

Lebanon's Reformed Electoral Law - Is the Cup Really "half full"?

Written by Julia Seiermann

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JULIA SEIERMANN, JUN 2 2009

Introduction

Following a provision of the Doha agreement[1], signed by Lebanese political leaders to put an end to the May 2008 crisis, the Lebanese parliament has discussed the Parliamentary Electoral Draft Law formulated by the National Commission on the Parliamentary Electoral Law[2] in 2006, and has voted on a reform of the electoral law on September 29th, 2008[3]. Whereas the new law draws on several provisions of the National Commission's report, many of its proposals were also rejected, which is why Minister of the Interior and member of the National Commission Ziyad Baroud qualified it as "a cup half full"[4].

This paper is going to analyze and discuss the National Commission's proposals and the law finally passed in parliament in the light of former Lebanese electoral laws, arguing that the reform cup was not even "half full". While articles on the topic mention many aspects of the draft law, some of which have been accepted and others rejected, media coverage generally fails to address the core of the reform proposal, which aims at altering not only aspects of the electoral system, but the system itself. Aiming at responding to the objectives set for a new parliamentary election law in the Ta'if Agreement[5], the National Commission suggested replacing the medium-size district majoritarian system in place by a "mixed system" combining the small constituency majoritarian system and the large constituency proportional model. This recommendation, designed as a step towards reducing the sectarianism prevalent in Lebanese politics, has, however, not been followed by the parliament, a decision which has received surprisingly little echo in the media.

Whereas discussing all aspects of the reform proposal, this paper will therefore lay emphasis on the question of electoral system design and assess the suitability of the "mixed system" to the case of Lebanon from a practical and theoretical point of view. Finally, it aims at answering the question whether the law adopted by the Lebanese parliament constitutes a step forward or backward on the way towards abolishing sectarianism in Lebanese politics, which is assumed to be one of the nation's most important long-term political goals.

Why Reform Lebanon's Electoral Law? The National Commission and its Proposal

During Lebanon's more than 80 years as a parliamentary democracy, its electoral law has been subject to little reform: The system, majoritarian first-past-the-post, has remained equal, while the size of the electoral district has been modified several times.[6] While no parliamentary elections were held during the Civil War, the post-war elections of 1992, 1996, 2000 and 2005 have repeatedly been criticized for the considerable interference of Syria, reflected for example in the design of the electoral districts, and for the lack of equality between the candidates, triggered by an incommensurate influence of money and of the private media.[7] After the assassination of Prime Minister Rafik Hariri in February 2005, and the consequent withdrawal of Syrian forces from Lebanon, the possibility of a reform of the electoral system first appeared, but because political forces profiting from the old system showed reluctance, the 2005 elections were still held under the 2000 system.[8]

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Popular discontent increased over the 2005 elections, which have been deemed by later Commission member Paul Salem "a great missed opportunity [...] to restore widespread representation in Parliament and to bring all major political players into the fold of democratic institutions"[9]. Subsequently, the newly formed government of Fouad Siniora soon decided to appoint a National Commission on Parliamentary Electoral Law, whose task would be the preparation of a new parliamentary electoral draft law, taking into consideration proposals from the different political factions, NGOs and independent experts, and responding to the provisions of the Lebanese constitution and the 1989 Ta'if Agreement.[10]

The Commission immediately began its work in August 2005 and submitted a Parliamentary Electoral Draft Law as well as a report on its own activities and decisions on May 31st, 2006. Its proposal mainly aimed at a widening of electorate and candidates (by lowering the voting age, allowing non-resident Lebanese to vote, and establishing a women's quota for lists of candidacy), ensuring greater equality of voters and candidates (by establishing an Independent Electoral Commission and regulating campaign spending and advertising), and at encouraging a gradual moving away from political sectarianism, while at the same time maintaining proportional representation of all confessions (by introducing a "mixed system" combining the small constituency majoritarian and the large constituency proportional model).[11] However, the outbreak of the July 2006 war only several weeks later was to bring more urgent issues onto the political table of Lebanon.

