I will look into the theoretical basis for the role of the rights-holder and the duty-bearer.

²⁹ There are nuances to this argument, as stateless people also are entitled to human rights. Yet, one's juridical identity is dependent on the relationship with a duty-bearing state, and therefore I will argue that citizenship *in general* is decisive in establishing the dynamic between duty-bearer and rights-holder (De Schutter, Olivier (2014): *International Human Rights Law*, 2nd ed., UK: Cambridge University Press, 685).

³⁰ UN General Assembly (1948): *Universal Declaration of Human Rights*, 217 A (III), art. 21(3)

2.1.1 The state as the duty-bearer of human rights

States parties to a human rights treaty are obliged to protect their citizens in accordance with the content of the treaty. These obligations differ with regard to type³¹ of right, as well as how the State party have committed themselves to the obligation.³² There are several available typologies to interpret the way to fulfil these obligations, such as Asbjørn Eide's "respect, protect, fulfil"-framework or Henry Shue's comparable tripartite typology.³³ These frameworks are too extensive to include as a whole, but the essence is still a necessary backdrop for all human rights obligations. If using non-discrimination as an example, the principle is that a State party to a treaty including the right to non-discrimination is obliged not to discriminate the citizen, protect the citizen from being discriminated by third-parties, and to take appropriate legal and political measures, in order to secure the principle of non-discrimination in the society.³⁴

It should be mentioned that the dynamic between state and individual is not the whole story of human rights protection. There can for example also be non-governmental duty-bearers, such as international corporations, and a state may also have certain obligations to non-citizens, such as in war, but for the topic of this thesis, it is of most relevance to consider the state's obligations to their citizens, as the systemic aspect is to remain in focus.

2.1.2 The individual as the rights-holder of human rights

For a human right to be of relevance, someone must also be the recipient of the right. This is tied to the foundational principle of the human rights system – that the rights are to apply to *all individuals*.³⁵ Within this claim lays two essential aspects when considering rights-holders of human rights – the universality and the individuality of the rights system. These are both important concepts for the present study, as they show which kind of rights-holder the international system is designed to “fit”, and is therefore constituting a basis for whether the consociational rights-holder is different than a “liberal democratic” one, and whether this affects his or her access to the human right to non-discrimination.

The universality of human rights is explained by human rights scholars Bantekas and Oette as “their applicability to everyone, everywhere and anytime”³⁶. Thus, this is where non-

³¹ For example, if the right is an absolute or a relative right.

³² For example, whether there is talk of reservations or derogations.

³³ De Schutter 2014, 280

³⁴ Ibid., 281; Nickel, James W. (2007): *Making Sense of Human Rights*, 2nd ed., Blackwell Publishing Ltd, 38-9

³⁵ Bantekas and Oette 2016, 72-3; Nickel 2007, 9

³⁶ Bantekas and Oette 2016, 5

discrimination is grounded in the very idea of human rights, not just as a separated article, referred to as “abstract universality”, by legal scholar Upendra Baxi.³⁷ However, the universality aspect is also subject to discussion among philosophers of human rights. Relativistic opponents may point to the fact that cultural differences and other contextual aspects should be taken into consideration, instead of applying rights equally to everyone.³⁸ These scholars regard the universality aspect as impossible to attain, as opinions on human nature and rights differ from culture to culture.

Bantekas and Oette refer to the inherent notion of human rights as something one has “by virtue of being human”, and therefore as *individuals*, not as a community.³⁹ Most rights today are individual rights, and traditionally, the collective dimensions of human rights were understood as belonging to *individuals in a minority group*, not the community itself, and not members of *any* community, according to General Comment 23 by the Human Rights Committee.⁴⁰ This again is related to the universality aspect, which can only be achieved by keeping individuals as the rights-holders.

The evolution of rights has nevertheless been moving towards an increased recognition of groups as rights-holders during the last years. This is evident in for example the African Commission on Human and Peoples' Rights, but also in UN treaties dealing with minorities and indigenous people.⁴¹

2.1.3 Group rights

The discussion of group rights in the international human rights system is an interesting aspect to consider for the sake of our analysis, as the discussion shows how states to a certain degree may recognize groups as rights-holders after all.

The initial question when discussing group rights, is to consider what *kind* of groups that are in need of special protection. Minorities and indigenous peoples are typically regarded as holders of group rights, although not without exceptions.⁴² For example, sexual minorities

³⁷ Baxi, Upendra (2008): *The Future of Human Rights*, 3rd ed., Oxford University Press, 167-9

³⁸ Bantekas and Oette 2016, 36

³⁹ *Ibid.*, 73

⁴⁰ UN Human Rights Committee (1994): *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, CCPR/C/21/Rev.1/Add.5, para. 1

⁴¹ Bantekas and Oette 2016, 74

⁴² Bantekas and Oette 2016, 448-9; Kymlicka, Will (ed.) (1995): “Introduction”, in *The Rights of Minority Cultures*, USA: Oxford University Press, 3

are rarely protected by group rights, but, as Bantekas and Oette points out, they are still protected by individual rights.⁴³ Why is it then that some groups are in need of special protection?

The answer lies in the *type of violation* and whether a certain group is in danger of being suppressed under the shield of individual rights. Bantekas and Oette distinguishes between several types of group rights, with the right to internal or external self-determination for minorities as the most common.⁴⁴ Political scientist and proponent of group rights, Vernon Van Dyke views such a self-determination as necessary in some states comprising of more than one ethnic group, where the minority historically has been suppressed by the majority.⁴⁵ He views the modern states' "social contract" between the individual and the state as potentially harmful to survival of these cultures.⁴⁶ However, as Bantekas and Oette emphasizes, group rights introduces the question of "us" and "them" into the human rights system – a system where the inherent universality aspect is existent precisely to combat this tension.⁴⁷ Can the introduction of group rights then be a danger to the protection of individual rights?

There are many critical voices when discussing group rights. Some are afraid it will contest the traditional view of the sovereign state, some point to the irrelevance of groups rights, because individual rights will have a positive enough trickle-down effect on the whole community, while others fear the potential discriminatory consequences for the individual group members.⁴⁸ Undoubtedly, the tension between individual- and group-based rights is interesting, as the promotion of one may potentially erode the other.

2.2 Non-discrimination

The universality principle has already been introduced as an intrinsic part of the human rights thought. Non-discrimination encompasses the same principle, but is often put in more specific terms, as individual articles or even individual treaties. When defining discrimination, Eide and Opsahl draws on a definition from legal scholar Christian Tomuschat: "Discrimination is invidious treatment which introduces unreasonable classifications within the specific context of the

⁴³ Bantekas and Oette 2016, 450

⁴⁴ Ibid., 449

⁴⁵ Kymlicka 1995, 4

⁴⁶ Ibid.

⁴⁷ Bantekas and Oette 2016, 449

⁴⁸ Ibid., 449, 451

rights concerned.”⁴⁹ Thus, *non*-discrimination is therefore the protection against this treatment. Eide and Opsahl has further developed a framework for defining unreasonable classifications, based on Tomuschat’s definition, and the differentiation between unjustifiable and justifiable distinctions.⁵⁰ General Comment 18 mentions political rights as an example of a justifiable distinction, which may be differentiated on grounds of citizenship.⁵¹ The General Comment also states: “(...) not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”⁵² To solve this, Eide and Opsahl suggests that one must see the distinction in light of the right concerned, why the distinction is introduced, and lastly, that the classification has no more damaging (invidious) costs for the ones involved, than necessary to reach the purpose of the classification.⁵³

The legal framework covering non-discrimination in international human rights law is broad. The principle was introduced in the UN Charter, and has followingly been included in the Bill of Rights⁵⁴, a range of regional charters and conventions, as well as some specific treaties dealing with discrimination of specific groups.⁵⁵ This thesis will make use of the wording from ICCPR, as this is a ratified convention in Lebanon, and is frequently referred to when dealing with non-discrimination.

Article 2 (1) in ICCPR reads:

“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

⁴⁹ Eide, Asbjørn and Torkel Opsahl (1990): *Equality and Non-Discrimination*, publication no. 1, Norwegian Institute of Human Rights, 10

⁵⁰ *Ibid.*, 10-11

⁵¹ UN Human Rights Committee (2018): Concluding observations on the third periodic report of Lebanon, CCPR/C/LBN/CO/3, C, para. 8

⁵² *Ibid.*, para. 13

⁵³ Eide and Opsahl 1990, 11

⁵⁴ The Bill of Rights include the Universal Declaration of Human Rights and the two Conventions (International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)).

⁵⁵ These include International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

The article states that all citizens in a state party to the treaty shall have the right to enjoy the civil and political rights included in the Covenant. Eide and Opsahl describe the obligation as a “double duty” – that the duty-bearers are to both respect their citizens’ right to non-discrimination and to fulfill, thus, to implement the appropriate legal framework.⁵⁶ However, incorporating anti-discrimination clauses in the legal framework, like ratifying treaties and other legal measures is only one part of the available means to combat discrimination.⁵⁷ Legal measures have to be placed in a specific context to be able to accomplish proper non-discrimination. For example, if the political system in itself is discriminatory, it’s no help that the State has ratified a range of non-discrimination treaties. In human rights theory, this can degenerate itself as a classical conflict of rights, where the protection of one human right contributes to the violation of another. This is often among the challenges with group rights, because the rights in itself can be seen as discriminative, by not applying to those *outside* of the designated groups.

2.3 Consociationalism

Political scientist Michael Hudson views the power-sharing system of consociationalism as a way for a deeply divided society to manage their internal conflicts through democratic institutions.⁵⁸ Instead of the dominating system of majoritarianism, these countries apply fixed quotas for ethnolinguistic or religious communities, to secure minority rights and equality.⁵⁹ Hudson explains the consociational model as “small elites of different communities interact moderately, responsibly with one another to preserve mutual advantages and promote mass tranquility while they maintain the tightest possible influence over their “flocks”.”⁶⁰ Namely, the system is illustrated as group-based, with community leaders interacting politically to secure the well-being of their groups, under an otherwise weak state power. Arend Lijphart has developed a well-known model of consociationalism, based on the existence of two dimensions: the plural society and the collaboration between the political elites – characterized by grand coalition, mutual veto, proportional representation and segmental autonomy.⁶¹ Establishing a theoretical

⁵⁶ Eide and Opsahl 1990, 22-3

⁵⁷ *Ibid.*, 25

⁵⁸ Hudson, Michael (1976): “The Lebanese Crisis: The Limits of Consociational Democracy” in *Journal of Palestine Studies*, Vol. 5, No. 3/4, 111

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Lijphart, Arend (1995): “Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems”, in Kymlicka 1995, 277; Lijphardt 1977 in Binningsbø, Helga Malmin (2013): “Power sharing, peace and democracy: Any obvious relationships?” in *International Area Studies Review*, 16(1), 92

framework based on these two elements is essential to be able to analyze the political system and the very state idea that permeates Lebanon, and therefore also the system of human rights protection.

2.3.1 The plural society

In a democracy, the core dynamic is, according to Butenschøn, the existence of a free opposition constantly challenging the ruling majority.⁶² In a homogenous society, this will ensure political stability, because the power to turn the opposition into the ruling majority lays with the people, and the people share a political culture, where tension and conflict are kept moderate.⁶³ Butenschøn explains how the differences in these kind of societies *cross* one another, thus, that the content in each “cleavage” is not decisive to the political culture as a whole.⁶⁴ However, such a stability is far more complicated when we are dealing with a *deeply divided society* – where different sub-societies live together in the same state – referred to as “segments” by Lijphart.⁶⁵ Typically, these divisions run parallel instead of crossing each other, which means that class differences may be strengthened by sectarian differences.⁶⁶ Butenschøn argues that when this “cultural fragmentation” dominates the political sphere, national unity proves difficult, and results in a more unstable democracy.⁶⁷ This kind of society is what is referred to as plural.

