The Civil State in Lebanon: An Inevitable Outcome of Sectarian Pluralism

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ABSTRACT

The prevailing public discourse in Lebanon is dominated by the notion that "sectarianism" constitutes the root cause of the country's political crises and that the only solution lies in abolishing sectarianism and transitioning to a civil state.

Through a constitutional lens, this paper examines and challenges this prevailing assertion by demonstrating that the legal structure of the Lebanese state is fundamentally civil. It highlights how political practice has distorted this reality by constraining the state's civil character and limiting the legal mechanisms that safeguard individual rights and uphold the principle of citizenship.

The paper does not aim to analyse the political positions of the sectarian parties that dominate Lebanese society and the state. It recognises that a constitutional approach alone cannot provide a complete picture of reality. Nonetheless, it emphasises the legal dimension of the relationship between the state and religious sects, seeking to free legal reasoning from the discourse of political power, which often manipulates the law to attribute blame to sectarianism and evade accountability.

Keywords: *personal status, civil state, recognition of sects, legislative supremacy of the state, constitutional freedoms.*

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Theoretical Introduction to the Civil State

Any theoretical framework aimed at defining the civil state must begin by identifying the source of its political legitimacy followed by an assessment of the consequences of that legitimacy for structuring the relationship between state institutions and religious institutions.

A. The Civil State and the Source of its Legitimacy

The defining characteristic of the civil state rests on the premise that political power is created, that is, it arises from a rational will that establishes authority in order to achieve specific objectives. Accordingly, political authority exercised by individuals or institutions does not derive from a natural condition that demands unconditional acceptance or obedience. Rather, it constitutes an artificial arrangement shaped by particular historical circumstances and remains subject to continuous development in response to societal needs. The civil state is therefore a voluntary and purposive form of organisation, rather than a natural or inherent one.

To complete the conceptual foundations of the civil state, an additional essential condition must be satisfied: the will that generates political authority must be not only positive but also human in origin. It cannot be grounded in religious or metaphysical doctrines; rather, it must arise from the consensus of individuals, reflecting their collective intention to regulate human affairs according to principles derived from reason, observation, and experience, with the aim of securing social stability. The civil state thus constitutes an institutional construct arising from the autonomous and rational will of human beings.

In light of the foregoing, the positive character of political power –encompassing both its voluntary and human dimensions– necessarily gives rise to the question of sovereignty, namely the identification of the entity entitled to establish a political order endowed with the legitimacy required to pursue its objectives. In the civil state, sovereignty resides in individuals who, through mutual agreement, constitute political authority as an expression of their collective will to safeguard their liberties within institutional frameworks governed by the rule of law. Accordingly, sovereignty in the civil state rests upon the following principles:

- Individuals are presumed, in theory, to predate any social or political order.
- Political authority is established by individuals through their own volition for the purpose of preserving rights and freedoms, placing inherent limits on state power from the moment of its creation.
- The individuals who consent to constitute political authority are, in theory, abstracted from particular affiliations, prejudices, and class-based interests, and are guided instead by the aim of formulating rational norms intended to secure, to the greatest extent possible, justice within society.
- The constituent will of individuals is, in itself, sufficient to reform political authority and to hold its officeholders accountable, ensuring that governance remains responsive to the evolving needs of society.

In sum, a civil state may be defined as one in which sovereignty is of positive origin, deriving its authority from the collective will of individuals, and whose legitimacy is grounded in the fulfilment of the purposes for which individuals establish it.

B. Manifestations of the Civil State

Undeniably, the most salient manifestation of sovereignty in a civil state lies in the state's genuine and comprehensive legislative authority. The state itself determines the extent of its legislative competence, that is, it possesses the jurisdiction to define the scope of its own powers (*la compétence de sa compétence*). Consequently, a civil state does not recognise any external source of legislation capable of constraining its authority. Put differently, under no circumstances can a civil state acknowledge an official religion that would obligate public authorities to enforce a particular set of beliefs or metaphysical principles across the domains governed by positive law.

Furthermore, the civil state not only refrains from adopting metaphysical doctrines, it cannot recognise or impose an official ideology as an unquestionable truth upon the population. The civil character of the state precludes the adoption of ideological tenets as official principles binding all individuals, even when these principles are non-metaphysical and of positive origin.

Accordingly, the civil state treats the religious convictions and philosophical orientations of its citizens as matters confined to the private sphere. Individuals are therefore free to adhere to any religion or belief that aligns with their personal convictions. This freedom encompasses the right to change one's religion or beliefs, as well as the right to abstain from any religious affiliation or to refrain from expressing such affiliation, both within the public domain and in interactions with the state.

However, these considerations do not imply that a civil state is categorically precluded from permitting the application of religious laws to its citizens. The historical context in which the modern state emerged may, in some cases, necessitate the incorporation of certain religious rules to address specific social needs, provided that this does not compromise the state's legislative sovereignty. Religious texts acquire legal effect only through state approval and remain valid solely to the extent permitted by it. Accordingly, religious legislation is subordinate to positive law, from which it derives its legitimacy, and cannot exercise independent authority outside the legal framework of the state.

Therefore, the civil nature of the state is clearly reflected in the following principles:

- The state does not recognise any religion or ideological doctrine as an official truth to which positive law must conform.
- The state's acceptance of religious legislation within its legal system must not, under any circumstances, compromise the principle of the state's supremacy in its relations with the groups to which such legislation applies.

- The existence of religious legislation applicable to specific groups constitutes a state-sanctioned exception granted out of necessity; nevertheless, the direct legal relationship between the citizen and the state must remain the primary standard for regulating public life.
- In accordance with the principle of equality, individuals retain full freedom to determine their relationship with the state on an individual basis. This right must be expressly guaranteed by the constitution, ensuring that the autonomy of the individual's will remains a foundational principle.

These characteristics illustrate that the civil state may adopt varying approaches to religious affairs, ranging from strict separation –as exemplified by the French secular state (*État laïc*)– to more flexible arrangements that recognise the enduring role of religion in certain societies. In such contexts, state intervention may be warranted to create public spaces in which religious matters can be addressed through dialogue, thereby fostering social cohesion among citizens.

