

Resurrection from Babel: The cultural, political, and legal status of Christian communities in Lebanon and Syria and their prospects for the future.

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Part I – Introduction.

In the well-known Biblical story, the faithful, attempting to create a place of unity for themselves, set about building the Tower of Babel, only to see the Tower implode due to linguistic differences and power assertions.¹ The end result of efforts based in faith and mutual belief was utter destruction of the shared dream and goal, and all of those involved in the Tower’s attempted building were relegated to the same failure despite their best intentions and communal support.²

Thousands of years later, the world is still plagued by sectarian strife and warfare. Indeed, the situation has only become more involved since Babel, as there are now inter-communal and intra-communal conflicts for supremacy and superiority – a notable difference in these conflicts is that the ultimate tool of getting to Heaven is no longer a tower, it is now a state. Within the framework of the much-vaunted and highly-contested state structure which sits at the heart of inter-communal and intra-communal conflicts lies a duality of politics and law. A state cannot exist without political actors, whatever their motivations may be, and political actors of all belief systems have embraced the need for laws as a method of control – if not equality and a means of assuring an open society.

For Christian communities in the Middle East there is perhaps no greater a living symbol of the effects of Babel-esque intra-communal fighting than Lebanon. The fighting

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¹ Genesis: 11.

² *Id.*

between Christian communities in Lebanon,³ and the alliances of these communities with various Muslim communities and other nations to try to crush rival Christian opposition,⁴ is more than just a memory of decades past; it continues today, albeit in slightly less violent forms than during the civil war which ravaged the country for over a decade.⁵ By contrast, the political and legal standing of Christian communities across the border in Syria is nowhere near as visible, or publicized, as their Lebanese co-religionists.⁶ However, lack of visibility does not correlate to lack of existence, and indeed there are many historical Christian communities within Syria.⁷ Disturbingly, at a time when many see the Middle East as an area that is unquestionably Muslim in character, and when Arab scholars themselves write on the topic of creating a symbiosis between democracy and Islam⁸ while ignoring the existence of other salient groups in the democratic debate mix,⁹ Christian communities in Lebanon and Syria appear to be phased out of public discourse. Yet there is perhaps no more vital a time for these communities to come to the forefront of the political and legal lives of their nations than at the present, as the future composition of the Middle East lies in the balance, and with it the future rights of these communities.

³ See *infra* Parts II. A.II. B.

⁴ See *infra* Parts II. A.II. B.

⁵ See *infra* Parts II. D, III. D.

⁶ See *infra* Part III. A.

⁷ See *infra* Part III. A.

⁸ See, e.g., FAWAZ GERGES, AMERICA AND POLITICAL ISLAM: CLASH OF CULTURES OR CLASH OF INTERESTS (explaining differences in American and Middle Eastern foreign policy stances as, in part, the result of failures of American officials to seek understanding of political Islam); LARIBI SADIKI, THE SEARCH FOR ARAB DEMOCRACY: DISCOURSES AND COUNTER-DISCOURSES (concluding that both democracy and Islam must alter elements of their fundamental parameters in order to allow for democratic Middle Eastern states).

⁹ See generally SADIKI, *supra* note 8 (emphasizing that Islamic governments will be the continued trend in the Middle East and failing to address the impact of non-Muslims on the advent of democratic regimes in the Middle East).

Part II of this article will discuss the Lebanese situation.¹⁰ This part starts with a description of the Christian communities in Lebanon, including their relationships with larger churches throughout the world.¹¹ Discussion then turns to the political history of Lebanon since the nation's founding - with the promulgation of its constitution - in 1926,¹² which necessarily includes the Christian communities.¹³ Emphasis will be placed on the intra-communal relationships during the last civil war (1975 - 1991)¹⁴ and its aftermath,¹⁵ as well as the growth of Islamist groups in Lebanon and their effect on the global perception of Lebanon as a political actor.¹⁶ After this historical discussion, the article will present the Lebanese constitutional law, as well as statutory law in the form of electoral law, personal status law, property law, and criminal law.¹⁷ These laws will be analyzed in terms of their plain language meanings and practical implications in a country which has varied widely from the tenets of the rule of law and the guarantees enshrined in its constitution despite having had a continual constitutional apparatus since

¹⁰ *See infra* Part II.

¹¹ *See infra* Part II. A.

¹² *See infra* Part II. B.

¹³ *See id.*

¹⁴ There are some conflicting opinions as to the precise dates of the Lebanese civil war. For simplicity, and because it represents an outside opinion and is less open to charges of domestic Lebanese political influence, the author uses the CIA and United States Department of State dates for the civil war. *See* LEBANON FACTBOOK, available at <http://www.cia.gov/cia/publications/factbook/geos/le.html> (last visited Oct. 22, 2005) [hereinafter LEBANON FACTBOOK]; BACKGROUND NOTE: LEBANON, U.S. DEPARTMENT OF STATE available at <http://www.state.gov/r/pa/ei/bgn/35833.htm> (last visited Oct. 22, 2005) [hereinafter BACKGROUND NOTE LEBANON].

¹⁵ *See id.*

¹⁶ *See id.*

¹⁷ *See infra* Part II. C. The author has selected these areas of law for analysis because it is her belief that constitutional law tenets – such as equality of all persons before the law and the ability of people to own property without interference from the government (in the absence of a legitimate exercise of eminent domain) – are hollow if they are only codified in a constitutional document and are not made a valid and enforceable part of the laws which enshrine the daily rights and practices of a nation's population. Not only does the author believe that equality in areas of personal status and property ownership are necessary to legitimate a constitution, she believes and will argue in Parts II, III, and IV that the ownership right in one's status and one's property is an essential way to link any person/population to the nation in which he resides and create ownership of that nation's laws and future. As will be seen throughout this article, the author advocates for legal changes and protections primarily in the form of statutory laws to accompany already existing constitutional law provisions in Lebanon and Syria based on her belief in the need for constitutional and statutory law to mirror each other rather than excuse each other.