It is important to emphasize that a heterogenous society is not necessary “deeply divided”. Many factors contribute to such a division, and the groups of a heterogenous society may view their national citizenship as their primary identity, assessing their affiliations to sect, class, ideology or ethnicity as sub-identities. This way, a heterogenous society can be as assembled as a homogenous one.

However, a plural society with deeply divided segments is seemingly less stable than a homogenous society. Still, scholars like Seymour M. Lipset, with references to Tocqueville and Marx, argues that there *are* certain democratic advantages with such a divided society.⁶⁸ Tocqueville feared that a homogenous society with little social conflict would lead to a *too* centralized state power, with no real opposition.⁶⁹ He explained this with a lack of alternative

⁶² Butenschøn, Nils (1985): “Conflict Management in Plural Societies: The Consociational Democracy Formula”, in *Scandinavian Political Studies*, vol. 8, 88

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Lijphart 1995, 276

⁶⁶ Butenschøn 1985, 88

⁶⁷ Ibid.

⁶⁸ Lipset, Seymour M. (1981): *The Political Man*, Baltimore: The John Hopkins University Press, 6-7, 52-53

⁶⁹ Ibid., 7-8

memberships to nurture political and social engagement.⁷⁰ However, with a plural society, the cleavages of the society *and* the consensual way of making policy could be upheld, and hence, maintaining the democracy and avoiding a society with “high dictatorial as well as revolutionary potential”.⁷¹

Tocqueville’s theory captures the democratic necessity of competition that is essential in all democracies. This does not mean that competition is not available in more homogenous societies, like Butenschøn emphasized⁷², but it is nevertheless interesting to see Tocqueville’s view of divisions as a *healthy* part of a society, before moving to Lijphart’s strategy of governing such a society.

2.3.2 Elite cooperation

The second part of Lijphart’s theory encompasses the governing of a plural society. Thus, how the elites of each segment can cooperate to create a stable democracy.

The grand coalition is a particularly important aspect, as it encompasses the basic power-sharing element of incorporating leaders from *all* groups to rule together.⁷³ Lijphart emphasizes that these coalitions may take many forms, all depending on the type of democratic system it is a part of.⁷⁴

The mutual veto aspect – or minority veto, as it is referred to in Kymlicka’s book – institutionalizes the minorities’ veto right against political decisions where they are being undermined in issues of vital interest to the group.⁷⁵

The proportionality aspect is based on the fair distribution of political power. For example, the minority’s right to a certain number of seats in the parliament, or a proportional representation in the army or state-owned companies.⁷⁶

The final principle is the one on segmental autonomy – a form of self-determination granted to the different groups.⁷⁷ Lijphart refers to this as a complement to the grand coalition

⁷⁰ Ibid., 8

⁷¹ Ibid., 7, 52

⁷² Butenschøn 1985, 88

⁷³ Ibid.

⁷⁴ Lijphart, Arend (1985): *Power-sharing in South Africa*, Institute of International Studies, University of California, Berkeley, 7

⁷⁵ Lijphart 1995, 278; Binningsbø 2013, 95

⁷⁶ Lijphart 1995, 278; Binningsbø 2013, 95

⁷⁷ Binningsbø 2013, 95

principle – that on issues of common interest, the decisions should be taken together, while other decisions should be left to the groups.⁷⁸

Consequently, the consociational democracy is, in Lijphart's view, a viable solution in deeply divided societies, where one aims at preserving the pluralistic aspects, while still being citizens of the same state. The structure may be a solely unformal one, where the leaders of each group agree on a set of rules or principles – or it can be enshrined in the constitution or other formal laws.⁷⁹ However, one last organizing element is decisive for the democratic potential of the consociational democracy, namely whether the segments of the society are pre-determined or self-determined. The former refers to a preliminary agreement of which segments the society are to consist of and the latter is a more dynamic system, where groups may rise and decline without any formal recognition from the state.⁸⁰ Lijphart has looked specifically at the consociational system of South-Africa, where he argues that the self-determination of groups have proved to be the most stable.⁸¹ He lists up a range of reasons for self-determination to be the preferred solution, such as prevention of discrimination between recognized and non-recognized groups, but also in defining the members of the groups.⁸² Lijphart argues that with pre-determined segments, a plural society risks placing individuals in groups they do not feel adherence to – either because they have overlapping affiliations, or because they do not feel belonging to *any* of the groups.⁸³

2.4 The role of citizenship

The role of citizenship is of vital importance when exploring the human rights protection in a certain country, as the state obligations depends on a degree of “social closure” between citizens and aliens – namely a clear distinction between those who are rights-holders in a certain country and those who are not.⁸⁴ Joseph defines it as “a legal relationship between the legitimate members of the political community and the state.”⁸⁵ In liberal democracies, this legal relationship is set to be between the individual and the state, a social contract, or in Uri Davis' words, a

⁷⁸ Lijphart 1995, 277-8

⁷⁹ Ibid., 279-80

⁸⁰ Ibid., 280

⁸¹ Ibid., 283

⁸² Ibid., 284

⁸³ Ibid.

⁸⁴ Jaulin 2014, 251

⁸⁵ Joseph, Suad (ed.) (2000): *Gender and Citizenship in the Middle East*, New York: Syracuse University Press, xvii; Jaulin 2014, 251

“certificate”, indicating the equal access to rights such as civil, power-political and material resources of the state.⁸⁶

Nevertheless, citizenship regimes may still differ significantly, and the inherent equality aspect found in many democratic citizenship regimes may degenerate itself differently. In her article on citizenship in Jordan, Abla Amawi applies Charles Tilly’s distinction between *thin* and *thick* citizenship – a useful definition when discussing the human rights access a political system’s citizenship regime leads to. The thin citizenship designates a limited range of duties and rights, and the thick citizenship a broad range.⁸⁷ More precisely, Amawi writes that in Jordan, a woman’s citizenship is mediated through a man’s – in this case, her husband – and consequently, she does not enjoy a thick citizenship.⁸⁸ This is not to say that the legal framework does not grant the same rights to men and women equally, but that the *realization* of these rights is only possible through a mediator, such as the woman’s father or husband, but also potentially through her tribe or other group relation.⁸⁹

Uri Davis applies a similar distinction when discussing citizenship, by instituting a two-tier model, differing between passport citizenship and democratic citizenship.⁹⁰ He characterizes the latter as having legitimate access to civil, political, social and economic resources of a state – a thick citizenship, if referring to Tilly’s definition – and the passport citizenship as restricted access to these rights.⁹¹ The degree of restrictions differ, but Davis provide the classical example of Israeli vs. Palestinian rights, where the Palestinians only have access to civil and political rights, and not to the economic and social rights.⁹²

Tilly and Davis’ theories obviously have some significant similarities, but Davi’s theory is more concrete in that the two types of citizenship include different *sets* of rights, where Tilly’s thin citizenship in theory may contain both of these sets, the only difference being that it is facilitated by a mediator. Both of these theories will be useful when exploring the Lebanese citizenship and the degree of human rights protection the political system allows for.

⁸⁶ Davis, Uri (2000): «Conceptions of Citizenship in the Middle East”, in Butenschøn, Nils et. al. (eds.) (2000): *Citizenship and the State in the Middle East: Approaches and Applications*, Syracuse University Press, 50-51

⁸⁷ Tilly, Charles (1995): "Citizenship, Identity, and Social History", in *International Review of Social History*, suppl. 3, 40, 7 (referred to by Amawi, Abla (2000): “Gender and Citizenship in Jordan”, in Joseph, Suad (ed.) (2000): *Gender and Citizenship in the Middle East*, New York: Syracuse University Press, 159

⁸⁸ Amawi 2000, 159

⁸⁹ Ibid.

⁹⁰ Davis 2000, 50-51

⁹¹ Ibid., 54-55

⁹² Ibid., 55

2.5 Summary

The preceding chapter has aimed at elaborating a conceptual and theoretical framework for the analysis of the Lebanese system as an impediment to human rights protection. The introduction of the rights-holder/duty-bearer dynamic, consociationalism, non-discrimination as well as the role of the citizenship, have provided a broader understanding of the research question and how these factors all are to be considered when discussing human rights protection.

Lijphart's consociational model show how a deeply divided society may be democratically governed, but also that the democratic outcome may depend on whether the segments are pre-determined or self-determined. With pre-determined groups, a system originally tailored to create stability may lead to a hardening of ethnical fronts, and therefore potential discrimination of those who fall outside of the pre-determined groups. This way, being citizen in a country may not be sufficient to have your basic rights respected by the state, if your citizenship is mediated through groups or persons, or if the citizenship is more like a "passport citizenship". These elements will be vital when analyzing the case of the Lebanese system. However, I will first introduce the historical aspects that have led to the formation of the contemporary system, and then the modern system and citizenship regime.

3 Historical development of a consociational democracy

The political system of a state is fundamental for its ability to protect the human rights of its citizens. Consequently, the system is also what may constitute the main *impediment* for human rights protection, and in some cases even contribute to discrimination of its citizens. However, a political system is meticulously tied to the historical development of both the country and the region, and for a case study it is all the more relevant to be familiar with the context, to be able to analyze the contemporary system. The aim of the subsequent paragraphs is to trace the consociational elements of Lijphart's model in Lebanese, political history, to better understand the current system and its effect on human rights protection and non-discrimination in particular.

The introduction of the first sectarian elements in Lebanon has been located to different periods by different scholars. Helena Cobban draws the line back to the 16th century, when the Maronite- and Druze people of Mount Lebanon pursued a system of coexistence instead of developing separate structures within the Mount Lebanon areas.⁹³ Salloukh et al. on the other hand, point to the Mount Lebanon upheavals between the two sects in 1839-40 as the decisive starting point.⁹⁴ The interesting disparity between the two sources is how Cobban refers to a state of peace and harmony as leading to a sectarian organizing of the society, while Salloukh et al. points to tension and upheaval as the real catalysator.⁹⁵ Nevertheless, this balance between coexistence and conflict is an interesting introduction to the history of the Lebanese system, as this is what has characterized the country all up until contemporary times.

3.1 Ottoman sultanate and French mandate period

The Ottoman empire extended across the entire Arab world in the 15th and 16th century, encompassing also today's Lebanon in its sultanate for well over 300 years. Cobban points to the Ottoman period as one bringing regional peace and prosperity, eventually also leading to internal stability among the different sects that later were to constitute the Lebanese state.⁹⁶ Lebanese historian Albert Hourani points to three vital elements that came out of this period; local autonomy in sectarian areas, introduction of the demographic pattern of today's Lebanese

⁹³ Cobban 1987, 35

⁹⁴ Salloukh et al. 2015, 13

⁹⁵ Ibid.; Cobban 1987, 35

⁹⁶ Cobban 1987, 35-6

population, as well as the system of local lordship⁹⁷, described by Cobban as sectarian leaders practicing a sense of local autonomy, but still under the “roof” of the Ottoman sultanate.⁹⁸ As described in 2.3.2, segmental autonomy is one of the vital elements of Lijphart’s theory of consociationalism.⁹⁹

It is important to bear in mind that the described area is not equal to the geographical area of Lebanon as of today. Thus, the sectarian coexistence described is mainly one between the Druze and Maronite sects, while the main Muslim sects of Shi’ites and Sunnis dominated what was then the Syrian area – as well as the rest of the Ottoman empire, as the Ottomans were predominantly Sunni.¹⁰⁰

While the early sectarianism of Mount Lebanon were fluid and the segments more or less self-determined, Ottoman rule institutionalized the areas and divided Mount Lebanon into two, sectarian districts.¹⁰¹ However, the inhabitants of Mount Lebanon were not only divided along sectarian lines, but also along the lines of class, which consequently defined your access to political influence.¹⁰² Thus, proportional representation, also introduced by Lijphart in 2.3.2, was formally introduced to the Lebanese system already at this point.¹⁰³

After World War I, the Ottoman empire collapsed, and vast areas were either made independent or divided between the European victors. After great rivalries¹⁰⁴, the French claimed the mandate power over Syria and Greater Lebanon.¹⁰⁵ Historically, France and the Maronites has had a special relationship, and the French language, history and culture is still an inherent part of Maronite life. This “new” area of Greater Lebanon not only consisted of the mountainous areas of the Maronites and the Druze, but also Muslim territories. Lebanon under French mandate was, according to Salloukh et al., described as “a plural society deeply divided along overlapping sectarian, ideological, economic, regional, and cultural cleavages”.¹⁰⁶ The segmental autonomy was further developed in this period, with the granting of extended

⁹⁷ Hourani, Albert (1981): *The emergence of the modern Middle East*, London: Oxford University Press, 126 (reference found in Cobban 1987, 36)

⁹⁸ Cobban 1987, 37; Hourani 1981, 126

⁹⁹ Lijphart 1995, 227

¹⁰⁰ Cobban 1987, 24-5

¹⁰¹ Salloukh et al. 2015, 13-4

¹⁰² Ibid.