Accordingly, it is necessary to distinguish between two levels or models of the civil state:

- Other forms of the civil state allow for the recognition of religious communities, but on the basis of equality, such that no religion enjoys a privileged status in relation to the state. In such a system, the legislature may enact laws regulating religious institutions and granting them official authority over their adherents. It may also permit the allocation of public funds to support religious bodies –measures that would be inconceivable, for instance, in France, where secularism is founded on the principle of strict separation between religion and state institutions. For purposes of clarity, we shall hereinafter refer to this model as the "secular state."
- In a secular state, neutrality is absolute and comprehensive. Individuals may not invoke their religious beliefs to claim exemptions from regulations that apply generally to all citizens, particularly within the public sphere. The secular state may even impose restrictions on the expression of religious affiliation within official state institutions and public schools,[1] requiring individuals to refrain from any conduct –verbal or otherwise– that would compromise the principle of neutrality. By contrast, a civil state is not bound to adopt such measures. It may permit the existence of special legislation applicable to religious or cultural groups, provided that such legislation operates within the framework of individual primacy and fully respects individual freedom.

It is incorrect to assume the existence of a single model of state neutrality or of the principle of separation between the state and religious or cultural groups. Each society, shaped by its historical experience, develops its own approach, influenced by specific circumstances as well as the evolution of constitutional and legislative frameworks and judicial interpretations. Despite this diversity, the fundamental objective of secularism –or, more broadly,

[1] For example, the French Law of 15 March 2004, which prohibits schoolchildren from displaying or wearing symbols that visibly indicate a religious belief: "In state schools, colleges and high schools it is prohibited to wear symbols or clothing through which pupils conspicuously show a religious affiliation." Article L. 141-5-1 of the Education Code promulgated by the Law of 15 March 2024 *(Loi n° 2004-228 du 15 mars 2004 relative au port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, Journal Officiel de la République Française).*

of the civil character of the state– remains the establishment of the rule of law, grounded in full respect for human rights and democratic principles. Accordingly, the relationship between the state and religious groups may be understood as existing along a spectrum defined by two models:

- The maximalist model is characterised by complete state neutrality, in which religious matters are strictly confined to the private sphere of individuals. Under this model, political authority treats all matters pertaining to religion as entirely beyond its competence. This deliberate detachment from religious affairs entails a structural and functional separation between state institutions and all religious affiliations.
- The minimalist model maintains that the state possesses no religious identity, eschewing the pursuit of religious objectives, and therefore it cannot justify its actions on the basis of specific religious reasoning. Owing to its neutrality, the state may intervene in religious matters to promote public interest, provided that strict equality among all religious groups is upheld. This perspective recognises religion as sufficiently significant that the state cannot entirely disregard it. Accordingly, the state may provide financial support to religious groups to ensure freedom of worship, or in areas such as education, insofar as such support is based on objective criteria and serves the public interest. The same principle may govern the state's relationship with religious groups, whereby public authorities may regulate this relationship by granting religious communities official recognition, thereby transforming them into public institutions vested with specific powers defined by law.

France is widely regarded as the model that most clearly embodies the secular state, exerting a significant influence on Lebanon's intellectual and political elites. Consequently, the Lebanese state has consistently been confronted with two opposing options: a "sectarian state" or a secular one. This framing positions the abolition of sectarianism in all its forms as the purportedly sole solution to Lebanon's political and social challenges.

Drawing on French intellectual tradition, Edmond Rabbath articulated this perspective in the Lebanese context when he asserted that "secularism does not merely mean that the state refrains from adopting an official religion, nor that it simply adopts a neutral stance toward the religions present within its territory. Rather, it means [...] that the state does not classify its citizens according to their religions, nor discriminate among them on the basis of sectarian affiliation, nor allocate their political rights–including those related to elections, public employment, parliamentary representation, ministerial appointments, and the presidency– on a sectarian basis."[2]

Rabbath's position reflects the dominant viewpoint among Lebanese elites during the French Mandate and the early years of independence. According to this perspective, the "fusion of the Lebanese people" constituted the only viable solution to the country's political challenges, framing sectarian diversity as an obstacle to stability and the formation of the Lebanese nation.

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[2] Edmond Rabbath, *Al-Wasit Fi Al-Qanun Al-Dusturi Al-Lubnani* [Guide to Lebanese Constitutional Law] (Beirut: Elem Al-Malayin Publsihing House, 1970), 224.

In a 2004 ruling,[3] the French Constitutional Council defined the principle of secularism, as established in Article 1 of the Constitution of the Fifth Republic (1958), as prohibiting any individual from invoking their religious beliefs to evade the application of general rules governing relations between public authorities and individuals. In an earlier decision in 1999,[4] the council held that the European Charter for Regional or Minority Languages conflicted with the constitutionally enshrined principle of the unity of the French people, as it permitted the use of languages other than French in public life. The council further ruled that the fundamental principles of the Constitution of the French Republic prohibit the recognition of collective rights for groups defined by cultural, linguistic, or religious characteristics.

However, even the French model of secularism is not as absolute as Rabbath and others might suggest, as it incorporates exceptions shaped by particular historical circumstances. The French Constitutional Council has affirmed in several rulings[5] that the Law of 9 December 1905, on the separation of church and state, does not apply to the French provinces[6] that were part of the German Empire at the time of its enactment and were returned to France in 1919 following World War I. In these regions, religious instruction continues to be provided in public schools, and recognised clergy[7] receive financial allowances from the state. Moreover, the Catholic bishops of Metz and Strasbourg are appointed by presidential decree following approval by the Holy See.

This illustrates that the core principles that must be enshrined in all constitutional systems –regardless of a country's historical context– are those relating to state neutrality and freedom of belief. The regulation of the relationship between the state and religious sects –including matters of recognition and funding– remains a legislative prerogative, evolving in accordance with the specific circumstances of each society.

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3 "(…) that, under these conditions, the provisions of Article 1 of the constitution, which states that 'France is a secular Republic,' are upheld, prohibiting anyone from invoking their religious beliefs to exempt themselves from the common rules governing the relations between public authorities and individuals" (French Constitutional Council, Decision No. 2004-505 DC, 19 November 2004).