Why Reform it Now? The 2008 Crisis, the Doha Agreement and the Parliament's Vote

After the July 2006 war, Lebanon found itself in a political deadlock, as the violent confrontation between Hizbollah and the Israeli army had further intensified the inner-Lebanese fraction between government (March 14 coalition) and opposition (March 8 coalition). The deeply divided parliament was not able to elect a new president after the expiry of Emile Lahoude's term in 2007[12], and political institutions remained paralysed for 18 months[13]. In 2008, the government's decisions "to reassign the pro-Hizbollah Beirut airport's security chief and investigate Hizbollah's independent telephone network" led to a new escalation of the divisions, culminating in Hizbollah's taking control over West Beirut.[14]

Paradoxically, it was the Qatari-brokered Doha agreement between the conflicting parties to halt the violence that would help resolve the overall stalemate in Lebanese politics. Its most important results included the agreement on former army commander in chief Michel Suleiman as a consensus-president, and the formation of a national unity government granting eleven ministerial posts to the opposition[15]. Additionally, the Doha agreement contained provisions addressing the Lebanese electoral system, namely a modification of the electoral units (re-adapting the cada as the electoral constituency, based on the 1960 electoral law) and the decision to finally refer the National Commission's draft electoral law to the parliament for discussion[16].

At the end of September 2008, the parliament ultimately agreed on a new electoral law to be applied in the 2009 parliamentary elections.[17] While it adopted certain aspects of the National Commission's proposed draft, it also rejected a number of them, and, most importantly, could not agree on fundamentally altering the design of the Lebanese electoral system.

How to Reform it? Comparing the Commission's Draft and the Parliament's Result

The National Commission's Draft Electoral Law suggests a comprehensive reform of the Lebanese electoral law, encompassing issues such as the conditions for eligibility of voters and candidates, the establishment of an independent electoral commission, the reorganization of constituencies and the reform of the voting system, the regulation of electoral competition and a number of provisions concerning the electoral process itself. The following section will present and discuss the Commission's proposals and contrast them to the electoral law finally passed by the Lebanese parliament in September 2008.

a. Eligibility of Voters and Candidates

Concerning the right to vote, the Commission's draft concedes it to "every Lebanese individual who has attained the

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age of eighteen years, whether or not resident on Lebanese territory"[18]. This provision would imply a lowering of the voting age (from 21 to 18 years), and an extension of the right to vote to Lebanese nationals residing abroad.

The inclusion of all Lebanese (excluding non-residents) aging between 18 and 20 years would roughly represent an increase of the electorate by 73.000 persons, equalling 3.25% of the electoral population.[19] 18 is by far the most common minimum voting age amongst countries across the world, and equally the age of legal majority in Lebanon, which is why the Commission considered it more suitable than the current minimum voting age of 21.[20] However, a lowering of the voting age would require an amendment to the constitution[21] and hence a two-thirds majority in parliament (Art.79 (1)). This proposal has been rejected by the parliament in 2008, and the minimum voting age remains "the legal age stipulated in the constitution"[22], i.e. 21 years, although the request of lowering the voting age was already included in the Council of Ministers' decision to appoint the National Commission in 2005[23].

The number of Lebanese citizens residing abroad, who would be granted the right to vote following the Commission's proposal, is far more difficult to assess than the potential number of additional young voters. Estimations about the number of non-resident Lebanese cover a wide range; however, researchers such as Guita Hourani (Lebanese Emigration Research Center) consider the idea that there are more Lebanese nationals living abroad than in Lebanon itself "a complete myth"[24]. Yet, numbers such as the about 1.2 million Lebanese having left the country between 1975 and 2007[25] suggest that the participation of non-resident Lebanese could alter the outcome of elections more considerably than the proposed lowering of the voting age alone. The inclusion of non-resident citizens into the electorate would nonetheless not require a constitutional amendment, as the right to vote is granted to "every Lebanese citizen" according to Art.21 of the constitution. In the September 2008 reform, the Parliament decided to allow out-of-country voting, but deferring its application to the 2013 elections.[26]

Regarding the eligibility of candidates, the National Commission recommended the establishment of a 30% quota for women on the electoral lists corresponding to the large constituencies[27], from which 51 of the 128 members of parliament should be elected applying a proportional system.[28] Contrary to what media coverage often suggested, this proposal was not identical with a "quota for women in parliament", as the election of a list candidate into parliament would, according to the Commission's draft, depend on the proportion of votes received by the list and on the number of preferential votes the candidate obtains, which determine his rank on the list[29]. Thus, the number of women in parliament would not be predetermined to 30%, but still depend on the preferences of the electorate. Despite the fact that the positive discrimination of women might represent a violation of the principle of equality, the National Commission deemed this measure desirable in order to "counterbalance the existing imbalance in society"[30]. Currently, only 6 out of 128 members of the Lebanese parliament are women[31], which places the country on rank 124 out of 137 on the women's parliamentary representation list in the world[32], which is considered by the Commission a result of Lebanese woman lacking "a fair chance to participate fully in the political life of the country"[33]. As the parliament has rejected the idea of a mixed electoral system partially based on a proportional model, the proposal of a quota for women on electoral lists subject to proportional vote could not be included into the 2008 reform. Whereas the issue of a women's quota has thus to be considered in the context of broader reform, it is nonetheless to be observed that the 2008 electoral law does not include any regulation to specifically promote female representation in parliament.