¹⁰³ Ibid; Lijphart 1995, 227

¹⁰⁴ Butenschön 2015, 108

¹⁰⁵ Salloukh et al. 2015, 14

¹⁰⁶ Ibid.

jurisdiction over personal status and family law to religious courts.¹⁰⁷ Thus, distinct characteristics of the contemporary Lebanese state was acquired already at this stage, but still with significant sectarian differences. Hourani describes the population at this point as subscribing to “different ideas of what Lebanon is and should be”.¹⁰⁸

3.2 Independence and civil war

After independence in 1943, the National Pact was presented, as an unwritten agreement of coexistence and power-sharing between the Lebanese sects and a supplement to the established Constitution.¹⁰⁹ Following the agreement, a Maronite president and a Sunni prime minister were elected and a distribution key based on the 1932 population census (showing the Maronites as a narrow majority) was implemented, to guide the representation in parliament.¹¹⁰ Raghid El-Solh’s study from 2004 argues that one of the major accomplishments of the National Pact is the “democracy of conciliation”¹¹¹, where a version of the “mutual veto”, referred to in Lijphart’s consociational model, was implemented to “smooth out the differences among the Lebanese”.¹¹²

The French mandate power regarded the independence as a straight out coup and put in great efforts to dissolve the parliament and retain decisive power over the area. On the other side, the harsh reaction from the French led to increased, national solidarity among the people, where the Lebanese confessions stood together in widespread, national protests, to regain their independence.¹¹³ They eventually succeeded, and it seems viable that a range of the elements that today make out the political system of contemporary Lebanon was institutionalized at this point in history. Butenschøn writes:

“We can clearly say, not least with the hindsight of today, that the Republic of Lebanon emerged more as a de facto federation of religious sects, with separate and deeply divided communities finding together a union of convenience and historical necessity, far from the ideal prescribed by the French republican model.”¹¹⁴

¹⁰⁷ Jaulin 2014, 270

¹⁰⁸ Hourani, Albert (1998): “Visions of Lebanon”, in Halim Barakat (ed.): *Toward a Viable Lebanon*, Washington: Georgetown University Press, 7 (reference from Salloukh 2015, 15)

¹⁰⁹ Salloukh et al. 2015, 16

¹¹⁰ Butenschøn 2015, 111

¹¹¹ El-Solh, Raghid (2004): *Lebanon and Arabism: national identity and state formation*, London: I.B. Tauris, 208-9 (reference from Butenschøn 2015, 110).

¹¹² Ibid.

¹¹³ Butenschøn 2015, 111

¹¹⁴ Ibid.

Thus, even though the division between the significant sects upheld, the shared, Lebanese identity became stronger. The Shihabist administration, who ruled between 1958 and 1970, were particularly advocating this nationalism, and tried to increase the significance of other affiliations than the sectarian.¹¹⁵ This included an amplified significance of familial and personal relations, as seen in Mount Lebanon under the Ottoman system.¹¹⁶ General Fouad Shihab himself even referred to his trusted circle of coworkers as *awladi* – my children, illustrating the personal affiliations that emerged.¹¹⁷ However, the Shihabist objective never settled in the society, and in 1975, sectarian tension led to the outbreak of a major civil war.¹¹⁸ The war raged for 15 years, fatal for all sects and resulting in a country bound to start over. By 1989, the different sects agreed on a peace settlement – the Taif Accord – a written agreement ending the civil war and installing a range of constitutional changes, like decreasing the Christian president’s power by moving decisive policy areas to the Sunni prime minister and altering the 5:6 ratio of division of parliamentary seats, to a 5:5 ratio, leading to equal distribution between Muslims and Christians.¹¹⁹ The agreement also aimed at abolishing sectarianism completely, while at the same time contributing to a reproduction of the system, with increased autonomy to the different sects.¹²⁰ With this, Ta’if prepared the ground for a move towards a “consociational inter-sectarian partnership”¹²¹, much like Lijphart’s element of “grand coalition”.¹²² Hence, the political system and its consociational characteristics has evolved in line with the historical development in the country and in Suad Joseph’s words, it is today “a product of global transformation over the past 150 years or so”¹²³.

¹¹⁵ Salloukh et al. 2015, 19

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid., 19-20

¹¹⁹ Butenschøn 2015, 113

¹²⁰ Ibid., 112

¹²¹ Salloukh et al. 2015, 23

¹²² Lijphart 1995, 277

¹²³ Joseph 2011, 151

4 Lebanese consociationalism as a basis for human rights protection

While the preceding chapter has had a contextual purpose, by elaborating on how power-sharing elements have been introduced throughout Lebanese history, the following chapter will initiate the analytical part of the thesis, by discussing the contextual elements more specifically in terms of Lijphart's model and their sufficiency in being a basis for human rights protection. The case of citizenship will be particularly important for the question of human rights protection, as a country's citizenship regime defines the linkage between the state as a duty-bearer and the individual as a rights-holder. These elements will be foundational for a shared discussion towards the end of the chapter, considering the Lebanese system's ability to protect the citizens' human right to non-discrimination.

4.1 Consociational elements in accordance with Lijphart's model

Lijphart's consociational model encompasses the concepts of the plural society and the elitist cooperation, consisting of grand coalition, proportional representation, mutual veto and segmental autonomy. The plural society is, as elaborated in 2.3.1, characterized by deep division between precisely defined segments.¹²⁴ The 18 confessional groups of Lebanon make out the segments of the country, and the political system is meant to be a reflection of this demography.¹²⁵ The division between the groups are carefully outlined, not only in the daily life, but also constitutionally, where rights and duties are ascribed in accordance to confessional adherence.¹²⁶ Hence, the legal framework is designed to maintain the cultural, religious and social features of each confession – resulting in divisions running parallel, instead of crossing each other, and therefore strengthening a degree of cultural fragmentation and the society as “deeply divided”.¹²⁷ The fragmentation is strengthened by Lebanon's pre-determination of its segments¹²⁸, in that unrecognized groups do not have the ability to rise and decline, like in self-determined societies.

¹²⁴ Butenschøn 1985, 89

¹²⁵ Butenschøn 2015, 107

¹²⁶ *Ibid.*, 110; Salloukh et al. 2015, 32; Brill 1997 (e.g. ch. 2)

¹²⁷ Butenschøn 1985, 88

¹²⁸ Lijphart 1995, 283

4.1.1 Elite cooperation in the Lebanese political system

The division of power, in line with Lijphart's grand coalition element, was introduced with the unwritten National Pact in 1943, and later altered by the Ta'if Agreement in 1989.¹²⁹ The division is still not a part of the Constitution, but the ruling "troika" is today consisting of a Maronite president, a Sunni prime minister and a Shi'ite speaker of the house. Seemingly serving the democratic intention of the grand coalition element, the power positions of the country is then evenly delegated among the larger confessions, and smaller, yet important, positions are delegated to other confessions. However, Lebanese scholar Antoine Messara argue that the grand coalition in Lebanon has throughout the years had *too* much power, and has therefore resorted to solving political issues by exclusive bargaining in the back room, degrading the Parliament's function significantly.¹³⁰ From Messara's point of view, the grand coalition of Lebanon could then give the impression of being more democratic than it actually is, if it has a potentially damaging function on other democratic institutions in the political system.

The proportionality aspect is enshrined in the Constitution¹³¹ (art. 22 and 24), and was also significantly improved after the Ta'if Agreement, when the 5:5 ratio replaced the 5:6 ratio and the number of Christian and Muslim members of Parliament became equal.¹³² However, there are at least two issues related to Lebanon's application of the proportionality element. First, the distribution is supposed to reflect the population *as it is*, which is difficult to attain in Lebanon, as a population census has not been carried out since 1932. It is highly likely that the Muslim population as a whole has grown significantly with the migration from Palestine and Syria¹³³, and also with regard to higher fertility rates among Muslims than Christians. When the system's main aim is to accurately reflect the different segments and their size and influence, it is all the more vulnerable to changes in the demography. Arnon Soffer once wrote that demography is said to be the "core of politics"¹³⁴ in Lebanon, and thus, when the political system is incapable of dealing with a changing demography, problems may occur.¹³⁵ Proportional distribution of parliamentary seats were already by the end of the civil war an established part of

¹²⁹ El-Khazen 1991, 64; Butenschön 2015, 120

¹³⁰ Butenschön 2015, 120

¹³¹ Brill 1997

¹³² Ibid., 113

¹³³ Ibid., 112

¹³⁴ Soffer, Arnon (1986): "Lebanon: Where Demography is the Core of Politics and Life" in *Middle Eastern Studies* vol. 22, no.2, 197-205.

¹³⁵ Butenschön 2015, 112

the political system, but when the changing demography is not reflected in the official numbers, distribution is based on incorrect figures. Thus, elements that were supposed to secure equality instead becomes an impediment to fair distribution of influence, based on the confessional size.¹³⁶ The second problem of the proportionality aspect in Lebanon is the issue of placing the 18 confessions in boxes marked “Christian” and “Muslim”, both because it strengthens the pre-determined aspect of consociationalism where non-religious groups or religious groups not adhering to Christianity or Islam are excluded, and because the already recognized confessions are not regarded as independent groups, but as a part of a larger religious class. This is especially problematic for the Druze people, who are more often regarded as a separate religion than as an Islamic branch.

Lijphart’s mutual veto aspect is also existent in the Lebanese system, as the ability for the leaders of a confessional group to prevent political decisions that may undermine or harm the group.¹³⁷ However, this action is only available for the most powerful groups and history shows that the mutual veto has to a large degree contributed to a blocking political decisions that could have strengthened the other consociational elements and had a democratizing effect.¹³⁸ A describing example is the Maronites’ veto against carrying out a new population census, as it would probably alter the proportional distribution in favour of the Muslim population.¹³⁹ Lijphart’s view of the veto aspect is that it may be either absolute or suspensive, for example only regarding cultural or educational aspects of the policy, and the Lebanese example shows how an absolute veto may be damaging to the consociational democracy as a whole.¹⁴⁰

Lijphart’s fourth principle is the segmental autonomy, which is established among the Lebanese confessions as a degree of independence “free from any overview by state institutions.”¹⁴¹ This freedom is particularly visible in the field of personal status laws, where the sects have full jurisdiction over policy areas like marriage, divorce and child custody.¹⁴² However, the laws have to be recognized by the state institution before being implemented, which means that there are still *some* regulation on the field. Today, 15 of the sects have their own personal status laws, with the remaining three sects adhering to other sectarian laws. No civil alternative

¹³⁶ Ibid.

¹³⁷ Ibid. 110-112

¹³⁸ Ibid., 112

¹³⁹ Ibid.

¹⁴⁰ Lijphart 1995, 279

¹⁴¹ Salloukh et al. 2015, 34

¹⁴² Jaulin 2014, 270

is available. The personal status laws are particularly interesting to our research question, as separate jurisdiction means that the Lebanese citizens are in principle not equal before the law, but rather reduced to sectarian, legal subjects.