4 French Constitutional Council, Decision No. 99-412 DC, 15 June 1999.

5 "The principle of *laïcité*, which is among the rights and freedoms guaranteed by the constitution, notably requires respect for all beliefs, equality of all citizens before the law without distinction of religion, and that the Republic guarantee the free exercise of worship. It implies that the state does not pay the salaries of any religious denomination. However, it appears from both the preparatory works for the draft Constitution of 27 October 1946, regarding its Article 1, and those of the draft Constitution of 4 October 1958, which retained the same provision, that by proclaiming France as a '…*laïque* Republic,' the constitution did not intend to override specific legislative or regulatory provisions applicable in certain parts of the territory of the Republic at the time of its entry into force, relating to the organisation of certain religions, including, in particular, the remuneration of ministers of religion" (Decision No. 2017-633 QPC, 2 June 2017).

6 Alsace and Moselle

7 Catholics, Lutherans, Calvinists and Jews.

I. The Historical and Legal Foundations of the Civil State in Lebanon

The relationship between the state and religious sects has long been a matter of contention in Lebanon. Opinions are divided between those who view the Lebanese state as inherently sectarian, with its primary function being to safeguard the "rights" of religious sects, and those who consider that the adoption of comprehensive secularism constitutes the appropriate solution to the crises affecting the political system, with the aim of establishing a civil state grounded in the values of freedom and equality among all citizens.

This division is most evident with respect to the issue of sectarian personal status laws and the ongoing debate over the possibility of adopting civil personal status legislation. For example, on 18 February 2019, the media office of Dar al-Fatwa issued a statement asserting that civil marriage "violates the provisions of the Lebanese Constitution concerning the obligation to respect the personal status laws applicable in religious courts for Lebanese citizens, as stated in Article 9. Therefore, it cannot be approved by Parliament without consulting Dar al-Fatwa and other religious authorities in Lebanon." This position is not confined to religious authorities; it has also been echoed by members of Parliament and political figures who contend that the adoption of civil personal status legislation would require a constitutional amendment. Such stances imply that the state is inherently sectarian and that its legislative authority is constrained by personal status laws, which remain entirely subject to the authority of religious sects.

There is no doubt that this contradiction– whether deliberate or inadvertent– results in the debate being subsumed within complex political discussions that divert it from its proper legal foundations. It is therefore essential to examine the nature of the relationship between the state and religious sects in Lebanon to demonstrate that the state's recognition of sects' autonomy in managing their personal status affairs does not undermine its civil character. Rather, the manner in which the state grants this recognition provides the framework through which the constitutional principles underpinning the legal structure of the Lebanese state can be understood.

A. Regulation of the Relationship between the State and the Sects during the French Mandate

The establishment of the State of Greater Lebanon on 1 September 1920, under French tutelage, introduced a new model for the relationship between the state and religious sects, distinct from that which had existed under the Ottoman Empire's millet system. With its newly expanded borders, Lebanon became an entity composed of multiple sects, with religious diversity that was demographically balanced– Christians and Muslims were roughly equal in proportion.[8] Consequently, the French authorities were compelled to establish a framework that respected this pluralism while ensuring equality among sects in their legal relations with the Lebanese state.

[8] According to the official census conducted in 1921, Christians constituted 55.12% of the total population, while Muslims accounted for 44.87%. These proportions changed in the 1932 census, the last official census conducted in Lebanon, with Christians representing 50.73% and Muslims 49.26% of the total population. For detailed figures on the major sects in the 1921 and 1932 censuses, see: Meir Zamir, *The Formation of Modern Lebanon* (Ithaca and London: Cornell University Press, 1988).

Article 6 of the French Mandate, approved by the Council of the League of Nations on 24 July 1922,[9] outlined France's responsibilities in this regard, stating: "The Mandatory shall establish in Syria and the Lebanon a judicial system which shall assure to natives as well as to foreigners a complete guarantee of their rights. Respect for the personal status of the various peoples and for their religious interests shall be fully guaranteed. In particular, the control and administration of Wakfs shall be exercised in complete accordance with religious law and the dispositions of the founders."

One of the initial measures undertaken by the Mandatory was the extension of official recognition to Muslim sects that had not been recognised under the Ottoman Empire, including the Alawite and Shiite sects. The French governor of the Alawite State issued Decree No. 623 on 19 September 1922, authorising the implementation of religious legislation in accordance with the Alawite sect, while prohibiting Sunni Sharia courts from adjudicating matters within the jurisdiction of Alawite courts.

In Lebanon, the Jaafari sect was similarly recognised by Decree No. 3503, issued by the Governor of Greater Lebanon, Léon Cayla, on 17 January 1926. Article 1 of the decree stated: "Shiite Muslims in Greater Lebanon constitute an independent religious sect, and they are to be tried in matters of personal status according to the provisions of the Jaafari sect." The remaining articles of the decree regulated the jurisdiction of Shiite judges in the governorates and the procedures for appealing their decisions before a special cassation court composed of Shiite judges, headquartered in Beirut.

Accordingly, these Muslim sects received official state recognition for the first time with respect to the application of their religious laws, after centuries during which such laws had been applied informally. Members of these sects had previously chosen to submit to the arbitration of local religious scholars rather than resorting to the Ottoman Sharia courts, which recognised only the Sunni Hanafi school of jurisprudence.

The Lebanese Constitution, promulgated on 23 May 1926, established equality among sects regarding their autonomy in matters of personal status. Article 9 of the Constitution stipulates: "There shall be absolute freedom of conscience. The state, in rendering homage to the God Almighty shall respect all religions and creeds, and guarantee, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected."

At the parliamentary session of 20 May 1926, the Representative Council approved this article. During the same session, Chebel Dammous, the reporter of the committee that drafted the principles of the Constitution, addressed a key point regarding the nature of the Lebanese State. The minutes of the meeting record the following exchange:

Al-Khazen: "What does it mean that it shall also guarantee to its population the respect of personal status [...]?"