1926.¹⁸ Part II will close with the author's call for unity among Lebanese Christian communities as a way to ensure political stability,¹⁹ enshrine legal rights for Christians in Lebanon which do not mirror those applied to Christians in other Muslim communities (or the *dhimmi* patterns used in the Ottoman Empire),²⁰ and give Lebanese Christians a greater role in the control of their country.²¹ It will be argued that these suggestions will not only strengthen the Christian communities, and Lebanon itself, but will also strengthen Lebanese Muslim communities which are currently facing an uneasy choice between terrorist group affiliation and a peaceful civil society.²² Unity among Lebanon's Christian communities will also invite confidence from the United States and its allies in the global war on terror, which would serve to bolster the ability of the Lebanese state to be a reliable and functional ally rather than a Syrian pawn.²³

Part III of this article will discuss the Syrian situation.²⁴ The available information on Christian communities in Syria is not on par with the information available about the Lebanese Christian communities, hence the initial background discussion of the Syrian Christian communities will be brief.²⁵ Part III will turn from the Syrian Christian communities themselves to the history of Syria since its independence in 1926, with an emphasis on its cross-border role in Lebanon.²⁶ A discussion of Syrian constitutional law, as well as statutory law in the form of election law, personal status law, and the effect of

¹⁸ See *infra* Part II. C.

¹⁹ See *infra* Part II. D.

²⁰ See Fuad I. Khuri, *The Alawis of Syria: Religious Ideology and Organization* in SYRIA: SOCIETY, CULTURE, AND POLITY 49 (Richard T. Antoun and Donald Quataert eds. 1991); see generally ALBERT HOURANI, A HISTORY OF THE ARAB PEOPLES 220, 242 (1991); Sergei Hackel, *The Orthodox Churches of Eastern Europe*, in THE OXFORD HISTORY OF CHRISTIANITY 564 (John McManners ed. 2002).

²¹ See *infra* Part II. D.

²² See *id.*

²³ See *id.*

²⁴ See *infra* Part III.

²⁵ See *infra* Part III. A.

²⁶ See *infra* Part III. B.

decades old emergency law will then ensue.²⁷ As in Part II, the legal analysis will emphasize the real, pragmatic state of Syrian law rather than the esoteric or plain meaning of the Syrian constitution.²⁸ The conclusion of Part III will be the author's call for Syrian Christians – those in Syria and those who have emigrated – along with Lebanese Christians to use the increasingly dire situation of the Assad regime in Syria to push for legal reform for Syrian Christians and Syrians as a whole.²⁹ This call comes with the caveat that domestic agitation might be too risky to attempt at present,³⁰ but will highlight that, if Lebanese Christian communities were to follow the author's recommendations in Part II, the situation and bargaining power of Syrian Christians would likely increase as a result.³¹

Finally, Part IV will summarize the conclusions and recommendations in Parts II and III for Lebanon and Syria.³² Part IV will emphasize that from the pieces of Christian communities in Lebanon and Syria which have been ravaged by both internal and external forces, it is possible to resurrect the modern Babel and fashion, if not a tower to Heaven, at the very least two states which celebrate their shared faiths rather than their devastating divisions.³³

Part II – Lebanon.

A. Christian Communities in Lebanon

The officially recognized Christian communities in Lebanon include the Maronites, Greek Orthodox, Greek Catholics, Armenian Catholics, Roman Catholics,

²⁷ See *infra* Part III. C. See also *supra* note 17, stating the author's reasoning in selecting these areas of law for discussion and analysis.

²⁸ See *infra* Part III. C.

²⁹ See *infra* Part III. D.

³⁰ See *id.*

³¹ See *id.*

³² See *infra* Part IV.

³³ See *id.*

Syrian Catholics, Armenian Orthodox, Syrian Orthodox, Orthodox Melkites, and forms of Protestantism.³⁴ These communities have a long history with Lebanon,³⁵ and were part of the Ottoman governing system of allowing millets – groups of non-Islamic, or non-Arabic as the case might be, peoples – to live within the confines of the Ottoman Empire in exchange for a lower social status and payments from the millet leaders to the Ottoman regime.³⁶ As fellow believers in God and “the book,” Christian communities were also protected by the Ottomans because of their status as *dhimmi* – believers who did not convert to Islam but nevertheless worshiped God and a holy book.³⁷

Throughout the growth and development of Mount Lebanon, Beirut, and the areas which comprise modern-day Lebanon, the Maronites and the Greek Orthodox became the paramount groups in the Christian power structure³⁸; the Maronites came to control the Mountain,³⁹ and the Greek Orthodox extended more control over Beirut.⁴⁰ Politically, these groups have stood the test of time and continue to be the most influential Christian communities in Lebanon,⁴¹ although in the author’s opinion all of the Christian communities have gained in status – extant or potential – in the wake of the civil war and

³⁴ See Joseph Chamie, *Religious Groups in Lebanon: A Descriptive Investigation*, 11 INT’L J. MIDDLE EASTERN STUDS. 175, 176 (1980) (describing the forms of recognized religious groups in Lebanon); see also Fr. Nasser Gemayel, *The Christian Communities in Lebanon* (trans. Nayla H. Mouzannar), OPUS LIBANI, available at <http://www.opuslibani.org/lb/Lebanon/dos003.html> (last visited Oct. 22, 2005).

³⁵ *Id.*; Kallistos Ware, *Eastern Christendom* in THE OXFORD HISTORY OF CHRISTIANITY (John McManners ed. 2002); Jeremy Johns, *Christianity and Islam* in THE OXFORD HISTORY OF CHRISTIANITY (John McManners ed. 2002); ALBERT HOURANI, *supra* note 20, at 48; CHARLES WINSLOW, *LEBANON: WAR AND POLITICS IN A FRAGMENTED SOCIETY*, 11, 66 (1996)

³⁶ See Johns, *supra* note 35.

³⁷ *Id.*

³⁸ MICHAEL JOHNSON, *ALL HONORABLE MEN: THE SOCIAL ORIGINS OF WAR IN LEBANON 2* (2001).

³⁹ *Id.*; SAMIR KHALAF, *CIVIL AND UNCIVIL VIOLENCE IN LEBANON: A HISTORY OF THE INTERNATIONALIZATION OF HUMAN CONTACT* 281 (2002) (“In a sense, the Maronites never ceased to recognize Mount Lebanon as their traditional home.”).