Lastly, it is important to emphasize that it is not a general agreement among scholars that Lebanon is to be regarded as a full-on consociational democracy. For example, Rania Maktabi argues that Lebanon has evolved more towards an ethnocracy, than an actual consociational democracy, in terms with Lijphart's model.¹⁴³ She points specifically to the fact that the population census of 1932 has been used by certain confessional groups to restrict the access to the political institutions.¹⁴⁴ Other scholars, like Nagle and Fakhoury, divide between different forms of consociational democracies, and point to Lebanon as a "corporate consociational democracy", opposed to a "liberal consociational democracy".¹⁴⁵ The corporate version only allows for ethnic or sectarian groups, while the liberal has a broader scope.¹⁴⁶ Nagle and Fakhoury argue that, even though consociationalism was deemed a harmonizing incentive for post-war societies, the corporate version is problematic, as it contributes to freezing the ethnic divisions, and exclude those who do not identify with a sectarian, pre-determined group.¹⁴⁷ These views contribute to problematizing the Lebanese consociationalism and the degree of democratic effect that follows from such a system.

4.2 Lebanon's citizenship regime

As argued in the introductory chapter, citizenship is the very backbone of the relationship between individual and state – it is the "right to have rights".¹⁴⁸ Therefore, citizenship is also the natural linkage between an analysis of Lebanon as a consociational democracy and a larger discussion of the system's implications on human rights protection and non-discrimination in particular.

The Lebanese citizenship was established in 1924, and no major reform has been initiated since then.¹⁴⁹ The two main texts that still regulates the citizenship law is the Treaty of Lausanne (1923) and the Lebanese Nationality Law (1925). These provide regulations to both

¹⁴³ Maktabi 2000, 147-48

¹⁴⁴ Ibid., 148

¹⁴⁵ Nagle and Fakhory 2018, 83-4

¹⁴⁶ Ibid.

¹⁴⁷ Ibid., 83, 95-96

¹⁴⁸ Arendt 1958, 296

¹⁴⁹ Jaulin 2014, 251

transmission, acquisition and loss of citizenship, and were decisive to the replacement of stateless people after the fall of the empires after World War I.¹⁵⁰ However, the Lebanese citizenship has been – and still is – connected to one’s sectarian affiliation, and even the national identity cards has until recently contained signage of which of the 18 sects you belong to.¹⁵¹ Thus, a citizen of Lebanon is not only Lebanese, but a Maronite Lebanese, Sunni Lebanese or a Lebanese in terms of any of the other confessions. As we have seen in the preceding paragraphs, this is the basis for governmental representation and is also defining certain rights and duties, as the groups enjoy a degree of segmental autonomy.

4.2.1 Civil citizenship vs. sectarian citizenship

The primary problem with the Lebanese citizenship regime’s mandatory sectarian attachment is precisely the word mandatory – there is no civil alternative where you get to keep your basic civil rights, without adhering to one of the recognized confessions.¹⁵² UN’s Special Rapporteur on Freedom of Religion and Belief states that as an adherent of convictions like Buddhism, atheism or unrecognized Christian denominations, you are disadvantaged by law.¹⁵³ You have no right to own land, be elected to Parliament or even get married.¹⁵⁴

The reason for why a civil alternative has never been introduced is linked to the very state idea of Lebanon, where groups enjoy a favourable position and the organization of the society is based on segmental autonomy. However, I will argue that the political system is not dependent on the existing citizenship regime to uphold its consociational structure. The Lebanese citizenship is intrinsically linked to the pre-determination of segments, and one of Lijphart’s main arguments *against* pre-determination is that the citizens should be granted the choice of not belonging to any segment, while still enjoying the same civil rights as your fellow

¹⁵⁰ Ibid. 255

¹⁵¹ This law has been opted for change several times, lastly in 2009 when it was formally accepted to remove sectarian affiliation from the identity cards (Salloukh et al. 2015, 36). However, according to non-governmental actors like Human Rights Watch, this is not sufficient, as the remaining personal status laws are related to religious affiliation (Human Rights Watch (2009): "Lebanon: Removal of Religion from IDs Positive but not Sufficient Amend Laws to Reform Sectarian System and End Discrimination" <https://www.hrw.org/news/2009/02/16/lebanon-removal-religion-ids-positive-not-sufficient>, accessed 31.03.2019) and one is required to refer to the sectarian courts to which one belongs, in family-related matters (UN Human Rights Council 2015, art. 43).

¹⁵² Lebanon is a civil state and the citizenship is in theory a common citizenship. However, there is no Civil Code, which means that there is no civil citizenship where you have access to the same set of rights as the ones adhering to one of the recognized confessions.

¹⁵³ UN Human Rights Council 2015, art. 44

¹⁵⁴ Ibid.

citizens.¹⁵⁵ Hanf argues that such a choice would strengthen the consociational system in Lebanon specifically, as it would include both advocates of a sectarian identity and the opponents, and therefore be able to satisfy both opinions.¹⁵⁶

So if a full civil citizenship regime is possible, and perhaps even advantageous, without eradicating the consociational idea, why is it still not introduced? Also this question is related to the very idea of Lebanese consociationalism, and more specifically to the “elite cartel”, which consociationalism has been termed.¹⁵⁷ The demographic balance, which is the foundation for the consociational elements in Lebanon, is favourable to certain confessional groups, and a citizenship reform would obviously poke this balance, as confessional members would dispose their membership in return of a full, civil citizenship.¹⁵⁸ This is relatable to the mutual veto element, as discussed in the previous sub-chapter, where the Maronites have hindered a new population census, as it is likely to show less favourable numbers for the group. Opening up for full civil citizenship would lead to a similar result.

The citizenship issue is also rooted in a discussion of the very identity of the Lebanese democracy, as many see the political system as deeply attached to the different religions of the country, and an important force in securing stability between the groups.¹⁵⁹ Many fear that a full civil citizenship will allow for jurisdiction that opposes or degrades religious teachings, even though Lebanon *is* a civil state with several laws already in conflict with certain religious teachings.¹⁶⁰ Nevertheless, to many, the debate of a civil citizenship has been seen as a debate of the future of sectarianism. There is no doubt that with a powerful elite making sure that the demographic balance stay frozen and the citizenship is kept sectarian, the citizenship regime and the consociational democracy will continue to be mutually reinforcing.¹⁶¹ This way, the power-sharing elements of Lebanon constitute an impediment to a civil citizenship reform, but the citizenship regime also enforces the political system.¹⁶²

¹⁵⁵ Lijphart 1995, 285

¹⁵⁶ Hanf 1981, 249 (reference from Lijphart 1995, 285)

¹⁵⁷ Binningsbø 2013, 107

¹⁵⁸ Firro, Kais (2003): *Inventing Lebanon: Lebanism and the State during the Mandate*, London: I. B. Tauris, 204 (reference from Jaulin 2014, 257)

¹⁵⁹ Jaulin 2014, 251, UN Human Rights Council 2015, art. 64

¹⁶⁰ Jaulin 2014, 251

¹⁶¹ *Ibid.*, 251, 256

¹⁶² *Ibid.*

4.2.2 The Lebanese citizenship on the basis of Tilly and Davis' theories

Nevertheless, my main intention of elaborating on the citizenship aspect in this thesis, is to explore to what extent the role of the national citizenship in consociational Lebanon affects the citizens' access to protection of human rights. The preceding paragraphs have established how the Lebanese citizenship is a sectarian one, as a range of rights and duties are under sectarian jurisdiction, and there are no civil alternative for those outside of the 18 confessions. From a human rights perspective, this is problematic on several levels, as the sectarian membership both decides *if* you are granted a set of rights, and the type of sect defines *which* rights you have. Again, this leads to inequality before the law and therefore discrimination.

On the basis of Tilly's distinction between thick and thin citizenship, I will therefore argue that citizenship in Lebanon is mediated through one's confessional adherence and can be regarded as *thin*. More specifically, a Maronite and a Sunni are both Lebanese citizens on equal terms, but in matters concerning family law, their rights are defined by their confession and the adhering religious court.

With regards to Davis' distinction between passport citizenship and democratic citizenship, the case is more complex. Constitutionally, all citizens are equal and entitled to a democratic citizenship. However, if you do not adhere to a confession – either by choice or by force – you lose access to a set of rights which would otherwise be granted through your sectarian membership. Therefore, one could argue that such citizens only are in possession of a passport citizenship. Another view is that by allowing the sect to be a mediator, the state also allows itself to be a *weak* state where the power to monitor whether citizens have a full, democratic citizenship is lost.

Taking both Tilly and Davis into consideration, I will argue that the Lebanese citizenship is a thin citizenship, but that most still enjoy a full, democratic citizenship. However, the fact that some do not, and that the different sects hold jurisdiction where the state has no power show the weakness of the Lebanese state and therefore also the weakness of the national citizenship, where citizens are *not* equal before the law.

4.3 Human rights protection in consociational Lebanon

I have in the preceding chapter analyzed the consociational elements of Lebanon, how they fit with Lijphart's model, and how the particularities of Lebanese history, demography and political system have resulted in a citizenship regime that is mediated through one's confessional group. The subsequent sub-chapter will be gathering the threads and discuss the human rights

consequences of the political system and to what extent the Lebanese consociationalism and appurtenant citizenship regime may constitute a first layer of discrimination. Before moving to the discussion, a brief introduction to the human rights principles' place in Lebanese law is necessary, as this make out the theoretical basis for human rights protection.

4.3.1 Lebanon's legal framework of human rights - constitutional recognition and ratification of treaties and conventions

The references to basic rights and duties are included several places in the Constitution.¹⁶³ Personal status and freedom of religion is guaranteed, as well as equality before the law (art. 7), freedom of expression (art. 13) and right to private ownership (art. 15). However, as noted by the Special Rapporteur of Freedom of Religion and Belief, the respect for personal status is guaranteed for persons in *every religious sect*.¹⁶⁴ Thus, this can be interpreted as including the 18 recognized sects only, and a legal basis for the personal status laws that are placed under the jurisdiction of the religious confessions.¹⁶⁵ Thus, when solely looking at the Constitution, non-discrimination is an inherent principle in the Lebanese law corpus.

Lebanon has also ratified the majority of the core human rights treaties from the UN¹⁶⁶ and is ranked as number 106 by the Economist's 2018 Democracy Index.¹⁶⁷ The Special Rapporteur of Freedom of Religion and Belief deem the domestic law to be a "comprehensive legal framework" where the main international human rights treaties have been integrated into domestic law.¹⁶⁸ They have, throughout the preceding years, welcomed a range of Special Rapporteurs and other type of country visits. However, for this thesis it is especially interesting to address the Human Rights Committee's (HRC) most recent report on the country's non-discrimination framework. The HRC notes that the principle of equality is generally included in the Constitution, but they view the framework as being too narrow and in need of

¹⁶³ Brill 1997; UN Human Rights Council 2015, art. 9

¹⁶⁴ UN Human Rights Council 2015, art. 10

¹⁶⁵ Brill 1997, art. 9; UN Human Rights Council 2015, art. 11

¹⁶⁶ The "core treaties" are in reference to UN's publication from 2006 (Office of the United Nations High Commissioner for Human Rights (2006): The Core International Human Rights Treaties, ST/HR/3, <https://www.ohchr.org/Documents/Publications/CoreTreatiesen.pdf>, accessed 14.05.2019). Lebanon has ratified all this, with except from the Optional Protocol to the International Covenant on Civil and Political Rights and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Office of the United Nations High Commissioner for Human Rights (2019): Ratification Status for Lebanon, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=96&Lang=EN, accessed 14.05.2019)

¹⁶⁷ The Economist Intelligence Unit 2019

¹⁶⁸ UN Human Rights Council 2015, art. 17

concretization¹⁶⁹ They are concerned about missing remedies for the discriminated and a comprehensive legislation to combat discrimination in all spheres.¹⁷⁰

Nevertheless, ratifications are not sufficient if systemic conditions or other laws prevent the full realization of the rights. This is what I referred to as “systemic and institutional shortcomings”¹⁷¹ in the introductory chapter. This also counts for non-discrimination, and the HRC points to several problematic aspects of the Lebanese system, such as personal status laws, gender equality and transmission of citizenship from parents to children.¹⁷² These will be discussed further in chapter 5 and 6.