9 The Mandate Charter officially came into effect on 29 September 1923.

Dammous: "This is meant to support Article 6 of the French Mandate. Since sects have practiced their personal status systems for 600 years, the League of Nations and this Constitution have reflected this freedom."

Munther: "And what does it mean that 'the state, in rendering homage to God Almighty' [...]?"

Dammous: "A state is composed of multiple religions, all of which are minorities; it does not belong to any of them. It is, rather, non-religious and respects all equally."

Equality among sects entails that the state does not adopt an official doctrine and, consequently, neither seeks to promote one religion over others nor grants any religious group legal privileges that would render it superior to the rest.

Thus, the distinction is evident between the spirit of the Lebanese Constitution and that of the Syrian Constitution, issued by the High Commissioner on 14 May 1930, as Article 3 stipulates: "Syria is a representative republic, the religion of its president shall be the religion of Islam, and its capital shall be the city of Damascus."[10]

Lebanon's balanced sectarian composition required not only the recognition of this pluralism but also the guarantee of equality among all sects in their legal relationship with the state.

Edmond Rabbath explains this point, stating: "Regarding the State of Syria, which was established to include in its borders a Muslim (Sunni) majority, the state remained Muslim and practiced Islam [...]; it is noticed at present that the two conditions inherent to the state's religion –practice and spending– are fulfilled in the State of Syria."[11] Thus, Lebanon's Constitution, to this day, unlike those of other Arab countries, has remained devoid of any reference to the official religion of the state, the religion of its head, or a text that considers Islamic Sharia as a source of legislation, meaning that positive laws may not conflict with its provisions.

There is no doubt that Decision No. 60/L.R., issued on 13 March 1936 by the French High Commissioner, Damien de Martel, is one of the most important decisions enacted during the French Mandate. To this day, it continues to constitute the legal framework governing the relationship between the state and religious sects.

The main principles embodied in this decision can be summarised as follows:

- Religious sects designated by the decision as "historical sects" may not legally apply their personal status to their followers except after being recognised by the state through a legislative instrument, namely a law approved by the Chamber of Deputies (Parliament). The decision includes a list of recognised historical sects, which may be amended.[12]

10 *The Constitution of the State of Syria*, Official Bulletin of Administrative Affairs of the High Commissioner, no. 11 (15 June 1930).
11 Rabbath, *Guide to Lebanese Constitutional Law*, 251.
12 For example, pursuant to Decision No. 146 issued on 18 November 1938, this regulation was amended to include the Protestant sect among the officially recognised historic sects. As a result, it was granted the right to apply its personal status laws to individuals affiliated with it.

- Historical sects must submit to the governmental authority the rules governing their teachings, courts, and personal status legislation, specifying how their spiritual leaders are appointed and the applicable hierarchy. These rules shall be approved by law, "provided they do not include a text contrary to public security, morals, the constitutions of countries and confessions, or the provisions of the present decision" (Article 5).
- Article 11 enshrines freedom of belief, stating: "Anyone having attained the age of majority and possessing full mental faculties may leave or embrace any sect that has a recognised personal system[...]" The rights of sects do not preclude the rights of individuals, who enjoy complete freedom in their relationship with those confessions.
- In addition to the historical sects, the decision allows for the establishment of sects under ordinary law, whereby citizens may submit to the governmental authority a request outlining their religious teachings, provided that they are recognised by law.
- The personal status of sects established under ordinary law shall be subject to civil law.
- The decision recognises the existence of Lebanese nationals who do not belong to any sect, provided that their personal status is likewise subject to civil law.

Decision No. 60/L.R. thus enshrined state sovereignty in its relationship with the historical sects, which may exist only by law upon the state's recognition. Although sects are free to determine their personal status, it becomes effective only when ratified by the legislature, which ensures that their personal status does not contradict the constitution.

This decision also reflects a traditional liberal principle, according to which the individual takes precedence over the group to which they belong. Individuals are free to convert from one historical sect to another and have the right to establish a new sect under ordinary law, that is, to adopt a set of religious beliefs and moral principles not upheld by the established historical sects. They also have the right not to belong to any religious sect, without the implication of a lack of religious belief. Adherence to a particular religion is distinct from formal affiliation; an individual may privately embrace the tenets of a given religion while simultaneously choosing not to disclose this belief publicly or to structure their relationship with the state through official sectarian identification. From the perspective of the state, sectarian affiliation is purely administrative and does not pertain to an individual's personal beliefs, moral foundations, or the degree to which their actions align with religious teachings. This principle reflects one of the fundamental pillars of the civil state: its neutrality and its refusal to privilege any belief system over another.

B. Expansion of Religious Authorities' Powers after Independence

Following Lebanon's independence in 1943, political authorities expanded the powers of sectarian institutions, whether by permitting Christian sects to enact their own regulations or by removing the legislative character of the laws applicable to Muslims, thereby allowing them to amend such laws without parliamentary oversight. The legal mechanisms through which the state granted these expanded powers to religious sects are outlined below. This, however, does not imply that the state has relinquished its authority to reclaim or modify these powers.

Decision No. 60/L.R. required the historical Christian sects –its application to Islamic sects having been suspended– to submit the laws derived from their religious texts under which these sects were administered for government review as a condition for obtaining recognition. Article 5 of the decision provides: "The law governing the sects shall be ratified by a legislative decision that renders it enforceable and includes recognition of the sect in accordance with the provisions of Article 1 herein, provided that said law does not include a text contrary to public security, morals, state constitutions, sectarian rules, or the provisions of the present decision." Accordingly, sectarian personal status laws do not acquire legal force solely upon approval by religious authorities; rather, they require legislative ratification, meaning formal approval by Parliament through the enactment of a law.

From the foregoing, it is evident that the legal force of sectarian legislation derives from parliamentary approval, as Parliament formally retains exclusive legislative authority. The Lebanese Constitution established a unified and centralised legislative power and did not confer upon sectarian institutions the authority to legislate in matters of personal status. Unlike federal constitutions, which explicitly divide legislative competence between the federal authority and constituent units, the Lebanese Constitution does not recognise the existence of any entity empowered to legislate on behalf of a religious sect. Indeed, the constitution does not enumerate Lebanon's sects; rather, it leaves their recognition to the legislative authority. As previously noted, recognition of the historical sects was effected through Decision No. 60/L.R., issued by the High Commissioner, who, under the French Mandate, exercised legislative power. Any amendment to that decision may now be achieved only through legislation enacted by Parliament.