⁴⁰ See Chamie, *supra* note 34, at 180 – 1 (describing the results of a 1970 Lebanese study finding that “the percentage of all Catholics (mainly Maronites) who are located in Mount Lebanon and Beirut is 38 and 37 percent, respectively.”); KHALAF, *supra* note 39, at 281 (setting out the dichotomy between the worldview of the Maronites in the mountain and the Greek Orthodox and other communities which had established themselves in various Lebanese cities).

⁴¹ See generally Chamie, *supra* note 34; JOHNSON, *supra* note 38, at 2.

the current war on terrorism taking place in the Middle East. This is so because many of the traditional leaders in the Maronite community in particular were killed or forced into exile by the civil war,⁴² and recent polling data indicates that many of the remaining Christian political leaders in general are tainted in the eyes of Lebanese Christians because of their dependence upon and affiliation with Syria.⁴³ In this situation, it is politically feasible that a member of any Christian community, with the right grass-roots support and personality, could emerge as a future leader of a block of united Lebanese Christian communities, provided that the political and legal reality of the need for unity is understood and achieved.⁴⁴ After all, the presence of Maronites and other Christian groups in Lebanon has historically been such that, at its founding, many Lebanese considered the nation to be rightfully Christian.⁴⁵

⁴² See KHALAF, *supra* note 39, at 54 (2002) (“While all other communities appear to enjoy uncontested leaders or spokesmen, the Maronites seem leaderless, splintered and bereft of compelling voices apart perhaps from the Patriarch.”); Simon Haddad, *The Christians of Lebanon in the context of a [sic] Syrian-Israeli political relations*, J. SOCIAL, POLITICAL, AND ECONOMIC STUDIES 589 (2001) (recounting polling results in which many Lebanese Christians reported that they were not pleased with the political leaders who had survived the civil war and remain active in Lebanese politics).

⁴³ Haddad, *supra* note 42 (explaining that most powerful Christian politicians are tainted by their affiliations with Syria and stating that “[n]early 84% of the respondents [who were all Lebanese Christians] do not feel that their ruling elites work in the best interest of the people.”); *see also id.* (stating that, although disenchantment with and distrust of the Lebanese government and the individuals who comprise it is prevalent among all religious communities, it is most prevalent among Lebanese Christians *per se*).

⁴⁴ For a discussion of the increasing trend of confessional identification among Lebanese today, *see* KHALAF, *supra* note 39, at 27 (“[M]ore and more Lebanese today are brandishing their confessionalism, if we may invoke a dual metaphor, as both emblem and armor: Emblem, because confessional identity has become the most viable medium for asserting presence and securing vital needs and benefits. . . . Armor, because it has become a shield against real or imagined threats. The more vulnerable the emblem, the thicker the armor.”); *see also* Ahmad Beydoun, *Confessionalism: Outline of an Announced Reform in OPTIONS FOR LEBANON* 85 (Nawaf Salam ed. 2004) (describing the effect of the civil war on self-identification with a confessional community in Lebanon). It is the author’s opinion that this trend will only continue in the face of increased instability in the Middle East generally, and particularly in light of the Hariri investigation and the steadily more public debate over the appropriate role of Syria in Lebanese political life.

⁴⁵ *See* Rania Maktabi, *The Lebanese Census of 1932 Revisited. Who Are the Lebanese*, 26 Brit. J. Middle Eastern Studs. 219, 224, 224 n. 9 (1999); WINSLOW, *supra* note 35, at 66-67 (describing the motivations of early Lebanese Republic founders *viz.* religion and the state).

To understand how this unity is possible in terms of beliefs as well as pragmatic politics, it is important to examine briefly the doctrinal beliefs of several Christian groups and their historical places in Lebanon.

1. The Maronites

Founded as a separate religious group, the Maronites are currently one of the many Uniate Churches affiliated with Roman Catholicism through a sworn allegiance to the Pope.⁴⁶ Maronites have claimed shelter in Mount Lebanon for well over a thousand years, were involved in the Crusades at various points in time,⁴⁷ and were rewarded with the 1584 founding of the Maronite College in Rome.⁴⁸ The Maronite College still exists today,⁴⁹ as does the role of the Maronite clergy as religious and political leaders within Lebanon.⁵⁰

With historical longevity on its side, the Maronite Church in Lebanon has continued to be a political force.⁵¹ Maronites were vehement that Lebanon be founded on the principle of having a Christian majority after independence was achieved in 1943.⁵² However, at the time of the creation of the Lebanese constitution, which was in essence the founding of the modern Lebanese Republic,⁵³ and in the years afterward when citizenship and voting rights became paramount issues in the political and legal power

⁴⁶ Gemayel, *supra* note 34.

⁴⁷ Gemayel, *supra* note 34. Interestingly, some of the Muslim civil war opponents of the Maronites in particular referred to them as “crusaders.” See Johns, *supra* note 35.

⁴⁸ Gemayel, *supra* note 34; HOURANI, *supra* note 20, at 242.

⁴⁹ Gemayel, *supra* note 34.

⁵⁰ WALID KHALIDI, CONFLICT AND VIOLENCE IN LEBANON: CONFRONTATION IN THE MIDDLE EAST 68 – 72 (1979).

⁵¹ See Maktabi, *supra* note 45, at 227; WINSLOW, *supra* note 35, at 67; BACKGROUND NOTE LEBANON, *supra* note 14.

⁵² See Maktabi, *supra* note 45.

⁵³ *Id.*

structure of Lebanon,⁵⁴ the Maronites and other Christian communities took a pragmatic view of the need to buffer the Christian communities as a whole, consenting to the extension of citizenship rights to members of other Christian communities who had emigrated.⁵⁵

Due to the potential contentiousness that a religion-based census could bring to Lebanon, an official census has not been released since the 1932 census which was used to create the legislative apportionment scheme of seats as 6 Christian seats for every 5 Muslim seats in the Lebanese Parliament.⁵⁶ However, the total estimated Christian population in Lebanon is approximately 1.48 million, representing the estimate that Christians comprise approximately 39% of the Lebanese population as of mid-2005.⁵⁷ In this context, it is important to note the toll that the 1975-1991 civil war took on the Christian communities in Lebanon as a whole. It has been estimated that roughly 950,000 people fled Lebanon during the decades of the war, approximately two-thirds of whom were Christians.⁵⁸ It is also estimated that roughly two-thirds of the Lebanese who fled during the civil war and have chosen not to return to Lebanon to date are Christians of

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ This apportionment system, as well as the confessional apportionment system used for the top governmental positions in Lebanon, was part of the National Pact, an unwritten agreement which was in effect until the end of the civil war. *See* BACKGROUND NOTE LEBANON, *supra* note 14.