b. Establishment of an Independent Electoral Commission

In order to assure fully fair and democratic elections, the National Commission suggested the establishment of an independent electoral commission[34], which would take over the ministry of interior's current functions of organizing and monitoring the electoral process. The parliament did not adopt the Commission's proposal in 2008; yet, it decided to establish a mere "Supervisory Commission on the Electoral Campaign". Its functions are restrained to the supervision of campaign spending and advertising[35], while the organization of the electoral process remains a task of the ministry of interior. Whereas some political representatives generally supporting the National Committee's proposal have expressed doubt that an independent commission could accomplish the tasks required in the next election given the short period of time between the September 2008 reform and the spring 2009 elections[36], the parliament has also refrained from establishing such a commission to hold the following 2013 elections, while such a deferral has been agreed on in the case of out-of-country voting.

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c. Electoral Constituencies and Voting System

The most important change included in the National Commission's reform proposal concerns the voting system and the design of electoral constituencies: The Commission suggested replacing the medium-sized constituency majoritarian system in place with a "mixed system" combining the small constituency majoritarian model and the large constituency proportional model. According to its draft, 77 out of 128 members of parliament would be elected from small electoral units (cadas) following the majoritarian (first-past-post) system, whereas the remaining 51 candidates would be elected from lists corresponding to the electoral provinces (muhafazat). The Commission regarded this mixed system as appropriate for achieving the general aims set for a reformed electoral law and implementing the concrete call for a system on the basis of provinces spelled out in the 1989 Ta'if Agreement[37]. Nonetheless, in 2008 the parties to the Doha Agreement decided on re-adopting the small electoral units (cadas) corresponding to the 1960 electoral law, while however redrawing the three districts in Beirut.[38] These decisions were confirmed by the electoral law adopted in 2008, which re-introduces the cada as electoral unit, but maintains the current majority system, thus rejecting the National Commission's broad reform proposal.

d. Regulation of Electoral Competition

In order to grant equality not only among voters, but also among candidates, the National Commission included in its draft law regulations on campaign spending and advertising. Concerning the former, the Commission suggested mainly the imposition of a ceiling on campaign spending (taking into account the number of voters in a candidate's constituency)[39] and a set of rules aimed at increasing transparency, such as the establishment of a specific campaign account for all candidacy contributions and expenses by each candidate and list, to which banking secrecy should not apply[40]. Regarding campaign advertising, the National Commission's draft most importantly includes provisions on the audio-visual media designed to ensure equal access to these for all lists and candidates[41], as well as restrictions on posting and distribution of electoral advertising materials[42]. After the experience of the 2005 elections, which were, according to critics, characterized by tremendously high campaign expenses and uncontrolled advertising[43], political representatives generally regarded the commission's demands favourably[44]. These stances were reflected in the parliament's decision to adopt regulations on campaign expenses and advertising in the September 2008 electoral law (Chapter 5 and 6), which mainly drew on the National Commission's proposal.

e. The Electoral Process

Several other regulations included in the National Committee's draft concerned the electoral process. Most important among these were the suggestion to hold the national parliamentary elections on one day (instead of four consecutive Sundays, as in 2005[45]), and to use official pre-printed ballot papers. Whereas the proposal to have one date for national elections in all districts in order to ensure equality among candidates was included into the 2008 law[46], no provision concerning pre-printed ballot papers was incorporated. Consequently, voters are forced to either write down their preferred candidates on a sheet of paper, or to use the different pre-printed papers provided by the candidates themselves. This procedure should be regarded as highly critical, as it increases the possibility of influencing especially less-educated voters and leads to difficulties in counting the votes, as ballot papers are not standardized.

Why a "mixed system" for Lebanon? Electoral Systems in Divided Societies

While the Lebanese parliament in 2008 restricted itself to redefine the electoral constituencies, the National Commission's proposal included a far more comprehensive reform of the electoral system. This section aims at discussing the advantages and disadvantages both systems might have for a divided society, taking into account the specific characteristics of the Lebanese case. (It is understood that Lebanon constitutes a "divided society", since political representation is organized along confessional lines.)