The exclusivity of legislative authority, as enshrined in Article 16[13] of the constitution, inevitably leads to consideration of Article 9, which provides that the state shall also "guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected." This juxtaposition raises a fundamental constitutional question: does a contradiction exist between Articles 16 and 9 of the Lebanese Constitution? More specifically, by recognising sectarian personal status systems, did the constitution establish auxiliary legislative authorities alongside Parliament?

Article 9 refers solely to the respect for religious personal status and does not designate any particular authority, nor does it establish sectarian institutions endowed with legislative powers. Legislative authority is vested exclusively in Parliament, as provided in Article 16 of the constitution. When the constitution affirms the state's obligation to respect sectarian personal status, it is, in effect, addressing Parliament and imposing a substantive limitation on the exercise of its legislative authority, ensuring that such authority does not result in the abolition of sectarian personal status systems. Article 9 thus concerns the substance rather than the form of legislation. It neither confers nor creates legislative powers for sectarian authorities; rather, it obliges Parliament to respect the legislative content governing sectarian personal status.

[13] "The legislative power shall be vested in a single body, the Chamber of Deputies."

Nevertheless, this constitutional exclusivity did not prevent Parliament, for reasons unrelated to legal principle, from expanding the scope of sectarian legislation and delegating aspects of its legislative authority to Christian and Jewish religious institutions. This delegation was effected through various mechanisms, which must first be examined with respect to Christian and Jewish sects, and subsequently with respect to Muslim sects.

1. Christian and Jewish Sects

The scope of the powers of these two religions was expanded pursuant to the law entitled "Determining the Powers of Doctrinal References for Christian and Israeli Sects," promulgated on 2 April 1951.

This law significantly expanded the jurisdiction of these sects by seeking to grant them powers as closely equivalent as possible to those exercised by Islamic courts. This intent was explicitly stated in the evaluation report issued by the Administration and Justice Committee, which noted: "This draft law grants the sectarian courts the same powers conferred by Legislative Decree No. 241 of 4 November 1942, as amended by the law of 4 December 1946, upon the Sunni and Jaafari Sharia courts with respect to matters such as marriage and its validity and annulment, filiation, legitimacy of children, adoption, alimony, guardianship of minors, and other issues related to personal status."

The Beirut Bar Association strongly objected to this law, calling for its repeal, the limitation of the powers of the various sectarian courts, and the expansion of the jurisdiction of civil courts. The Bar Association escalated its opposition by declaring an open strike, while Christian and Jewish religious authorities, in a meeting held in Bkerke on 24 January 1952, insisted on maintaining the law as a consecration of historical rights and long-standing traditions.

The Bar Association's strike lasted for nearly three months, while Parliament refused to amend its position. The opposition MP Abdullah Al-Hajj alluded to the political motivations that led President Bechara El-Khoury to endorse the law. During a parliamentary session devoted to discussing the ministerial statement of the new government on 19 February 1952, he stated: "The influence of clergymen on the state is well known. The lawyers' strike is directed against members of the clergy who benefited from corruption, exerted pressure on legal processes, and facilitated the passage of the Law of 2 April –only thirteen days before the elections of 15 April. This law is considered to contravene parliamentary procedures and is viewed as a product of clerical influence." This statement clearly refers to the general parliamentary elections held on 15 April 1951, reflecting the political authorities' objective of securing the support of religious authorities in advance of the electoral process.

The expansion of the powers of the spiritual courts was accompanied by a significant development introduced by the Law of 2 April 1951 concerning the relationship between religious sects and the state. Article 33 of the law provides: "The sects covered by this law must submit to the government their personal status law and the procedural law of their spiritual courts within a period of one year from the date of entry into force of the present law, to be recognised within six months, provided they are consistent with the general law and the fundamental laws of the state and of the sects. The implementation of the present law with respect to religious sects that fail to comply with the provisions of this Article shall be suspended".

In effect, the law delegated to non-Muslim sects the authority to establish their own legislation, thereby granting them a degree of legal autonomy approaching near-complete independence from the state.

However, unlike Decision No. 60/L.R., Article 33 does not explicitly specify the mechanism through which the government is to recognise the rules submitted by religious sects –namely, whether such recognition must take the form of a law enacted by Parliament or a decree or decision issued by the executive authority. In any event, and notwithstanding the broad powers granted by the Law of 1951 to Christian and Jewish sects – particularly the authority to legislate in matters of personal status– the application of these rules remains conditional upon government approval.

Indeed, the sects covered by the 1951 Law submitted their internal regulations to the government; however, these regulations were never formally recognised. In 1965, the Court of Cassation issued a landmark ruling (Civil Court of Cassation, Decision No. 6 dated 2 April 1965) establishing that personal status draft laws submitted within the prescribed timeframe –but not yet formally recognised as positive law– may be treated as internal regulations adhered to by the religious sects. Courts may apply these regulations insofar as they do not conflict with existing positive laws or the principles of public order, and provided that official authorities have not taken measures to revoke them.

The court's recognition that such regulations remain effective only in the absence of action by official authorities constitutes a clear affirmation that the State retains the power to repeal them.

The State Shura Council also addressed the issue, concluding that "the Lebanese legislative authority has authorised the recognised sects to legislate in certain areas of concern." However, it emphasised that sectarian regulations require legislative ratification in order to acquire legal effect. The council further stated that "the contested regulations were not approved by Parliament and are, therefore, still not valid" (Decision No. 426 dated 5 March 2014). It thus becomes evident that the laws currently applied by Christian and Jewish sects have yet to be officially recognised by the state and are, accordingly, either unapproved –as affirmed by the State Shura Council– or remain provisional, pending an official decision of recognition by the state.