⁵⁷ *See* Maktabi, *supra* note 45; LEBANON FACTBOOK, *supra* note 14; BACKGROUND NOTE LEBANON, *supra* note 14. It is important to remember that the population percentages do not necessarily correspond to citizenship status and voting rights figures, as Palestinian refugees who can be counted as Lebanese inhabitants are not granted citizenship rights and cannot vote in Lebanon. *See id.*; *see also* Haddad, *supra* note 42 (describing the position of Palestinians in Lebanese society and their relationship with Lebanese Christians).

⁵⁸ M. Joseph Khoreich, *Results of the Lebanese War 1975-1997*, CENTRE CATHOLIQUE D'INFORMATION (trans. Dr. Georges Kallas) available at <http://www.opuslibani.org/lb/Lebanon/dos013.html> (last visited Oct. 22, 2005); *see also* TOUFIC K. GASPARD, A POLITICAL ECONOMY OF LEBANON 1948 – 2002: THE LIMITS OF LAISSEZ-FAIRE 97 (2004)(providing non-religiously based emigration figures for Lebanon from 1900 to 1974; these figures show an upswing in emigration starting from the 1970 – 1974 period).

some denomination.⁵⁹ All Christian denominations in Lebanon are or have been active in the propagation of religious orders in Lebanon, and/or the maintenance of hospitals, schools, and charitable institutions as well.⁶⁰ Many of these institutions, especially schools, were damaged or destroyed in the war,⁶¹ yet still carry on today as integral parts of the community. Indeed, with the exception of the American University of Beirut,⁶² the best known universities in Lebanon are at least affiliated with Christianity.⁶³

Due to their preeminent status among the Lebanese Christian communities, the Maronites have enjoyed the guarantee that the President of Lebanon will always be a Maronite.⁶⁴ The only other groups so privileged are the Sunnis, who are guaranteed the Prime Minister's spot in any Lebanese government,⁶⁵ and the Shi'is, who are guaranteed the slot of the President of the Lebanese Parliament.⁶⁶

During the civil war, by far the greatest number of Christian combatant groups were Maronites;⁶⁷ indeed, although the Lebanese national Kata'ib party was founded on the idea of a Christian state in Lebanon,⁶⁸ it ultimately eschewed a Maronite identity and became associated with the Maronite-dominated Phalanges party and its militant

⁵⁹ Khoreich, *supra* note 58.

⁶⁰ KHALAF, *supra* note 39, at 281 (providing a brief account of the role of Christian religious orders in the early founding of Lebanese educational institutions).

⁶¹ See Khoreich, *supra* note 58.

⁶² The American University of Beirut is administered under the auspices of the State University of New York. See ABOUT THE UNIVERSITY, AMERICAN UNIVERSITY OF BEIRUT, *available at* <http://www.aub.edu/about/about.htm> (last visited Oct. 22, 2005).

⁶³ See GASPARD, *supra* note 58, at 46 (describing the founding of several influential religious-based universities in Lebanon, especially at the behest of the Jesuits and Lazarists).

⁶⁴ This is one of the provisions of the National Pact which remains in effect today. See BACKGROUND NOTE LEBANON, *supra* note 14.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ WINSLOW, *supra* note 35, at 192 – 193; JOHNSON, *supra* note 38, at 36 – 37.

⁶⁸ WINSLOW, *supra* note 35, at 193 – 194; JOHNSON, *supra* note 38, at 36 – 37, 150 – 151.

groups.⁶⁹ While the civil war raged, so too did the internal divisions within the Maronite community – particularly within the groups established by former notable Maronite families.⁷⁰ Ultimately, these divisions would provide an opening for both Syria and Israel to enter the conflict and add their own agendas to the war and the peace which followed.⁷¹

Despite the ravages of war, the Maronites have managed to maintain their permanent hold on the Presidency, and have also maintained the majority apportionment of Christian seats in the Lebanese Parliament even after the Ta'if Agreement (officially known as the Charter of Lebanese National Reconciliation⁷²) altered the apportionment of seats in the Parliament so that there would be absolute parity between Christians and Muslims.⁷³ However, neither the Ta'if provisions nor the constitutional enshrinement of religion-based awarding of key governmental posts has been enough to stop violence carried out against Christian targets and in Christian neighborhoods, most recently in the form of bombings.⁷⁴

⁶⁹ WINSLOW, *supra* note 35, at 193 – 194; KHALAF, *supra* note 39, at 230 (describing the escalation of Maronite, and particularly Kata'ib, militarization and mobilization in the face of the initial events which ultimately lead to the civil war); *Id.* at 241 (describing the various combination of sectarian allies and enemies during the course of the civil war).

⁷⁰ WINSLOW, *supra* note 35, at 193 – 194; *Id.* at 221 – 230; KHALIFDI, *supra* note 50, at 68 – 72 (1979); EYAL ZISSER, *LEBANON: THE CHALLENGE OF INDEPENDENCE* 10 – 12, 17 - 21 (2000).

⁷¹ *See* WINSLOW, *supra* note 35, at 199 – 200, 218 – 224; KHALIDI, *supra* note 50, at 139 – 143 (describing the process in which escalating hostilities between Syria and Israel were played out through the actions of these countries, and their designated agents, in Lebanon).

⁷² *LEBANON FACTBOOK*, *supra* note 14.

⁷³ KHALAF, *supra* note 39, at 54 (describing the impact of this parity on the psyche of the Christian and Muslim communities). Currently, Maronites hold 34 of the 128 seats in Parliament. *See* LOI ELECTORAL PARLEMENTAIRE, TABLEAU 1 – LES SIEGES PARLEMENTAIRE DANS LES CIRCONSCRIPTIONS ELECTORALE (Electoral law, Table 1 – parliamentary seats in the electoral districts), REPUBLIQUE LIBANAISE ASSEMBLEE NATIONALE, available at <http://www.lp.gov.lb/Version%20Francaise/Loi/table1.htm> (last visited Oct. 22, 2005).