4.3.2 The citizenship regime as the first layer of discrimination by the Lebanese system?

As demonstrated, non-discrimination *is* an inherent principle in the Lebanese Constitution, as well as in the many treaties they have ratified and implemented. However, as the citizenship regime and certain systemic elements of the Lebanese consociationalism seem to lack this element of non-discrimination, is it then correct to regard the Lebanese state as upholding its “double duty”?¹⁷³

I will argue that the citizenship regime constitutes the main problem, as it is in practice more of a sectarian citizenship rather than a common citizenship. A sectarian citizenship, according to Salloukh et al., leads to the production of sectarian, legal subjects, instead of individual subjects.¹⁷⁴ This, together with the view of the Lebanese citizenship as a *thin* one, is seemingly a problematic point of departure for the protection of human rights, as it results in inequality. This is also discussed by Salloukh et al., who write that “(...) the Lebanese remain unequal sectarian subjects compartmentalized in self-managed communities, rather than citizens with inalienable rights.”¹⁷⁵ Henceforth, sectarian subjects do not have access to individual rights, as he or she is defined on the basis of group membership, not citizenship, or simply by virtue of being human. Jaulin writes of the Lebanese system, that it “(...) is characterized by

¹⁶⁹ UN Human Rights Committee (2018): *Concluding observations on the third periodic report of Lebanon*, CCPR/C/LBN/CO/3, C (11-12)

¹⁷⁰ Ibid.

¹⁷¹ Bantekas and Oette 2016, 26

¹⁷² HRC 2018, art. 15-16

¹⁷³ “Double duty” referred to by Eide and Opsahl and discussed in ch. 2.2.

¹⁷⁴ Salloukh et al. 2015, 41

¹⁷⁵ Ibid., 2

the primacy of communal over individual rights and by the subversion of the principle of equality among individuals by citizenship status.”¹⁷⁶

Thus, Lebanon is a group-based system, where citizens have access to a set of communal rights, mediated through their confessional groups. However, when defending the existence of group rights, the protected group’s *minority status* is always an important backdrop. So what then when we are dealing with a society where *all* groups have group rights, and no group is granted minority status? This is interesting, as the primary risk of applying group rights is the discriminatory aspect that creates a sense of “us” and “them”. Hence, by giving *all groups* a degree of sovereign rights, one somehow avoids this potential problem. However, while the Lebanese Constitution do not discriminate between the groups *on paper* (except the groups that are not recognized), it opens up to a separate jurisdiction, where the different groups are allowed to apply their own, religious rules in the field of family law. Thus, the Constitution itself do not discriminate directly in these terms, but it allows for a set of group rights which indirectly lead to the production of unequal, sectarian subjects. This, I will argue, means that the Lebanese system *do not* fulfill their double duty in protecting against discrimination, as the implemented laws against discrimination in practice cannot provide a full protection on equal terms. Bantekas and Oette write: “In whatever way collective rights are perceived and put into practice, care should be taken that they are not implemented in a way that prejudices the individual rights of group members.”¹⁷⁷ In the Lebanese case, it seems viable to believe that the segmental autonomy that each of the 18 groups are granted *do* prejudice the individual rights of the group members and therefore propose an impediment to the right to non-discrimination. Therefore, I will argue that citizenship – as an outcome of the Lebanese system – constitutes a *first layer of discrimination*, where citizens are unequal because other group affiliations than the national citizenship are favoured, and granted jurisdiction over certain rights and duties.

As mentioned in the introductory chapter, my assumption is that the group affiliations that enjoy an extended jurisdiction or influence, at the expense of the national affiliation, are sect and family. The sectarian membership is a more apparent element than the familial one, but I believe that they both constitute two different, but equally important influences over the Lebanese population. The two following chapters will therefore explore and discuss whether these may constitute a *second layer of discrimination*, caused by the citizenship regime as a first layer. Salloukh et al. write: (...) the disciplinary logic of the sectarian system denies

¹⁷⁶ Jaulin 2014, 252

¹⁷⁷ Bantekas and Oette 2016, 451

Lebanese their existence as citizens with inalienable political and social rights, reducing them instead to unequal members of state-recognized sectarian communities regulated by extended patriarchal kinship groups and clientelist networks.”¹⁷⁸ I will argue that this quote catches the essential link between the citizenship regime and the group memberships of family and sect: That a system reducing national citizenship to a weak status leads to sectarian and familial (and family-like) relations constituting increasingly important identity markers. These relations – and their potentially discriminating practice – will be discussed in the coming chapters.

¹⁷⁸ Salloukh et al. 2015, 7

5 Sectarian membership

The discussion of sectarian membership is foundational for the entire case of Lebanon, as the sects are the very building blocks of the society. Therefore, the sectarian aspect has been explored from several angles already. However, while the preceding chapter has enlightened how sectarian citizenship is an impediment to the protection of the human right of non-discrimination, the following discussion will be exploring the discriminating *outcome* of sectarian citizenship. Thus, what kind of consequences follows, when the sectarian membership is mandatory to access certain, basic rights?

5.1 The sectarian subject and the personal status system

Among the most tangible consequences of the Lebanese personal status system is the establishment of sectarian courts, where it was articulated that citizens were subject to their confessions' religious laws on personal status matters, as well as other legal topics not covered by civil law.¹⁷⁹ This resulted in different law corpuses for each sect, covering matters of marriage, family relations, lineage, divorce, adoption, child custody, kinship and inheritance.¹⁸⁰

The primary discrimination the existence of these courts contribute to is how the Lebanese citizens, officially under the jurisdiction of the state of Lebanon, are made unequal sectarian subjects *by law*. This is a direct consequence of Lebanon's corporate, consociational system and the incorporated citizenship regime, as discussed in chapter 4. However, the background for the institutionalization of this separate law system was – as the very idea of consociationalism – meant to create democracy and coexistence in a divided society. In 1936, Greater Lebanon was still a fairly new constellation, and harmonizing incentives were deemed necessary. Allowing each recognized sect autonomy over “private” matters were therefore seen as a viable solution for each religion to be able to flourish, but still within the framework of the Lebanese state. However, this was – and is – not without problems.

First and foremost, the implementation of sectarian courts is particularly problematic in a pre-determined consociational democracy, like we see in Lebanon. This aspect was also discussed in chapter 4.2, in relation to the discussion on sectarian citizenship as an impediment to human rights protection, but I also find it relevant when discussing the consequences. With a legal area limited to sectarian members, any groups not recognized by Lebanese law – or those who do not wish to adhere to *any* group – suddenly are in lack of a range of civil rights. With

¹⁷⁹ Salloukh et al. 2015, 33

¹⁸⁰ Ibid., 32; Human Rights Council 2015, para. 68

self-determined segments, groups would be able to emerge and decline as they wanted, and all members would still have the ability to be included in a group and have access to a set of rights (although not necessarily the same rights). Theodor Hanf saw this as a viable solution for the Lebanese system, especially if secular groups could be included as well:

“A formula which makes group membership optional instead of obligatory could perhaps reduce the fear of those who wish to preserve their group identity, and perhaps prevent pressure being exerted upon those who do not wish to define themselves as members of a specific community but as Lebanese.”¹⁸¹

Hanf sees the discriminating potential of mandatory sect membership, but he also acknowledges the fear of diminishing the religious identity, as the religious confessionality has been a part of the Lebanese state idea for such a long time.

A second problematic aspect of the sectarian court system is how it contributes to a sharp division between private and public matters. A frequently used argument from opposers of a civil alternative to the personal status system argues that the state is not supposed to govern what is thought of as private – family-related – matters.¹⁸² This is also an important element in the discussion on relational rights, as will be elaborated in chapter 6. Human rights lawyer Hallie Ludsin points to the discriminatory consequences of this divide, especially with regards to women’s rights.¹⁸³ For example, in a case of domestic violence, the state might avoid interfering, as family-matters are seen as private realm.¹⁸⁴ This is more a question of general human rights consequences, than specifically related to non-discrimination, but it still enlightens the patriarchal structures of Lebanon, which is supported by the consociational elements of the political system and in terms contributes to discrimination. The Special Rapporteur of Freedom of Religion pointed specifically at the gender-discriminatory issues of sectarian courts, where women in several denominations are neglected in matters related to inheritance, child custody or divorce.¹⁸⁵ Also Nagle and Fakhoury write that there is “prevailing consensus in the literature”¹⁸⁶ that the existence of these family courts is the largest impediment to women’s equality in Lebanon. If a civil alternative had been present, it is likely that it had been favourable to

¹⁸¹ Hanf 1981, 249

¹⁸² Salloukh et al. 2015, 40

¹⁸³ Ludsin, Hallie (2008): "Relational Rights Masquerading as Individual Rights", in *Duke Journal of Gender Law and Policy*, no. 195, 202

¹⁸⁴ Salloukh et al. 2015, 7

¹⁸⁵ Human Rights Council 2015, para. 61

¹⁸⁶ Nagle and Fakhoury 2018, 92

women in cases like these, as religious laws traditionally are based on patriarchal structures. Women's rights is a large topic that will not be discussed further in this case study, but it is nevertheless an unavoidable example when discussing discrimination based on the sectarian court system.

5.1.1 The case of civil marriage

Marriage is among the most frequently debated cases related to the sectarian court system and a typical example of a discriminatory outcome of sectarian membership. Today, marriage laws are still subject to sectarian jurisdiction, which lead to different practices for different sects, as well as the inability to marry across confessions.¹⁸⁷

Nevertheless, in a non-discrimination perspective, the main problem is still how Lebanese citizens are made unequal before the law, as they are bound to deal with a different law corpus than citizens from other sects. This differentiation has opened up to another practice with potentially discriminating consequences: Civil, cross-sectarian marriages conducted abroad. This has a socio-economic backdrop as well, as many couples do not have the means to travel out of the country to get married, which therefore makes the civil marriage alternative only available to some.¹⁸⁸ The strict divorce laws of some of the sects have also contributed to an increased practice of converting to another sect – simply to be able to get a divorce.¹⁸⁹ This is problematic because citizens are bound to use their sectarian membership as a tool to get access to rights other citizens already have.

According to Salloukh et al., a survey from 2013 states that 51 % of Lebanese support either civil or optional civil marriages.¹⁹⁰ This is a majority in the Lebanese population, but I find it just as interesting that such a large amount of people *do not* support such a development. Many fear that a civil alternative would create marriage traditions in opposition to the religious teachings, and in the long run, also harm the fundamentals of the Lebanese sectarianism.¹⁹¹ Thus, we are dealing with the same type of oppositional arguments as was presented against a general, civil citizenship, and also the same type of discriminatory outcome – that citizens are made unequal subject to law.