2. Islamic Sects

Given the historical relationship between Islamic sects and the state, from the Umayyad period through to the fall of the Ottoman Empire, the Lebanese State was compelled to regulate these sects directly by enacting legislation that granted them independent institutions, courts, and various administrative bodies. This process occurred progressively across all Islamic sects, with the exception of the Ismaili sect, which, to this day, remains without a legal framework governing its internal affairs.

The first Islamic sect to be regulated was the Sunni sect, under Legislative Decree No. 18 of 13 January 1955, which is regarded as the foundational text establishing the administrative framework through which Sunnis manage their affairs. Article 1 of this decree states: "Sunni Muslims are entirely independent in their religious affairs and charitable endowments. They enact their legislation and rules in full respect of the noble Sharia, the laws, and regulations derived therefrom, through competent representatives in the manner outlined in the following articles."

However, the State Council revoked Legislative Decree No. 18 after the government included provisions concerning the organisation of religious edicts (*fatwas*) and endowments without being granted authority to legislate on these matters, thereby exceeding its jurisdiction. Consequently, the provisions and measures adopted in this manner were deemed null and void (Decision No. 522 dated 9 November 1955).

This decision provoked strong opposition from a significant number of Sunni deputies, as it annulled all measures previously enacted under the aforementioned legislative decree, which had been in effect since its issuance.

To address the issue, Parliament, at the request of the new Prime Minister Abdullah al-Yafi, enacted a single-article law on 28 May 1956, which states: "The Supreme Sharia Islamic Council may reconsider all provisions of the abovementioned legislative decree and introduce the amendments it deems necessary to fulfil its intended purpose. Its decisions in this respect, and concerning all matters related to *fatwas*, and organisational decrees pertaining to the religious community and the management of its endowments, shall be self-executing, provided that they do not conflict with the provisions of public order-related laws".

In other words, this law reinstated Legislative Decree No. 18, ratifying all measures previously adopted under it, and granted the authority responsible for administering Sunni affairs the power to amend the decree without referral to Parliament, thereby effectively granting it a legislative mandate.

An identical legal approach was applied to the Shiite sect. Article 31 of the law concerning the organisation of the Shiite sect, issued in 1967, provides: "With the exception of the first, second, third, fourth, and fifth articles of this law and with due regard to the provisions of Article twenty-six of the same, the Sharia and executive bodies shall collectively have the right to reconsider its provisions and amend what they deem necessary. Their decisions in this regard, as well as in all matters related to the religious community and the management of its endowments, shall be self-executing, provided they are approved by the General Assembly and do not conflict with the provisions of laws relating to public order." It should be noted that the legislative mandate granted here is not absolute, as was the case with the Sunnis, since it permits amendments only to certain articles of this law, rather than to all of them.

While Parliament decided to grant Sunni and Shiite religious authorities an explicit legislative mandate, it did not extend this power to the Druze. The laws, both old and new, concerning the organisation of the Druze sect lacked such a mandate. In contrast, Article 31 of the law concerning the organisation of the Alawis (1995) provided for such authorisation, albeit in an ambiguous and indirect manner:

"The Sharia and executive bodies shall collectively have the right to reconsider the provisions related to proper implementation for the purpose of achieving the main intended purpose of this law. Their decisions in this regard, as well as in all matters related to the Alawite community and the management of its endowments, shall be self-executing, provided they are approved by the General Assembly and do not conflict with the provisions of laws relating to public order."

Pursuant to this law, the Supreme Islamic Sharia Council amended Legislative Decree No. 18 on multiple occasions over the years, issuing decisions that were published in the Official Gazette. The Lebanese State was under no obligation to grant sectarian authorities this legislative mandate. Article 9 of the Lebanese Constitution of 1926, which guarantees that "the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected," had already been enacted decades earlier. This indicates that sectarian independence can exist without the conferral of a legislative mandate –a mandate that was only delegated three decades after the constitution recognised sectarian autonomy, and notably followed the abrogation of the legislative character of Legislative Decree No. 18.

II. Enshrining the Civil State's Legislative Supremacy

Understanding the legal nature of the mandate granted to various religious sects is crucial for defining the relationship between the state and these sects, as well as for preserving the state's civil character. The controversy surrounding the case of Sharia Judge Hammam al-Shaar serves as a particularly illustrative example, shedding light on the political and legal debates concerning the state's nature and its civil nature in Lebanon. As such, this issue warrants a comprehensive examination, which will be undertaken by reviewing the positions of the State Shura Council and then the Constitutional Council.

A. The State Shura Council's Affirmation of the State's Legislative Sovereignty

Judge al-Shaar filed a challenge with the State Shura Council, seeking the annulment of Decision No. 55 issued by the Supreme Islamic Sharia Council (Dar al-Fatwa) on 9 September 2023, pursuant to the legislative mandate granted by Parliament. This decision amended certain provisions of Legislative Decree No. 18, extending the term of the Grand Mufti of the Republic to 76 years of age, and the term of the local Mufti to 72 years of age.

The challenge argued that the decision was made in violation of procedural rules governing Dar al-Fatwa, as it was adopted during a session that lacked a quorum. Furthermore, it was not based on a valid and duly adopted proposal from the Legislative Committee, whose opinion is required for all amendments to Legislative Decree No. 18. In addition, the amendment was introduced outside the official agenda and was not communicated to Dar al-Fatwa members prior to the session, contrary to legal requirements. As a result, the challenge contended that the decision extending the term limits of both the Grand Mufti of the Republic and the regional Mufti should be annulled, particularly in the absence of any demonstrated public interest that would justify the amendment, beyond the benefits it conferred upon the individuals directly concerned.

In response, Dar al-Fatwa requested the dismissal of the challenge on grounds of invalidity, asserting that Decision No. 55 was issued under the authority of Law No. 28 of May 1956, which conferred legislative powers upon it. This law authorised Dar al-Fatwa to amend Legislative Decree No. 18 through decisions with autonomous legislative force, without the need for consultation with Parliament. Consequently, such decisions are regarded as legislative enactments and fall outside the jurisdiction of the State Shura Council, whose mandate is limited to administrative matters.