⁷⁴ *See, e.g.*, JOHNSON, *supra* note 38, at 246 – 249 (describing Syrian attempts to intimidate non-cooperative groups in Lebanon in the aftermath of Syrian attempts to increase local and national control from 2000 onward).

2. The Greek Orthodox

The Greek Orthodox Church in Lebanon traces its origins to the early years of Christianity.⁷⁵ As a separate entity from Roman Catholicism, and not part of the Uniate Churches, the Greek Orthodox population is not affiliated with the Vatican, although recent popes and patriarchs have made overtures which indicate that all sides are willing to attempt to breach the schism which divided the churches initially.⁷⁶ While the Maronites primarily gathered on Mount Lebanon, the Greek Orthodox became increasingly urban, especially during the nineteenth-century, when many Greek Orthodox became traders, merchants and bankers.⁷⁷

As mentioned above, the Greek Orthodox represent the second largest Christian community in Lebanon, and have historically held this position.⁷⁸ There are no governmental positions guaranteed to the Greek Orthodox community under the National Pact,⁷⁹ although the community has been apportioned fourteen seats in the Lebanese Parliament since the Ta'if Agreement.⁸⁰ Despite the lack of a guarantee for the holding of certain positions, the Greek Orthodox clergy and leadership still wield tremendous influence within the community.⁸¹

⁷⁵ It should be remembered that the Orthodox Church per se did not exist until Christianity was well established in the Middle East.

⁷⁶ See *Catholics, Orthodox trying to mend rift*, THE BROCKVILLE RECORDER AND TIMES (ONTARIO), Oct. 29, 2005 at A9; Nicole Winfield, *Vatican seeks full diplomatic ties with Russia*, ASSOCIATED PRESS, Oct. 27, 2005.

⁷⁷ ZISSER, *supra* note 70, at 61.

⁷⁸ *Id.* at 8 – 9.

⁷⁹ *Id.* at 60; see BACKGROUND NOTE LEBANON, *supra* note 14.

⁸⁰ LOI ELECTORAL PARLEMENTAIRE, TABLEAU 1 – LES SIEGES PARLEMENTAIRE DANS LES CIRCONSCRIPTIONS ELECTORALE (Electoral law, Table 1 – parliamentary seats in the electoral districts), REPUBLIQUE LIBANAISE ASSEMBLEE NATIONALE, *available at* <http://www.lp.gov.lb/Version%20Francaise/Loi/table1.htm> (last visited Oct. 22, 2005); see also BACKGROUND NOTE LEBANON, *supra* note 14.

⁸¹ See Haddad, *supra* note 42 (describing the anti-Syrian actions of the Greek Orthodox Archbishop Elias Audi during a period of anti-Syrian agitation in 2000; Archbishop Audi went so far as to use a Palm Sunday homily to deliver a message of support for anti-Syrian activists).

In the civil war years, the Christian communities in Lebanon fought not only within their own sects, but also with their co-religionists. Maronites and Greek Orthodox fought each other,⁸² as well as other Christians and Muslims,⁸³ in a war which, although it began as a religious war in name, ultimately blurred confessionalism with pragmatic alliances and, in the process, undermined the cohesion of the Lebanese Christian communities. In and of itself, this was dangerous enough for Lebanese Christians, however media coverage of the war, which tended to portray the conflict as between Muslims and Christians, or Israelis and Arabs, created and perpetuated an understanding of the politics of the region which is oversimplified, easily manipulated, and ongoing into present-day media and international societal understandings.

3. Other Christian communities

With the exception of the Protestant groups represented in Lebanon, the remaining Christian communities are either part of the Uniate church umbrella linking them to Roman Catholicism,⁸⁴ Roman Catholic themselves,⁸⁵ or various forms of Orthodox churches.⁸⁶ Although these communities do not have the numerical strength of the Maronites or Greek Orthodox,⁸⁷ they nevertheless have long standing historical ties to Lebanon, and are an integral part of Lebanese society.

⁸² See KHALIDI, *supra* note 50, at 75 – 78 (describing the range of political groupings adopted by the Greek Orthodox and other Christian communities during the civil war, including those which openly opposed Maronite and Muslim hegemony in Lebanon); JOHNSON, *supra* note 38, at 150 – 151, 160 – 161; ZISSER, *supra* note 70, at 177 – 186 (providing background on the tensions between factions of the Maronite and Greek Orthodox communities as they emerged in the founding of the Syrian Nationalist Party (or PPS) in Lebanon by, among others, a Lebanese Greek Orthodox).

⁸³ KHALIDI, *supra* note 50, at 75.

⁸⁴ LEBANON FACTBOOK, *supra* note 14.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Although there are no official census figures available, a rough estimate of the populations of these groups can be inferred from the number of Parliamentary seats apportioned to each group. See LOI ELECTORAL PARLEMENTAIRE, TABLEAU 1 – LES SIEGES PARLEMENTAIRE DANS LES CIRCONSCRIPTIONS ELECTORALE (Electoral law, Table 1 – parliamentary seats in the electoral districts), REPUBLIQUE

These communities were involved in, and damaged by, the civil war; indeed it can be argued that the damage sustained by these communities was perhaps more than the majority communities, as the plight of the majority communities, however misidentified as the plight of “Christians” or “Arabs” in general, was more visible to the world. In an electoral sense, these communities have regained at least some measure of status under the current Christian Parliamentary apportionment system.⁸⁸

B. Lebanese Creation and Strife

Lebanon’s status changed dramatically in the early twentieth century, starting out as part of the rapidly declining Ottoman Empire,⁸⁹ then becoming a French mandate after the cessation of World War I,⁹⁰ promulgating a constitution in 1926,⁹¹ and eventually achieving its own independence in 1943.⁹² When Lebanon was created it was an enigma, the first Christian-associated nation in the Middle East at the time. Although known for its confessional status, the original Lebanese constitution eschewed confessionalism, declaring that there would be religious freedom and tolerance for all.⁹³

Like most enigmas, particularly those dependent on politics and law to perpetuate their status, Lebanon’s myth was soon subsumed by the reality of inter-confessional divisions which threatened the future of the young nation. In 1943, these divisions resulted in the National Pact - an unwritten agreement between various powerful political