When it comes to discussing electoral systems for divided societies, one consensus among scholars can be observed: The electoral system of a country is regarded as crucial for achieving sustainable democracy.[47] However, opinions diverge on which system is most appropriate under which country-specific conditions. The two

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most important models argued for are consociationalism and centripetalism. On the one hand, the consociationalist model, as most importantly promoted by Arend Lijphart, calls for power sharing among communal groups and group autonomy, in order to secure each group's political representation.[48] On the other hand, the centripetal system, as promoted most prominently by Donald Horowitz, aims at encouraging cooperation among communal groups through the requirement that candidates need a defined amount of votes from outside their own community in order to be elected.[49]

The pre-Civil War Lebanese system is often cited as a model case of consociationalism: each community's representation in parliament was secured by the "formula", and the small electoral districts drawn according to confessional geographical distribution made sure that candidates mainly depended on votes from their own community. Whereas this system supported a fairly stable democracy for over 30 years[50], it more than failed in this point from 1975 onwards. However, this collapse is attributed by Lijphart not to consociationalism itself, but to its specific design.[51] Thus, it is to hope that the revival of a consociationalist system embodied by the 2008 electoral law, which redistricts electoral constituencies in Lebanon in a way such as to increase correspondence between the confession of candidate and electorate (especially concerning Christian candidates)[52], is not to suffer the same fate, since several imbalances of the pre-Civil War formula have since been corrected.

In order "to evaluate an electoral system", Horowitz argues that "it is necessary to ask first what one wants the electoral system to do"[53]. Therefore, the electoral law has to be seen in context with Lebanon's long-term political goals. A consociational system, while possibly able to ensure stability in the sense of preventing violence among confessional groups (if completed with satisfactory rules), will never be able to abolish political confessionalism. On the contrary, consociationalism even cements confessionalism, as it inherently promotes a political (and legal) system organized along sectarian lines. Thus, the 2008 electoral reform will not help Lebanon to approach the national goal of abolishing confessionalism, as stated in the constitution and reaffirmed in the Ta'if agreement.

While the 2008 electoral law represents a reintroduction of consociationalism, the National Commission's proposal consists of a sophisticated combination of elements of both the consociational and the centripetal system. Consociational characteristics are the formula of representation and the cada corresponding to the geographical distribution of confessions. Though consociationalism generally advocates proportional representation[54], this demand may be neglected in the Lebanese case, as proportional representation of the communal groups in question is regulated through the formula. The election from larger districts (muhafazat) on the basis of multi-confessional lists, in contrary, is derived from a centripetal approach, as these rules are designed to promote cooperation and moderation among confessional groups (as votes from other confessions are needed to be elected). Again, although the mechanism of preferential voting is included, it is not equal to the type of preferential voting classically promoted by centripetalists[55], as it merely enables the voter to express his preferences inside a list of candidates, and not between several parties or single candidates.

This brief analysis has shown that the system proposed by the Commission combines aspects of both systems recommended for divided societies, consociationalism and centripetalism, in a complex model. Following Golder, it can be categorized as a mixed electoral system of independent formulae (as the cada and muhafazat candidates are selected in independent processes) of superposition (as cada and muhafazat are geographically superposed), and is therefore comparable to the electoral systems of Japan and Russia.[56] Such a system could be an important step towards the abolition of confessionalism: while ensuring stability through consociational elements such as the formula of representation and a certain number of parliamentarians elected in small districts corresponding to their confession, it could, at the same time, promote the formation of multi-confessional parties through the establishment of multi-confessional lists necessary for being elected in the muhafazat.

In this context it is interesting to point out the results of the electoral laws applied from 1992 to 2005, which also comprised centripetal elements. Namely, the medium size of the electoral districts and the possibility of preferential voting (however restricted by the proportion of representation) made candidates dependent on votes from outside their own community. Whereas these centripetal features have led to pre-election cooperation between parties and candidates supporting each other, the confessional character of the Lebanese system has remained untouched and no remarkable multiconfessional party has emerged during this period. Therefore, the inclusion of electoral incentives

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related to centripetalism does not always lead to the development of aggregative parties, as suggested by Reilly[57].

Conclusion

As we have seen, the 2008 reform of the Lebanese electoral law has drawn to a certain extent on the proposals of the National Commission's 2006 draft. The fact that out of the superficial aspects of the draft law (such as voting age, campaign regulations etc.), roughly half were adopted and half were rejected by the Lebanese parliament could justify the view that the electoral reform of 2008 was "a cup half full". Important progress, yet not in all areas, has been made towards more democratic and free elections. However, if one regards the parliament's decision to reject the core proposal of the draft, a comprehensive reform of the electoral system itself, and to instead restrict itself to merely re-adopting the electoral districts of 1960, it would be more adequate to qualify the 2008 a "drop in the bucket".