Dar al-Fatwa's responsive brief further emphasised the autonomy of the sects, asserting that it exercises full sovereignty over matters related to Decree No. 18. It contended that the Sunni sect enjoys complete freedom to manage its affairs "independently of the state," as it is a "separate political entity." Furthermore, the 1956 law "granted it legislative sovereignty and did not designate the competent authority to adjudicate any conflict that may arise between the decisions of the Supreme Islamic Sharia Council and the provisions of laws relating to public order."

On 14 March 2024, the Director-General of the Presidency of the Council of Ministers addressed a letter to the lawsuits body at the Ministry of Justice, reiterating the position that the 1956 Law granted the Sunni sect genuine legislative sovereignty. Accordingly, decisions issued by Dar al-Fatwa are classified as legislative acts and, therefore, are not subject to appeal before the administrative judiciary. This interpretation consequently necessitates the dismissal of the challenge against Decision No. 55. Similarly, the State Attorney, in a brief submitted to the State Shura Council on 14 May 2024, affirmed that Dar al-Fatwa's decisions were issued "based on a legislative mandate and authorisation," and, as such, do not possess the status of administrative decisions subject to appeal, but rather hold the force and status of law.

It is important to note that, on 12 December 2023, Sunni Sharia judges issued a statement opposing the legal challenge to the extension of the Grand Mufti of the Republic's age limit. The statement employed rhetoric marked by a high degree of intimidation. The judges asserted that it was impermissible to "undermine the prestige of His Eminence the Mufti" or to challenge the "absolute sovereignty" of the Supreme Islamic Sharia Council. They further warned that judicial acceptance of the challenge would "provoke sectarian discord, threaten civil peace, and destabilise the unity of the Sunni sect," which they described as "foundational to the Lebanese entity." Despite the inflammatory tone of this statement, both Dar al-Fatwa and the Director General of the Presidency of the Council of Ministers cited it in order to denounce the challenge.

Nonetheless, it is evident that all parties advocating the dismissal of the challenge on the grounds that Dar al-Fatwa's decisions are legislative in nature –an argument premised on the purported sovereignty of sects– were legally mistaken. This position is inconsistent with the jurisprudence of the State Shura Council, Lebanon's highest administrative court, which has equated the state's legal relationship with Islamic sects to its relationship with public institutions. The State Shura Council held that "the administrative and financial independence enjoyed by the Fatwa and Endowments Department does not deprive it of its official public administrative character. Rather, it constitutes a public institution –effectively an administration distinct from state interests– endowed with substantial administrative independence, legal personality, its own budget, independent property, and the capacity to litigate before the courts" (Decision No. 399 dated 18 June 1956).

Thus, Dar al-Fatwa and other Islamic sectarian authorities do not constitute constitutional entities or authorities wholly independent of the state. Rather, they function as public institutions endowed with legal personality and administrative autonomy, enabling them to manage their internal affairs. Consequently, the decisions they issue remain subject to the principle of legality and must be amenable to judicial review to ensure compliance with that principle.

This position was explicitly affirmed by the State Shura Council, which clarified that decisions issued by Dar al-Fatwa pursuant to the legislative mandate conferred by the 1956 Law are not immune from judicial oversight. The Council held that such decisions are subject to review "with respect to their issuance within the limits of the legislative mandate and their violation of norms of public order." Accordingly, the contested decision is subject to challenge and judicial review within those defined parameters (Decision No. 182 dated 13 December 2004). This ruling unequivocally undermines claims of legislative sovereignty attributed to Dar al-Fatwa.

The State Shura Council reaffirmed its jurisdiction to review decisions issued by Dar al-Fatwa, notably in the context of the dispute that arose between the former Grand Mufti of the Republic, Muhammad Rashid Qabbani, and Dar al-Fatwa. In its ruling, the State Shura Council described Dar al-Fatwa as an "independent religious body entrusted with the management and administration of a public service." It further held that, in order to fulfil its functions, Dar al-Fatwa enjoys certain prerogatives of public authority, including the power to adopt measures necessary to regulate the religious affairs of the Sunni community, supervise its charitable endowments, and safeguard its religious interests. Consequently, measures issued by Dar al-Fatwa in relation to these matters are "considered administrative acts and are subject to appeal for annulment" (Decision No. 544 dated 15 April 2014).

In this decision, the State Shura Council reiterated its settled jurisprudence that decisions issued by Dar al-Fatwa are subject to judicial oversight only insofar as they are examined for compliance with the limits of the legislative mandate and for violations of norms of public order. This position decisively refutes claims of "legislative sovereignty" or the characterisation of the Sharia Council as being "its own master".

How can the Supreme Islamic Sharia Council (Dar al-Fatwa) be deemed sovereign when the source of its authority lies in a mandate conferred by the Chamber of Deputies, and when the exercise of that mandate remains subject to oversight by the administrative judiciary? The latter is entrusted with ensuring that delegated powers are exercised by the competent authority in accordance with established legal procedures and principles. It therefore follows that any claim of absolute immunity for the decisions of Dar al-Fatwa lacks legal foundation and is incompatible with the structure of a state governed by a unified legal order, at the apex of which stands the constitution.

B. The Constitutional Council's Affirmation of State Sovereignty and Neutrality

Parties asserting the legislative nature of Decision No. 55 have sought to rely on decisions of the Constitutional Council affirming the autonomy of religious sects in order to argue that the administrative judiciary lacks jurisdiction to hear the challenge. A closer examination of these rulings, however, reveals a more nuanced legal position. The Constitutional Council has explicitly held that, while Article 9 of the constitution grants religious sects autonomy, the state maintains sovereign authority to legislate in accordance with constitutional provisions. The Council has further emphasised that the state's legislative authority constitutes a sovereign power derived from the people and exercised through constitutionally designated institutions. Moreover, legislative power is inherent and absolute, and the constitution confines its exercise exclusively to the Chamber of Deputies.[14]

[14] Lebanese Constitutional Council, Decision No. 2 of 8 June 2000.

In line with this reasoning, the Constitutional Council recognised that the Chamber of Deputies possesses comprehensive legislative authority, including the power to enact and amend laws governing the affairs of religious sects, provided that such legislation does not infringe upon their independence in managing their religious affairs.