LIBANAISE ASSEMBLEE NATIONALE, *available at* <http://www.lp.gov.lb/Version%20Francaise/Loi/table1.htm> (last visited Oct. 22, 2005). At present, excluding Maronite and Greek Orthodox seats, there are 15 “other” Christian seats in the Lebanese Parliament. *See id.*

⁸⁸ *See id.*

⁸⁹ *See* BACKGROUND NOTE LEBANON, *supra* note 14.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ The current Lebanese constitution still retains these protections. *See infra* Part II.C. (discussing Lebanese constitutional and statutory law, with emphasis on personal status law).

leaders of religious communities - that created the 6 Christian/5 Muslim Parliamentary seat apportionment system⁹⁴ which would remain in effect until the Ta'if Agreement.⁹⁵

The National Pact also enshrined the permanent assignment of the Presidency of the Lebanese Republic to a Maronite, the position of Prime Minister to a Sunni, and the President of the Lebanese Parliament to a Shi'ia.⁹⁶

The reasons asserted for the increasing tensions in Lebanon in the years from the creation of the National Pact through the next incidence of civil strife in 1958,⁹⁷ and culminating in the civil war are myriad: the increasing influence of Israel and Palestinian refugees relocated to Lebanon⁹⁸; the rising influence of Syria in Lebanon's domestic politics and in the international world⁹⁹; the increasing number of Muslims in the country, coupled with Lebanon's status as the only Christian country in the otherwise Muslim Middle East¹⁰⁰; the changing social and economic milieu of the country¹⁰¹; the difficulties in trying to establish a pan-Arab culture with sectarian differences¹⁰²; the list goes on. What comes out of these explanations is not only a muddled understanding of the situation; rather, the disconnect between the laws and principles enshrined in legal documents and discourse and the meaning of these laws and principles in reality becomes vividly real.

⁹⁴ See BACKGROUND NOTE LEBANON, *supra* note 14.

⁹⁵ ZISSER, *supra* note 70, at 60 – 67.

⁹⁶ *Id.*

⁹⁷ See BACKGROUND NOTE LEBANON, *supra* note 14.

⁹⁸ See, e.g., Haddad, *supra* note 42.

⁹⁹ See BACKGROUND NOTE LEBANON, *supra* note 14.

¹⁰⁰ See, e.g. *id.*

¹⁰¹ See generally GASPARD, *supra* note 58 (discussing the changing economic situation in Lebanon from independence onwards, and the impact of this change on the social makeup of the Lebanese).

¹⁰² See generally ZISSER, *supra* note 70 (discussing the creation of the PPS); *infra* Part III (discussing the rise of the Ba'athist movement in Syria and its goals).

This disconnect reached new heights during the civil war,¹⁰³ when law as such was ineffective, and even customary communal laws – such as respect for notable families,¹⁰⁴ respect for elders and women,¹⁰⁵ and the observance of standard social tenets grounded in religious teachings, i.e. that killing is illegal and against God's commandments¹⁰⁶ – were cast aside in an escalating cycle of violence and hatred.¹⁰⁷ The disconnect was thus nearly complete.

Once peace arrived through the Ta'if Agreement,¹⁰⁸ which is widely held to be a compromise document created at the behest of foreign governments – particularly Syria¹⁰⁹ – the words of law were again meant to solidify the Lebanese state, though this time at the cost of significant legislative powers for the Christian communities as a whole.

C. Lebanese Constitutional and Statutory Law

1. Lebanese Constitutional Law

¹⁰³ A discussion of the causes of the Lebanese civil war is outside the scope of this article, and indeed this has been the subject of many books and articles. For accounts of the causes of the civil war in Lebanon, *see generally* JOHNSON, *supra* note 38; KHALAF, *supra* note 39; BACKGROUND NOTE LEBANON, *supra* note 14, LEBANON FACTBOOK, *supra* note 14.

¹⁰⁴ For a discussion of the splits between Christian groups which evinced a disregard for the established leadership and primacy of notables, *see supra* Part II.A.

¹⁰⁵ For an account of the horrific and ritualistic violence carried out against women, children, and the elderly by all sides during the war, *see generally* JOHNSON, *supra* note 38 (positing that these crimes were perpetrated because of the role that women in particular served in all religious groups within Lebanese society – namely that of the repository of the male community's honor).

¹⁰⁶ This is perhaps the most elemental of the Ten Commandments, and also carries over into Islam, regardless of the legal penalties placed on killing by a statutory law-based society.

¹⁰⁷ For an account of the escalating brutalities committed during the war, *see generally* JOHNSON, *supra* note 38; *see also* BACKGROUND NOTE LEBANON, *supra* note 14.

¹⁰⁸ *See* BACKGROUND NOTE LEBANON, *supra* note 14; KHALAF, *supra* note 39, at 54.

¹⁰⁹ *See* KHALAF, *supra* note 39, at 54 (detailing the Ta'if Agreement's requirement that Syrian troops be stationed in Lebanon in the aftermath of the Agreement's implementation and a later interpretation of the Agreement to allow for the presence of Syrian troops in Lebanon until certain milestones in Syrian/Lebanese/Israeli relations are met).

The original Lebanese constitution was promulgated in 1926,¹¹⁰ and has been amended on multiple occasions.¹¹¹ In the aftermath of the civil war, a new constitutional preamble was inserted, providing in relevant part that: Lebanon is “sovereign, free, and independent,” for the benefit of all of its “children,” inside the borders recognized by the international community¹¹²; Lebanon is Arab in its identity¹¹³; the Lebanese economic system is open and guarantees individual rights and private property¹¹⁴; and that “the suppression of confessionalism in politics constitutes an essential practice for the nation.”¹¹⁵ Title one, chapter two of the constitution provides that all Lebanese are to be considered for public employment without regard to factors other than their individual merit and qualifications, as well as other factors dictated by law.¹¹⁶ Chapter two also protects private property from a governmental taking without reason and compensation.¹¹⁷

Contrary to the goals of the preamble, Title two, Chapter two provides that apportionment for parliamentary seats is to be made initially on an equal division between Christians and Muslims,¹¹⁸ with these seats subdivided by region¹¹⁹ and by sect within each religion and region.¹²⁰ Currently, the Lebanese Parliament is comprised of 128 seats,¹²¹ of which 64 are designated as Christian seats and 64 as Muslim seats.