¹⁸⁷ Salloukh et al. 2015, 33

¹⁸⁸ Ibid., 36-37

¹⁸⁹ Ibid., 36; Human Rights Council 2015, art. 72

¹⁹⁰ Salloukh et al. 2015, 41

¹⁹¹ Ibid., 39-40

As was discussed in the previous chapter, the interests of the religious and political elites are also of strong significance in the Lebanese society. In the case of a potential civil marriage law, Salloukh et al. explain how this change would open up for citizens to abandon the religious laws if given the choice, and further down the line contribute to the degrading of sectarian institutions' power to produce sectarian subjects and interfere in the private sphere.¹⁹² Former president Elias Hrawi tried to establish a civil personal status law under his presidency in the 1990s but met significant resistance from the religious and political elite. He argued that there was a financial aspect to this opposition, where sectarian courts probably were to experience a significant decrease in their incomes if civil marriage became an option.¹⁹³

Thus, the debate around sectarian courts and the option of civil marriage has been vigorous for decades. I will argue that the power of the sectarian courts is among the most apparent examples of the discrimination that follows from the Lebanese system's sectarianizing of individual subjects. This opens up to a whole field of laws where the different citizens are made unequal before the law. Salloukh et al. explains it as follows: "The absence of an optional civil law allows different sects in Lebanon to follow alternative sectarian personal status laws, all of which discriminate against women and consecrate Lebanese society's patriarchal structure."¹⁹⁴

5.2 A sectarianized civil society, and their contribution to human rights protection

The sectarian membership as an identity marker is not only visible on the individual level, it also stretches to the civil society, where there has been a gradual sectarianizing of the organizational life, increasingly affecting rights organizations and their ability to keep track of the government's human rights protection.¹⁹⁵ Salloukh et al. argues that this is directly caused by the weak, consociational state and its demand for other welfare providers in areas where the state has discharged or weakened their jurisdiction or influence.¹⁹⁶

An active and open civil society is undoubtedly a healthy element for a state. However, the consociational system in Lebanon has created a division between sectarian and non-sectarian organizations, where the non-sectarian or cross-sectarian organizations experience little

¹⁹² Ibid., 41

¹⁹³ Ibid.

¹⁹⁴ Ibid., 43

¹⁹⁵ Ibid., 53

¹⁹⁶ Ibid.

or no influence, and view the system more as an impediment than as a tool.¹⁹⁷ This has historical explanations, where sectarian rights-based organizations have experienced a significantly different treatment and goodwill from the government, than the non-sectarian.¹⁹⁸ Thus, the society facilitates for an active civil society, and in some cases also as necessary welfare providers – but only within the boundaries of sectarianism. This way, some organizations are viewed as more “correct” than others, and therefore enjoy other opportunities, but I will argue that a more important outcome is how groups with other unifications than the sectarian one, such as gender, profession or class, are disadvantaged and enjoy little influence in the society. Thus, Lebanese citizens have access to freedom of assembly, but on different terms.

Another aspect of this is how rights promotion *within* the sects may potentially cause more harm than good. Rights-based, sectarian NGOs may risk *contributing* to the sectarian divide, by focusing on specific cases of discrimination or other human rights violations inside their own sect, instead of tackling the root cause of the entire discrimination – the sectarian divide of Lebanese consociationalism.¹⁹⁹ By creating strong civil society organizations within each sect, certain groups may be empowered, but the sectarian divisions might grow sharper and contribute to the consociational system.²⁰⁰ Thus, I will argue that sectarian membership also has discriminating consequences for the civil society arena.

5.3 Sectarian affiliation as an impediment to non-discrimination

As we have seen in the Lebanese case, the institutionalization of sectarian family law has a discriminating outcome, contributing to making Lebanese citizens unequal, sectarian subjects. However, as discussed in sub-chapter 2.2, some distinctions are justifiable, according to Eide and Opsahl’s framework.²⁰¹ May the consequences of the sectarian membership be seen as a justifiable distinction?

The Special Rapporteur points to an important consequence of the pre-determination of the confessional groups: When obliged to adhere to a sectarian membership you might not feel at home in, in order to have access to the rights and duties of your citizenship, the citizenship

¹⁹⁷ Nagle and Fakhoury 2018, 96

¹⁹⁸ Salloukh et al. 2015, 54

¹⁹⁹ Salloukh et al. 2015, 54-55

²⁰⁰ Ibid., 54, 70

²⁰¹ Eide and Opsahl 1990, 11

might feel less “valuable”, and more of a sub-identity.²⁰² This is an interesting paradox, because the degrading of the citizenship can be said to be *because of* the strong group affiliations, but also *leading to* stronger group affiliations. Thus, we can sense a circle.

The sectarian balance that Lebanon is characterized by is, according to the Special Rapporteur, a *delicate* balance, where the fear of new outbursts of conflict and tension is constant.²⁰³ Hence, changing the status quo – even small changes – might endanger the interreligious coexistence, which is clearly a reason why many resist any developments towards a more civil structure and why parts of the political elite oppose the inter-sectarian alliances that arise through the civil society.²⁰⁴ On the other side, in a region like the Middle East, one shall not underestimate the actual accomplishment of mutual coexistence, and it is therefore somehow understandable that one wishes to withhold this harmony – but to what expenses?²⁰⁵ Salloukh et al. addresses this fear of eruption, but argues that the introduction of civil alternatives would not only increase the respect for human rights, it would also help to strengthen the national sentiments for religious freedom and respect, a principle that is particularly important in the plural society of Lebanon.²⁰⁶

If we are to view the distinction between different sectarian members as a differentiation made in order to respect the distinctive religious laws of each of the sects, and further on, to preserve the sectarian harmony – may the distinction then be justified? According to Eide and Opsahl’s framework, the potential consequences for the disadvantaged cannot be too big, if the differentiation is to be justified.²⁰⁷ In this case, the disadvantaged are the non-recognized groups, who are deprived of a range of civil rights, and the individuals who wishes to be governed by civil, rather than sectarian, laws. The Special Rapporteur addresses this latter group, and how certain Lebanese are forced to choose between “self-betrayal and self-marginalization”, as religion becomes a “ticket” for accessing social and political opportunities.²⁰⁸ Consequently, I will argue that sectarian membership *does* contribute to discrimination, as an outcome of the political system being an impediment to the protection of human rights, as citizens of Lebanon are made unequal before the different sectarian courts, and different patriarchal and

²⁰² Human Rights Council 2015, art. 65

²⁰³ Ibid., art. 41

²⁰⁴ Ibid., art. 49, 64

²⁰⁵ Ibid., art. 64

²⁰⁶ Salloukh et al. 2015, 41

²⁰⁷ Eide and Opsahl 1990, 11

²⁰⁸ Human Rights Council 2015, art. 66

elitist aspects of the different confessions are legitimated *by law*. Henceforth, not a differentiation I would consider as a justified differentiation. The Special Rapporteur writes: “Disentangling political and societal opportunities from religious belonging (...) It would help to create an open, inclusive society based on common citizenship, in which religious diversity can unfold openly, authentically and without discrimination.”²⁰⁹ Hence, by dividing sectarian membership from the legal framework and the citizenship regime, one could still accomplish coexistence and harmony, but based on equality and non-discrimination.

²⁰⁹ Ibid., art. 66

6 Familial membership

I have argued that sectarian and familial relations constitute an extended layer of discrimination, caused by the citizenship regime and the consociational system of Lebanon's inability to be a protector of the human right to non-discrimination. In the preceding chapter, I introduced and discussed the sectarian membership as the first – and the most apparent – consequence of this first layer of discrimination. However, while the sectarian membership represent the formal part of Lebanese politics and the group-based society, I will in this chapter introduce “political familism” as the second group membership – representing the informal and private realm. Political familism is, as defined in the introductory part, the use of family and family-like relations to gain access to services and rights the state is otherwise expected to offer.²¹⁰

Salloukh et al. describe how the sectarian system affect both the public and private spheres of the society: “The disciplinary tentacles of the sectarian system reach deep into Lebanese society, and operate to reproduce sectarian identities, loyalties, and forms of subjectification. (...) These tentacles stretch across different public and private spheres of Lebanese life.”²¹¹ The sects are, as discussed in chapter 5, the building blocks of the political system in Lebanon.²¹² However, the sects consists *families* which have put their mark on the confessions for decades, and therefore constituting the building blocks of the sects. It's important to notice this link, as the mutual influence between the layers of discrimination is a central aim of the study. However, the disparity between the two memberships are also important to touch upon, as they cannot be viewed as interchangeable in legal terms. The sectarian membership is a formalized group by the Lebanese state and attached to different law corpuses. Hence, they are able to discriminate on an entire different level than the second group affiliation – family – because they are granted a separate, autonomous jurisdiction. However, the family has an informal, but still decisive, role in the Lebanese society, both historically and in the daily-life of most Lebanese, and I will argue that civil rights are not only mediated through confessions, but also through personal relationships and family affiliations.²¹³ Additionally, the family, rather than the individual, is lifted forward in the Lebanese Constitution, as the “basic unit of society”, which also establishes it as a semi-formal community.²¹⁴

²¹⁰ Joseph 2011, 151

²¹¹ Salloukh et al. 2015, 4

²¹² Nagle and Fakhoury 2018, 92

²¹³ Joseph 2011, 160

²¹⁴ Ibid., 158

6.1 Kinship and family as an informal group membership

Lebanese scholar Suad Joseph, perhaps the most significant voice of political familism in Lebanon²¹⁵, argues that family is a more powerful political pull of the Lebanese state than sectarianism, and that the loyalty to family and family-like²¹⁶ relations far precedes the loyalty to the state.²¹⁷

The significance of kinship has been a stable part of Lebanon's otherwise unstable history for a long time, signifying the tradition of turning to your family for support, not only socially and economically, but also politically, when living in a conflicted country.²¹⁸ Close family-ties represent something constant, while the state often has represented the opposite. Similar to the sects, Lebanese citizens have trusted the family for delivery of basic services and fulfilments of rights, while the loyalty to the state has remained weak.²¹⁹ However, I will argue that the lack of governmental trust is also due to the organization of the system, as discussed in chapter 4 and 5, and how the relationship to other group affiliations in terms of access to basic rights is not only a matter of trust, but purely necessary. This is where the discrimination comes in, as there are constitutional rights – granted to *all citizens* – but they are unequally divided, because of the mediation through political familism and sectarian affiliation, as seen in chapter 5.

Joseph argues that the religious institutions of the different sects “sanctifies” the family by considering it as a an organic part of social life.²²⁰ Religion, sect and family are therefore all inherited as part of the same system, where the confessions are the “religious cosponsors” of political familism, for example by encouraging cross-sectarian marriages and other familial relations.²²¹ I will argue that Joseph's view shows how family, as an *informal* group relation, contribute to the progress of the *formal* parts of the society. She explains how “Family and family-like relations lubricate the political machinery of state (...)”²²² Hence, personal relationships permeates all parts of society, both in the private and public sphere.

²¹⁵ She is referred in both Salloukh 2015, Ludsin 2008 and Khatib, Lina (2008): *Gender, Citizenship and Political Agency in Lebanon*, British Journal of Middle Eastern Studies, 35:3

²¹⁶ Referred to as “idiomatic kinship” by Joseph (Joseph 2011, 156)

²¹⁷ Joseph 2011, 157; Joseph 1999, 298

²¹⁸ Joseph 2011, 153-5

²¹⁹ Ibid., 159

²²⁰ Ibid., 158

²²¹ Ibid., 159; Salloukh et al. 2015, 35, 40

²²² Joseph 2011, 157

6.1.1 Patrimonialism and kinship

The issue of patrimonialism is frequently referred to when discussing the kinship and family values in Middle Eastern countries.²²³ Although Lebanon has reached far in the last decades²²⁴, patrimonialism is still a viable problem, and an inherent part of the political familism of the country.²²⁵ However, while patrimonialism is often linked to a country's deep-rooted traditions or outdated gender roles, the example of Lebanon is somehow different and more related to the current political system and its judicial "gaps". Joseph writes that "Kin-based patriarchy knits the threads of political, economic, social, and religious relations together (...)"²²⁶ Thus, the patriarchy is not only rooted in culture and traditions, but also in the legal framework and political institutions. This is closely related to the citizenship regime, as discussed in chapter 4, and how the sectarian citizenship is patrilineal – inherited from father to children.²²⁷

From a non-discrimination perspective, it is natural to touch upon the effect on women's rights and how patrimonial sectarian courts, according to Lebanese feminists, discriminate women.²²⁸ Within the jurisdiction of most of the sectarian courts, men and fathers are favoured in cases like inheritance, child custody, divorce and other family matters. Salloukh et al. argue that *all* personal status laws discriminate against women and strengthens the patriarchal structures of the society.²²⁹ They exemplify with laws allowing Muslim men to take four wives, how women are expected to follow their husband's religion and the favouring of the father or his family in cases of child custody.²³⁰ Again, it should be emphasized that women's rights are a separate and distinctive topic within the human rights field, but as we can trace this type of discrimination to the family courts and the political system's facilitation of it, it is still a relevant point. Also, as men and women are regarded as equal in the national law corpus, such a discrimination would be against the law, if the family law were placed under national courts' jurisdiction instead of the sectarian courts.