In the same decision, the Constitutional Council drew a fundamental and highly significant distinction between the administrative affairs of sects and their religious affairs, which differ in nature. It held that administrative affairs constitute a regulatory matter subject to the discretion of the Chamber of Deputies, "which has the original and absolute authority to legislate in all matters relating to the organisation of the autonomy of sects, in application of Articles 9 and 10 of the Constitution, provided that the exercise of religious freedoms and rituals is guaranteed."

In the aforementioned decision, the Constitutional Council observed that the challenge at issue was characterised by "ambiguity regarding the scope of the sect's autonomy,"[15] which resulted in an unjustified limitation on the legislative authority's right to intervene. The matters under review pertained exclusively to the administrative affairs of the Alawite sect –specifically, the composition of the General Assembly, the Sharia Council, the Executive Authority, and the procedures for electing the President and Vice-President. These issues were clearly distinct from religious affairs and, as such, fell squarely within the regulatory jurisdiction of the Chamber of Deputies, in accordance with the exclusive legislative powers conferred upon it by the constitution.

By analogy, Decision No. 55, in extending the mandates of both the Grand Mufti of the Republic and the local Muftis, concerned a purely administrative matter that does not fall within the domain of protected religious affairs. Consequently, the Chamber of Deputies retains the authority to regulate such matters directly or to delegate regulatory powers to sectarian institutions. Any such delegation, however, remains revocable, particularly where it pertains to the administrative affairs of a sect.

Given that the legislative mandate over the administrative affairs of religious sects has historically varied in both scope and extent from one sect to another, it is evident that such mandates were not grounded in any constitutional requirement. Had the constitution conferred such authority, uniform legislative powers would necessarily have been granted to all sects. Instead, the divergences in legal texts across different sects and periods reflect the influence of specific political contexts and contingencies. This is particularly evident in the case of the 1956 law concerning the Sunni sect, which was enacted in response to particular political developments rather than as part of a constitutionally enshrined framework. Accordingly, it cannot serve as a legitimate basis for asserting absolute or comprehensive "legislative sovereignty" for religious communities –an assertion fundamentally at odds with the principles of a modern constitutional state, in which sovereignty resides exclusively with the people.

In its 2000 decision, the Constitutional Council affirmed the state's right, exercised through the Chamber of Deputies, to regulate the historical sects "without this exceeding the threshold of infringing on the independence of the sects in managing their own affairs or leading to their replacement in managing these affairs"

[15] Ibid.

(Decision No. 2/2000 dated 8 June 2000). It follows that the legislative authority possesses an inherent right to regulate areas of personal status that fall outside the domain of religious affairs. This includes the civil personal status of Lebanese citizens who are not affiliated with any particular sect, as recognised in Decision No. 60/L.R., as well as Lebanese who voluntarily choose to submit to civil legislation. To prevent the state from legislating in this area would undermine its sovereignty, which derives from the people.

The source of sovereignty is purely temporal, and the state cannot therefore deny its inherently civil nature. It is not permissible for the state to elevate exceptional sectarian legislation into a principle that precedes it existentially, reducing its role merely to the protection of such legislation.

Furthermore, the Constitutional Council has held that Article 9 of the Constitution, which recognises the autonomy of sects, implies a neutral position of the state with respect to religions (Decision No. 1/1999 dated 23 November 1999). The sectarian pluralism that characterises Lebanese society necessitates state neutrality. This neutrality, however, should not be understood in the French model of *laïcité*, which prescribes the absolute separation of state and religion, but rather as a flexible form of separation that permits state intervention in the affairs of sects to guarantee religious freedoms and ensure their peaceful exercise in the public sphere.

This principle is clearly affirmed in the jurisprudence of the General Assembly of the Court of Cassation, which held that "jurisdiction over disputes between individuals is, in principle, vested in the civil judiciary, and that the authority granted to the religious judiciary under Law No. 2 of April 1952 constitutes a waiver by the state of certain aspects of its jurisdiction. Such a waiver must be interpreted strictly and narrowly" (Decision No. 8/1998 dated 23 January 1998).

This position is further reinforced by Article 95 of the Code of Civil Procedure, which grants the General Assembly of the Court of Cassation authority to adjudicate disputes concerning jurisdiction between civil and religious courts of different sects, as well as between religious courts themselves. Moreover, the Court of Cassation is empowered to examine challenges to final decisions rendered by religious courts where such decisions are alleged to contravene essential provisions relating to public order.

Disputes over jurisdiction between religious courts are resolved by the Court of Cassation, that is, by a civil court applying Lebanese positive law, which reaffirms the principle of equality among all sects. The Court of Cassation also retains the authority to overturn any ruling deemed contrary to the general order of the Lebanese state, demonstrating that the supremacy of the state is fully compatible with the recognition of sects. This sovereignty, rather, reflects historical circumstances that have rendered Lebanese society multi-sectarian in a balanced manner. These circumstances have had significant repercussions on the political system, which has found no alternative to managing this pluralism other than through the framework of a civil state.

CONCLUSION

Based on the foregoing, and drawing on the analysis presented in this study, the nature of the civil state in Lebanon can be affirmed in the following points:

- Sovereignty in Lebanon resides with the Lebanese people, and the state's legislation is positive in origin. The Parliament does not require the approval of religious authorities to exercise its legislative powers.
- The state's neutrality is reflected in its refusal to adopt any official religion. Recognition of religious sects constitutes a legal mechanism aimed at regulating the administrative relationship between citizens and the state, while simultaneously safeguarding individuals' religious freedom. This includes the right to convert, establish a sect representing their view of existence and life, or to remain unaffiliated with any sect or belief.
- The state retains the authority to regulate the administrative affairs of religious sects and to supervise their institutions, in accordance with the principle of the supremacy of civil authority.

In summary, the Lebanese state possesses a civil character in both its nature and legal framework. It upholds the principle of freedom of belief and recognises the personal status laws of religious sects, insofar as these do not conflict with the Constitution or public order. Nevertheless, the principal impediment to the state's advancement of individual freedoms –such as the adoption of an optional civil personal status law or the reform of sectarian personal status laws to promote gender equality– remains political in nature, closely linked to the interests and objectives of the ruling regime in Lebanon.

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