¹¹⁰ LEBANON FACTBOOK, *supra* note 14.

¹¹¹ Summaries of past amendments to the Lebanese constitution are available from the Lebanese Parliament. See LA CONSTITUTION LIBANAISE, REPUBLIQUE LIBANAISE ASSEMBLEE NATIONALE, *available at* <http://www.lp.gov.lb/Version%20Francaise/constitution.htm> (last visited Oct. 22, 2005).

¹¹² LEB. CONST. PREAMBLE, TIT. 1 (A) (2005)

¹¹³ *Id.* (B)

¹¹⁴ *Id.* (F)

¹¹⁵ *Id.* (H).

¹¹⁶ LEB. CONST. TIT. 1 CH. 2 ART. 12 (2005).

¹¹⁷ *Id.* at art. 15.

¹¹⁸ LEB. CONST. TIT. 2 CH. 2 ART. 24 (a) (2005).

¹¹⁹ *Id.* (c).

¹²⁰ *Id.* (b).

¹²¹ LEBANON FACTBOOK, *supra* note 14.

Interestingly, despite the apportionment system used, the constitution goes on to state that each Member of Parliament (“MP”) is a member for the nation rather than his own constituency, and must act accordingly in performing the duties of his office.¹²²

The President of Lebanon is largely a figurehead under constitutional law, albeit it a confessionally selected figurehead. His powers as commander-in-chief are subsumed by the powers of the Council of Ministers,¹²³ and technically his term is limited to one consecutive term,¹²⁴ although past and present attempts to thwart this provision have been made.¹²⁵ The President signs laws into effect, although he does not possess the ability to change laws promulgated by Parliament¹²⁶; in terms of foreign policy, both the President and the Prime Minister must sign treaties into law for them to be legally binding.¹²⁷ The Prime Minister is named by the President with the consent of Parliament.¹²⁸ The primary executive function of the Lebanese government is carried out by the Council of Ministers, which is comprised of MPs elevated to ministerial status.¹²⁹

2. Statutory Law

A. Electoral Laws

¹²² LEB. CONST. TIT. 2 CH 3 ART. 27 (2005).

¹²³ *Id.*

¹²⁴ *Id.*; Jean Naffah, *Administrative Law in THE LEBANESE LEGAL SYSTEM* vol. I 60(Antoine El-Gemayel ed. 1985).

¹²⁵ Most recently, controversy over extending the presidency of Emile LaHoud for a second term caused a rift between the Syrian regime and Lebanese leaders, key among them former prime minister Rafiki Hariri. According to press accounts at the time, and the preliminary findings of the United Nations committee charged with investigating Mr. Hariri’s murder on February 14, 2005, this rift with Syria resulted in hostile confrontations between Syria and several Lebanese regime members, as well as Mr. Hariri’s assassination by car bomb in the streets of Beirut. At present, as the result of the 2004 decision by the Lebanese Parliament, Mr. LaHoud still retains the office of President of the Republic of Lebanon. LEBANON FACTBOOK, *supra* note 14.

¹²⁶ LEB. CONST. TIT. 2 CH. 4 ART 50 (2005).

¹²⁷ *Id.* at art. 52

¹²⁸ *Id.* at art. 53

¹²⁹ *Id.* at art. 65.

Electoral laws are the backbone to free participation in government and an open society. In Lebanon, all Lebanese who are age 21 or over are given the franchise, as long as they are not subject to a legal penalty¹³⁰ (i.e. deprivation of rights as punishment¹³¹ or an established state of mental insanity¹³²) and are not part of the military or any other national policing body.¹³³ Eligible voters are registered to vote in their assigned geographical electoral districts by religious sect,¹³⁴ and must identify themselves by name, address, and religion when going to the polls to vote.¹³⁵ There are established mechanisms of governmental oversight of persons who are on voting lists and their status as eligible voters, and these lists must be compared prior to any election.¹³⁶

B. Personal Status Laws

Under the terms of the Lebanese constitution, all Lebanese are “children” of the nation and enjoy the same rights, regardless of confession.¹³⁷ However, the Lebanese personal status laws illustrate the disconnect between constitutional imperatives and the reality of law and society in Lebanon. Secular courts in Lebanon,¹³⁸ which are tasked with certain limited functions (many of these having to do with governmental and constitutional oversight), figure heavily in Lebanese jurisprudence.¹³⁹ It is important to

¹³⁰ LOI ELECTORAL PARLIMENTAIRE, ch. 2 art. 9 (2005)

¹³¹ *Id.* at arts. 9, 10 (the most common cause of legal deprivation of the franchise is the violation of the Lebanese Criminal Code provisions).

¹³² *Id.* at art. 9.

¹³³ *Id.* at art. 28.

¹³⁴ *Id.* at art. 4

¹³⁵ *Id.* at art. 13.

¹³⁶ LOI ELECTORAL PARLIMENTAIRE, ch. 2 arts. 17 – 27 (2005).

¹³⁷ LEB. CONST. PREAMBLE, TIT. 1 (A) (2005).

¹³⁸ The jurisdiction of secular courts in Lebanon is further subdivided into criminal and civil jurisdiction generally, with separate, secular military courts existing for limited questions of military law as well. *See* JUDICIARY: LEBANON, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION (POGAR), available at <http://www.pogar.org/countries/judiciary.asp?cid=9> (last visited Oct. 22, 2005).

¹³⁹ *See* Suleiman Takieddine, *An Independent Judiciary for a Better Justice* in OPTIONS FOR LEBANON 30 – 34 (Nawaf Salam ed. 2004) (describing the divisions within the secular court structure in Lebanon).

note that religious communities form their own councils and governmental bodies for their communities in addition to administering religious courts.¹⁴⁰

Religious courts in Lebanon are barred from trying cases brought pursuant to Lebanese penal laws, as well as certain civil cases.¹⁴¹ While it is possible for a person to change his religious sect, religious courts will assume that they have jurisdiction over a person if they have jurisdiction over the person's father by virtue of his religious affiliation.¹⁴² If the father changes his religious affiliation and his child has yet to reach the legal age of majority, the father's new religion has jurisdiction over both the father and his children.¹⁴³ In cases where the litigants belong to different religions, jurisdiction shifts to secular courts.¹⁴⁴

One of the primary areas of jurisprudence for religious courts is marriage, and subsidiary questions arising from marriage-related issues. It is in these areas that there is a disparity between the laws and requirements for Christians of various sects (not to mention Jews and Muslims)¹⁴⁵; for example, Catholic and Orthodox communities have slightly different requirements for marital capacity,¹⁴⁶ and their interpretation of what voids a marriage and the effects of a void marriage on any children of that marriage differ vastly.¹⁴⁷ Christian communities also differ in their requirements for establishing valid

¹⁴⁰ Bachir Bilani, Ibrahim Najjar, Antoine El-Gemayel, *Personal Status in THE LEBANESE LEGAL SYSTEM* vol. I 267 (Antoine El-Gemayel ed 1985).