²²³ Joseph 2011, 151

²²⁴ Khatib 2008, 437

²²⁵ Ibid., 437-8

²²⁶ Joseph 2011, 159

²²⁷ Joseph 1999, 296-7, 308

²²⁸ Ibid., 310

²²⁹ Salloukh et al. 2015, 43

²³⁰ Ibid.

6.2 Relational rights

The topic of relational rights is another important aspect of the political familism in Lebanon. These rights emerges from familial settings, and are therefore closely related to kinship as well as idiomatic kinship, but are not dependent on the membership in a community.²³¹ Rather, they are based on a person's relationships and are linked to a desired outcome in terms of services or favours, but can also be strategic, for network-building or influencing.

The loyalty to the state is low in Lebanon, and it seems natural to connect the upsurge of relational rights to that, as well as the strong familial relations, as was discussed in subchapter 6.1.²³² Nevertheless, relational rights are dynamic and highly subject to change, following the change in relationships, and they are therefore less accountable than rights based on a civil citizenship. Looking to sectarian membership, this is interesting, as one of the fundamental, discriminatory elements of the sectarian citizenship is the *lack* of dynamism. Being a part of a sect you are bound to follow the personal status system of this sect, unable to pick and choose from other sects. It is therefore interesting to see that with relational rights, this same kind of dynamism is what is the central discriminating element. I will argue that this is where we see the connection to the political system, that whether it is relational rights or rights granted to you by the sect, they are not rights you have "by virtue of being human", but by having the right relations, or by being a part of a particular sect.

Hallie Ludsin has a similar reflection, where she argues that the lack of governmental oversight makes the state unable to be a proper duty-bearer in terms of human rights, as the rights are outside the state's jurisdiction.²³³ In many ways, this is recognizable from many former discussions in this thesis and a consequence of the *thin* citizenship of Lebanon, as discussed in chapter 4. As citizen and rights-holder, the duty-bearer is bound to be the state, because your citizenship is a membership of *this state in particular* – not of any other state, the world, the region, the sect or family. Thus, if the state of Lebanon declares equality before the law for its citizens, this is worthless when the law is adding up to a citizenship mediated through your religious sect or your family or family-like relations. This leads to discrimination and inequality, because your citizen rights are in reality relational or sectarian rights.

²³¹ Joseph 1994, 274-5

²³² Joseph 2011, 160; Joseph 1994, 278

²³³ Ludsin 2008, 196-8

6.2.1 Relational rights as group rights?

I have previously discussed the advantages and disadvantages of group rights in a non-discrimination perspective and also the role of group rights in a consociational democracy *without* the minority aspect that is often fundamental to the justification of group rights. The primary difference between relational rights and groups rights is how the latter are formalized in the judicial framework and the former are not. However, the outcome or intention may be similar, and the one may sometimes lead to the other. I will argue that relational rights do not arise *in or for* a community, but *from* a community. Hence, the relations one have in a community may create a set of relational rights, however, these are personal and exist between people, it is not a common set of rights for everyone in a group, like with group rights.²³⁴

Ludsin argues that the very existence of group rights in a community may lead to the transformation of individual rights into relational rights, particularly when the state creates a separate jurisdiction for religious or cultural law.²³⁵ This leads to unequal power relations²³⁶, and therefore a governmental recognition of elitism and discrimination between citizens that are otherwise meant to be equal. As previously discussed, the danger of introducing group rights is that the society ends up diminishing individual rights. However, Ludsin emphasizes that not all instances lead to relational rights, and not all relational rights lead to actual discrimination.²³⁷ If only members of a society's majority group is allowed to take public office, this is not relational rights – just discrimination.²³⁸

What is particularly apparent in a society like the Lebanese is how the inclusion of *sectarian courts* into the judicial framework has introduced not only group rights, but also relational rights. An important discriminatory outcome of this is mainly due to the government's strict division between private and public matters – hence, that it is the private issues that belong to the sectarian courts, where the state is not interfering. This is problematic, because the patriarchal structure of Lebanon leads to a majority of women being affected by regulations to the private realm – a sphere without governmental oversight, and therefore without oversight from the duty-bearer in terms of human rights.²³⁹

²³⁴ Joseph 1994, 274

²³⁵ Ludsin 2008, 204-5

²³⁶ *Ibid.*, 205

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ *Ibid.*, 202

6.2.2 Relational rights as facilitator for patriarchy and elitism

The patriarchal outcomes of relational rights are related to those discussed in accordance with kinship. Family and family-like relations have been decisive in the organization of social life²⁴⁰, and therefore also the creation and sustenance of relational rights. Both Joseph and Ludsin emphasize how both genders may make use of relational rights²⁴¹, as the hierarchy is also existent between women, and older women are often superior to younger women and men. However, the traditional family structure of Lebanon is still characterized by male dominance.²⁴²

Turning to relations to get access to a service also means that lack of relations (or unfavourable relations) may be an impediment to services you are otherwise entitled to.²⁴³ Joseph's fieldwork in the Armenian neighbourhoods of Beirut shows how active relations to the right people were highly necessary to get access to even the smallest of services.²⁴⁴ This opens up to a whole new way of viewing rights – as something you have earned or was given, not something you are entitled to “by virtue of being human”. Thus, receiving relational rights are seen as successful relationship building – but also as the work of beneficiaries.²⁴⁵ Ludsin argues that the beneficiaries of the relational rights in a community are often the most powerful, and that relational rights in this way reinforces already existing social hierarchies.²⁴⁶ This strengthens an elitism which is already existing in the political sphere, but with relational rights, also permeates other societal spheres. Ludsin views this as especially apparent in the differences between women and men.²⁴⁷

6.3 Family affiliation as an impediment to non-discrimination

The preceding paragraphs have presented familial relations as an important force in the Lebanese society, both in terms of kinship relations and relational rights. Like with sectarian membership, the increasing importance of this type of membership can be traced to the weak state power of Lebanon. Joseph argues that the Lebanese system has both subsidized and supported a reproduction of relational rights.²⁴⁸ However, I will argue that the reproducing of relational

²⁴⁰ Joseph 1994, 282

²⁴¹ Ludsin 2008, 202-3; Joseph 1994, 282

²⁴² Joseph 1994, 277

²⁴³ *Ibid.*, 278

²⁴⁴ *Ibid.*, 281

²⁴⁵ *Ibid.*, 280

²⁴⁶ Ludsin 2008, 198

²⁴⁷ *Ibid.*

²⁴⁸ Joseph 1994, 281

rights also contributes to a *diminishing* of the state power and its facilitation for human rights. By the frequent use of familial relations as mediators for accessing services and rights, the state loses some of its influence over their citizens, and therefore, the citizenship loses some of its value to the Lebanese people. Hence, while the system reproduces familial relations and relational rights, the use of these relations reproduces the sectarian system.

From her field work in Beirut, Joseph writes of her experience that Lebanese men and women saw their constitutional rights corresponding poorly to their daily life and how they typically viewed their access to rights.²⁴⁹ This leads us back to the thin citizenship, where the rights and duties ascribed to your citizenship are not really “valid” as an independent matter, as the citizenship is mediated through family or sect. Thus, Lebanese citizens *have* a set of constitutional rights, but regards the access to them as dependent on their relations. This has a discriminating outcome, caused by the system’s inability to be a protector of the human right to non-discrimination.

²⁴⁹ Ibid., 276

7 Concluding discussion

The analysis has established Lebanon as a corporate, consociational democracy, consisting of pre-determined, confessional groups. The elevated position these groups have in the legal framework²⁵⁰, as well as in the historical narrative of the country, has contributed to making the Lebanese citizenship a *thin* citizenship, where one's rights as a citizen are mediated through group affiliations such as family and sect. This lack of equality in access leads to discrimination among the Lebanese citizens. Although I have looked specifically at the system as a cause and primary layer of discrimination, I will argue that the consequences are also social and cultural, stretching to both informal and formal group affiliations. By downscaling the national citizenship, the affiliations of family and sect become more significant, and the groups become the main provider of rights protection. This way, a Lebanese citizenship is *not* "the right to have rights"²⁵¹, as quoted by Hannah Arendt in the introductory chapter.

Butenschøn writes: "In Lebanon, nobody can in a situation of violent conflict trust the state to come to rescue or guarantee basic rights. The individual citizen depends totally on the family, the clan, the sect (...)"²⁵² This encompasses the very core of the Lebanese human rights dilemma as pictured in the present study, that when in need, being *Lebanese* cannot take you far, but being Maronite or Sunni, being a part of the Jumblatt or the Hariri family, or have close relations to the right people, will define which rights you can expect to claim. The preceding analysis has also pictured how the system is central in preserving the family and sect as "parallel rights system", which are in direct conflict with the right to non-discrimination, as well as the universality aspect as an inherent human rights principle. Hence, I find that the Lebanese political system is not only an impediment to non-discrimination, but it also reproduces discriminating sub-structures that the citizen is bound to take part in to be an adequate rights-holder.

The parallel rights systems of family and sect cannot fill the role as sufficient duty-bearers, as the international human rights system is simply not designed to encompass non-governmental duty-bearers.²⁵³ This makes the rights-holders in the Lebanese state deprived of an institution that protects their basic rights on equal terms. Consequently, I find that consociational Lebanon is not only an impediment to the protection of human rights, it is also reproducing its sectarian and discriminating identity, by strengthening the confessional differences

²⁵⁰ Joseph 2011, 160

²⁵¹ Arendt 1958, 296

²⁵² Butenschøn 2015, 121

²⁵³ Non-governmental duty-bearers *do* exist, but the system is not designed for organizations or sub-structures to be the *primary* duty-bearer for a population.

of the society. This is visible in several areas, for example in the case of rights-based NGOs, which are often forced within a sectarian framework to practice any influence upon the society and therefore ends up working with specific human rights causes in their own sect, avoiding what could be argued to be the very cause of the human rights problems: The sectarianism itself.

Viewing the group memberships of family and sect separately has enlightened the different loyalties the individuals relate to in a weak state. However, as mentioned, the sects are the building blocks of the political system, and the families are the building blocks of the sects, so it also seems tangible that the one do not exist properly without the other, and that it is the dynamic between relational and sectarian rights that together creates the strongest impediment to non-discrimination in Lebanon. Where many liberal, Western democracies' strategies of rights protection are based on a strong relationship between state and citizen – the so-called “social contract” – a weak state power, such as Lebanon, is in lack of a social contract, and instead has created a void. In Lebanon, both family and sect contribute to filling this void, but in different ways. As the sectarian groups are constitutionally defined as the building blocks of society, the void can be seen as purposely created *to make room for* the sect and its religious rulings. This is the strategy of mutual coexistence from the Ta'if Agreement. However, family – and particularly by the use of relational rights – contributes to *expanding* this void, by upholding a space where citizens mediate their access to services and rights through family and family-like relations. This way, the dynamic within and between relational and sectarian rights contributes to reproducing a weak state unable to protect its citizens against discrimination.