From a theoretical point of view, it might be argued that a rather consociational electoral system, such as the 2008 law, is recommended by renowned scholars such as Arend Lijphart for countries divided along ethnic or sectarian lines and would thus be suitable for a country like Lebanon. However, one has to take a closer look at the Lebanese case in order to evaluate this systemic choice, asking at the same time "What does Lebanon want?" and "What can the consociational system achieve?" Whereas the consociational model is certainly able to stabilize a nation's political situation, Lebanon (on a long-term perspective) is longing for more: the abolition of confessionalism. Thus, a centripetal electoral system, which aims at fostering cooperation among groups, might be a more appropriate choice for the country than consociationalism. From this point of view, the Commission's draft, consisting of a sophisticated balance between consociational and centripetal elements, might have been a step towards cautiously abolishing sectarianism, whereas the 2008 electoral law even cements it.

Nevertheless, while the new electoral law might be considered a step backwards on the road to the abolition of confessionalism from a theoretical perspective, practical experience prohibits this premature conclusion. What four post-Civil War elections have demonstrated is that even a more centripetal approach, such as the one governing the 1992-2005 elections, does not automatically lead to a decrease of sectarian politics. Thus, it can be concluded that a theoretical discussion, although providing important insights on the effects of electoral system design, cannot precisely predict a system's outcomes. For a conclusive assessment of the 2008 electoral law, one consequently needs to await the practical outcomes of the elections it is to govern in 2009 and, eventually, thereafter.

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[7] See for example AFP (2005), MENA Election Guide (2005) and Salem (2006).

[8] Salem (2006).

[9] Ibid.

[10] Republic of Lebanon, Council of Ministers (2008): Decision No. 58.

[11] Report of the National Commission on Parliamentary Electoral Law (2006).

[12] Dingel (2008), p. 3.

[13] Ibid, p. 1.

[14] ICG (2008a), p. 2.

[15] Doha Agreement, First and Second.

[16] Doha Agreement, Third.

[17] AFP (2008).

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[18] Parliamentary Electoral Draft Law, Art. 1.

[19] This rough estimation applies for the year 2008 and is based on population data from EarthTrends Country Profiles (2002), assuming a proportional distribution of births per years inside the age groups of 0-15 and 15-65 years.

[20] Report of the National Commission on Parliamentary Electoral Law (2006), Fourth, Ch. 1, Third.

[21] Art. 21 of the Lebanese Constitution concedes the rights to vote to those Lebanese citizens having completed their twenty-first year.

[22] Law on Elections to the Chamber of Deputies (2008), Art. 3.

[23] Republic of Lebanon, Council of Ministers (2008): Decision No. 58.

[24] NOW Lebanon (2008), interview with Guita Hourani.

[25] Ibid.

[26] Khoury (2008).

[27] Parliamentary Electoral Draft Law, Art. 64.

[28] Further explications concerning the proposed „mixed system“ will be given in section IV.c.

[29] Parliamentary Electoral Draft Law, Art. 124 (2), (4), (5).

[30] Report of the National Commission on Parliamentary Electoral Law (2006), Fourth, Ch. 1, Fourth.

[31] Interparliamentary Union (2008a).

[32] Interparliamentary Union (2008b).

[33] Report of the National Commission on Parliamentary Electoral Law (2006), Fourth, Ch. 1, Fourth.

[34] Parliamentary Electoral Draft Law, Art. 9.

[35] The corresponding regulations will be discussed in section IV.b.

[36] CCER (2008).

[37] Ta'if Agreement (1989), III.D.

[38] Doha Agreement (2008), Third.

[39] Parliamentary Electoral Draft Law, Art. 74.

[40] Ibid, Art. 72 (1-3).

[41] Ibid, Art. 84ff.

[42] Ibid, Art. 88ff.

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[43] Khoury (2008).

[44] CCER (2008b, c).

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[47] Reilly (2002), p. 1f.

[48] Lijphart (2004), p. 2.

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[50] Dekmejian (1978), p. 252.

[51] Lijphart (2004), p. 99.

[52] ICG (2008b), p. 3.

[53] Horowitz (2003), p. 115.

[54] Lijphart (2004), p. 100.

[55] Reilly (2002), p. 158ff.

[56] Golder (2005), p. 112.

[57] Reilly (2002), p. 159.

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*Written by: Julia Seiermann
Written at: American University of Beirut
Written for: Professor Hassan Krayem
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