7.1.1 Addressing the bigger picture

With this study, it has been my intention to contribute to a discussion of systemic restrictions to human rights protection – how nearly spotless records of treaty ratifications may fall short if a country's political system lack the sufficient tools to uphold the treaties, or if the system itself is directly or indirectly opposing the content of the rights. This is particularly interesting for the human right to non-discrimination, as this is a principle that permeates the entire human rights idea and the ability to uphold the remaining human rights principles on an equal basis. Thus, I have aimed at enlightening an aspect of the Lebanese consociationalism that I have found partly neglected in social scientific research – the dilemma between a group-based political system and an individually based human rights system.

Is it then possible to conclude on whether the Lebanese system is discriminatory or not or whether the consociational model is the “right one” for Lebanon? No. With an explorative case study approach, I have omitted too many elements of the Lebanese case to be able to place

such a verdict, and it has neither been my intention. First and foremost, I have only looked at how the consociational systemic is an *impediment* to human rights and non-discrimination, not whether it can also be a *facilitator*. A political system is the result of a complex set of historical, contextual and demographical factors, and several scholars look to consociationalism as the best possible solution for a conflict-ridden society like the Lebanese. Likewise, a common, relativistic criticism of human rights in general is how the contemporary concept is both neo-colonial and patronizing, and the outcome of a Western, liberal tradition, befitting to a value system of liberalism and individualism, instead of the group-oriented conceptions of rights that are found elsewhere.²⁵⁴ From this point of view, one may say that it is the human rights system and not the Lebanese system that is the “problem”. However, while these are important points, I will argue that viewing the Lebanese system from the angle that has been applied in this thesis has enlightened both Lebanon as a duty-bearer in the human rights system, as well as the potential paradox between group-based systems and individual human rights. In the sub-chapter on methodology I mentioned how a single-unit case study could be seen as “generalizable to theoretical propositions” and be able to say something about a topic broader than the specifics of the thesis. In those terms, I will argue that this case study is a relevant contribution to an overarching discussion on how laws may work in unconstitutional ways. In the Lebanese case, the constitutional equality between citizens is unconditional and absolute. Still, the group-based political system and the laws existent to uphold it hinders the absolute equality, by reducing individuals to sectarian and familial subjects. This type of legal conflict is far from unique, and can be compared to a range of previous struggles against discrimination.²⁵⁵

However, in a region like the Middle East one cannot divide practice from history, and it is important to emphasize the stabilizing function both family and sect have had for Lebanese citizens in violent and chaotic times. Despite the mutual coexistence of the Ta’if Agreement, which were initially aiming at abolishing sectarianism, combating discrimination between the groups of the society and creating a political order where all groups are recognized and properly represented, I will argue that Ta’if has contributed to deepening the divisions between the sects and discriminating one Lebanese from the other. I will argue that it is precisely the idea and practice of mutual coexistence in a consociational democracy that contributes to a state-sponsored discrimination on an individual level, where citizens of Lebanon are made unequal

²⁵⁴ Bantekas and Oette 2016, 36-8

²⁵⁵ Among the most prominent examples is *Moritz v. Commissioner* (1972), which later served as precedence for showing how discrimination may be unconstitutional (US Court of Appeals (1972): *Moritz v. Commissioner*, No. 71-1127)

because their groups are made equal. Thus, I will argue that the systemic impediment that the consociationalism of Lebanon *is* has provided non-discrimination on group-level, leading to discrimination on an individual level.

Table of references

Books and book chapters:

- Amawi, Abla (2000): "Gender and Citizenship in Jordan", in Joseph, Suad (ed.) (2000): *Gender and Citizenship in the Middle East*, New York: Syracuse University Press
- Arendt, Hannah (1958): *The Origins of Totalitarianism*, Cleveland: The World Publishing Company
- Bantekas, Ilias and Lutz Oette (2016): *International Human Rights Law and Practice*, 2nd ed., UK: Cambridge University Press
- Baxi, Upendra (2008): *The Future of Human Rights*, 3rd ed., Oxford University Press
- Butenschøn, Nils (2015): "Lebanon", in Butenschøn, Nils et. al (ed.): *Power-Sharing in Conflict-Ridden Societies Challenges for Building Peace and Democratic Stability*, 1. ed, Taylor & Francis Ltd
- Butenschøn, Nils et. al. (eds.) (2000): *Citizenship and the State in the Middle East: Approaches and Applications*, New York: Syracuse University Press
- Cobban, Helena (1987): *The Making of Modern Lebanon*, London: Hutchinson Education
- Davis, Uri (2000): «Conceptions of Citizenship in the Middle East», in Butenschøn, Nils et. al. (eds.) (2000): *Citizenship and the State in the Middle East: Approaches and Applications*, New York: Syracuse University Press
- De Schutter, Olivier (2014): *International Human Rights Law*, 2nd ed., UK: Cambridge University Press
- Eide, Asbjørn and Torkel Opsahl (1990): *Equality and Non-Discrimination*, publication no. 1, Norwegian Institute of Human Rights
- El-Solh, Raghid (2004): *Lebanon and Arabism: national identity and state formation*, London: I.B. Tauris
- Firro, Kais (2003): *Inventing Lebanon: Lebanonism and the State during the Mandate*, London: I. B. Tauris
- Gerring, John (2017): *Case Study Research. Principles and Practices*, 2nd ed., USA: Cambridge University Press
- Hellevik, Ottar (2002): *Forskningsmetode i Sosiologi og Statsvitenskap*, 7th ed., Norway: Universitetsforlaget
- Hourani, Albert (1998): "Visions of Lebanon", in Halim Barakat (ed.): *Toward a Viable Lebanon*, Washington: Georgetown University Press
- Hourani, Albert (1981): *The emergence of the modern Middle East*, London: Oxford University Press
- Joseph, Suad (ed.) (2000): *Gender and Citizenship in the Middle East*, New York: Syracuse University Press
- Kymlicka, Will (ed.) (1995): *The Rights of Minority Cultures*, USA: Oxford University Press
- Lijphart, Arend (1995): "Self-Determination versus Pre-Determination of Ethnic Minorities in Power-Sharing Systems", in Kymlicka, Will (ed.) (1995): *The Rights of Minority Cultures*, USA: Oxford University Press
- Lijphart, Arend (1985): *Power-sharing in South Africa*, Institute of International Studies, University of California, Berkeley
- Lipset, Seymour M. (1981): *The Political Man*, Baltimore: The John Hopkins University Press
- Maktabi, Rania (2000): «State Formation and Citizenship in Lebanon», in Butenschøn, Nils et. al. (eds.) (2000): *Citizenship and the State in the Middle East: Approaches and Applications*, Syracuse University Press

- Nickel, James W. (2007): *Making Sense of Human Rights*, 2nd ed., Blackwell Publishing Ltd.
- Salloukh, Bassel F. et.al. (2015): *The Politics of Sectarianism in Postwar Lebanon*, London: Pluto Press
- Stausberg, M. and Steven Engler (eds.) (2012): *The Routledge Handbook of Research Methods in the Study of Religion*. London: Routledge.
- Yin, Robert K. (2014): *Case Study Research. Design and Methods*. 5th ed., USA: Sage Publications.

Articles:

- Binningsbø, Helga Malmin (2013): "Power sharing, peace and democracy: Any obvious relationships?" in *International Area Studies Review*, 16(1)
- Butenschøn, Nils (1985): "Conflict Management in Plural Societies: The Consociational Democracy Formula", in *Scandinavian Political Studies*, vol. 8
- El-Khazen, Farid (1991): "The Communal Pact of National Identities: The Making and Politics of the 1943 National Pact" in *Lebanese Papers 12*, Oxford: Centre for Lebanese Studies
- Hanf, Theodor (1981): "The "Political Secularization" Issue in Lebanon", in *The Annual Review of the Social Science of Religion*, vol. 5, Amsterdam: Mouton.
- Hudson, Michael (1976): "The Lebanese Crisis: The Limits of Consociational Democracy" in *Journal of Palestine Studies*, Vol. 5, No. 3/4
- Jaulin, Thibaut (2014): "Citizenship, Migration, and Confessional Democracy in Lebanon", in *Middle East Law and Governance*, vol. 6
- Joseph, Suad (2011): "Political Familism in Lebanon", in *The Annals of the American Academy of Political and Social Science*, vol. 636, Sage Publications
- Joseph, Suad (1999): "Descent of the Nation: Kinship and Citizenship in Lebanon", in *Citizenship Studies*, 3:3
- Joseph, Suad (1994): "Problematizing Gender and Relational Rights: Experiences from Lebanon", in *Social Politics*, vol. 1(3)
- Khatib, Lina (2008): Gender, Citizenship and Political Agency in Lebanon, *British Journal of Middle Eastern Studies*, 35:3, 437-451
- Ludsin, Hallie (2008): "Relational Rights Masquerading as Individual Rights", in *Duke Journal of Gender Law and Policy*, no. 195
- Nagle, John and Tamirace Fakhoury (2018): "Between Co-Option and Radical Opposition: A Comparative Analysis of Power-Sharing on Gender Equality and LGBTQ rights in Northern Ireland and Lebanon" in *Nationalism and Ethnic Politics*, 24:1
- Soffer, Arnon (1986): "Lebanon: Where Demography is the Core of Politics and Life" in *Middle Eastern Studies* vol. 22, no.2, 197-205.
- Tilly, Charles (1995): "Citizenship, Identity, and Social History", in *International Review of Social History*, suppl. 3

Juridical and official documents:

- Brill (1997): "The Lebanese Constitution", in *Arab Law Quarterly*, Vol. 12, No. 2
- Office of the United Nations High Commissioner for Human Rights (2019): *Ratification Status for Lebanon*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=96&Lang=EN, accessed 14.05.2019
- Office of the United Nations High Commissioner for Human Rights (2006): *The Core International Human Rights Treaties*, ST/HR/3, <https://www.ohchr.org/Documents/Publications/Core-Treatiesen.pdf>, accessed 14.05.2019
- UN General Assembly (1948): *Universal Declaration of Human Rights*, 217 A (III), <https://www.refworld.org/docid/3ae6b3712c.html>, accessed 12.04.2019
- UN Human Rights Committee (2018): *Concluding observations on the third periodic report of*

- Lebanon*, CCPR/C/LBN/CO/3, C, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/LBN/CO/3&Lang=En, accessed 14.05.2019
- UN Human Rights Committee (1994): *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, <https://www.refworld.org/docid/453883fc0.html>, accessed 14.05.2019
- UN Human Rights Committee (1989): *CCPR General Comment No. 18: Non-discrimination* <https://www.refworld.org/docid/453883fa8.html>, accessed 12.04.2019
- UN Human Rights Council (2015): *Report of the Special Rapporteur on freedom of religion or belief on his mission to Lebanon*, 30 November 2015, A/HRC/31/18/Add.1, <https://www.refworld.org/docid/56c2e5c34.html>, accessed 14.05.2019

Other:

- Freedom House (2018): *Freedom in the World 2018*, "Lebanon" - United States, 16 January 2018, available at: <https://www.refworld.org/docid/5a5e11f626.html>, accessed 16.04.2019
- Human Rights Watch (2009): "Lebanon: Removal of Religion from IDs Positive but not Sufficient Amend Laws to Reform Sectarian System and End Discrimination" <https://www.hrw.org/news/2009/02/16/lebanon-removal-religion-ids-positive-not-sufficient>, accessed 31.03.2019
- Merriam-Webster Dictionary: "Familial", <https://www.merriam-webster.com/dictionary/familial>, accessed 13.05.2019
- United Nations: "The Ta'if Accords" https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_taif_agreement_english_version_.pdf, accessed 14.05.2019
- US Court of Appeals (1972): *Moritz v. Commissioner*, No. 71-1127, <https://openjurist.org/469/f2d/466/moritz-v-commissioner-of-internal-revenue>, accessed 14.05.2019
- The Economist Intelligence Unit (2019): "Democracy Index 2018: Me Too?", *The Economist Intelligence Unit*, https://www.eiu.com/public/topical_report.aspx?campaignid=Democracy2018, accessed 15.05.2019