¹⁴¹ *Id.* at 268.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Bachir Bilani, Ibrahim Najjar, Antoine El-Gemayel, *Personal Status in THE LEBANESE LEGAL SYSTEM* vol. I 276 (Antoine El-Gemayel ed 1985) (explaining that Catholic courts will find a lack of capacity when there is some element of "feigning" involved in consent to marry - such as a lack of intent to remain faithful to one's spouse during the marriage or to procreate during the marriage - while "[a]ccording to the Christian Orthodox and Evangelical sects, coercion or seduction only will nullify consent.").

¹⁴⁷ *Id.* at 276 - 77, 296 - 300, 306 - 312.

parentage, recognition of children, and adoption of children.¹⁴⁸ Religious status also impacts on the inheritance and gift-giving rights of Lebanese in both life and death.¹⁴⁹

C. Property Law

Regardless of their religion, landowning Lebanese are required to register their land with their local government,¹⁵⁰ subject to an official assessment of the land by a surveyor.¹⁵¹ All landowners receive the same rights in and to their property,¹⁵² subject to the general interests of society in the use of the property and the ability of the government to take the property for cause and with compensation to the property owner.¹⁵³ Disputes regarding landownership,¹⁵⁴ and the ability to use the right of usufruct¹⁵⁵ are governed by secular Lebanese courts, except to the extent that inheritance laws are involved.¹⁵⁶

D. Criminal Law

All Lebanese are subject to the criminal code regardless of their religious affiliation or status.¹⁵⁷ The criminal code makes distinctions between crimes which qualify as “major offenses”¹⁵⁸ and those which are essentially misdemeanor offenses¹⁵⁹; crimes that are classified as political are subject to a different set of *mens rea* requirements and punishment standards than those imposed for major offenses and

¹⁴⁸ See *id.* 321 – 334.

¹⁴⁹ See *id.* 349 – 51, 363 – 77.

¹⁵⁰ Edward Eid, Antoine El-Gemayel, *Real Property* in THE LEBANESE LEGAL SYSTEM vol. I 205 (Antoine El-Gemayel ed. 1985).

¹⁵¹ *Id.* at 208.

¹⁵² *Id.* at 221 – 223.

¹⁵³ *Id.* at 223 – 227.

¹⁵⁴ *Id.* at 233 – 234.

¹⁵⁵ *Id.* at 238 – 243. This right under Lebanese law is analogous to usufruct in American law, which is defined as: “[a] right to use another’s property for a time without damaging or diminishing it, although the property might naturally deteriorate over time.” BLACK’S LAW DICTIONARY 1542 (7th ed. 1999).

¹⁵⁶ See *supra* Part II.C.2.B.

¹⁵⁷ Samir Alyeh, *Criminal Law and Procedure* in THE LEBANESE LEGAL SYSTEM vol. I 396 (Antoine El-Gemayel ed. 1985).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

misdemeanors.¹⁶⁰ Criminal trials start at the lower court level,¹⁶¹ and their adjudicative results can be appealed up a chain of appellate courts as applicable for outcome only and not sentencing,¹⁶² except in the case of military court decisions, which have a separate appellate procedure.¹⁶³ There is a limited right to counsel at certain points in the adjudicative and questioning process, subject to the rights of the examining magistrate during the initial investigative proceeding.¹⁶⁴

D. Possibilities for the future

As the previous sections have illustrated, there is a clear disconnect between constitutional provisions, laws, and societal practices in Lebanon. The constitution itself decries confessionalism in politics, yet at the same time enshrines voting procedures which institutionalize religious voting segregation.¹⁶⁵ Electoral laws provide the franchise based solely on citizenship status and capacity, however voters are registered by religion and must identify themselves by such when they vote.¹⁶⁶ Criminal and civil laws of the Lebanese nation are applied to all Lebanese alike, yet intimate personal legal issues are subject to the requirements of religious courts and bodies except in rare circumstances which cross the communal divide.¹⁶⁷ Lebanese property law provides for equal protections of landowners regardless of religion, unless it intersects with questions of inheritance, which are the province of religious courts.¹⁶⁸ These differences and

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 400 – 01.

¹⁶² *Id.* at 406.

¹⁶³ Samir Alyeh, *Criminal Law and Procedure* in THE LEBANESE LEGAL SYSTEM vol. I 401 (Antoine El-Gemayel ed. 1985).

¹⁶⁴ *Id.* at 404.

¹⁶⁵ *See supra* Part II.C.1, 2.

¹⁶⁶ *See supra* Part II.C.2.A.

¹⁶⁷ *See supra* Part II.C.2.D.

¹⁶⁸ *See supra* Part II.C.2.B, C.

contradictions only further serve to divide Lebanese Christian communities themselves, not to mention Lebanese society as a whole.

There are many historical reasons for the legal divide between Christian and Muslim communities in Lebanon, and indeed a call to radically change this practice is not only unrealistic, but also potentially dangerous given the presence of Hizbollah¹⁶⁹ and other terrorist groups which have used Lebanese internal weaknesses to create instability in the region in the past and continue their attempts to do so.¹⁷⁰ However, this is not necessarily a bad thing for the current and future state of Lebanon, and its Christian and Muslim populations.

At present, there is a divide between nations fighting the war on terror and Middle Eastern countries, whose response to the war varies from the more aggressive pursuit of terrorists,¹⁷¹ to countries which are much more likely to pay lip service to the idea of stopping terrorists than to take concrete action to stop them.¹⁷² This is certainly a political and cultural divide, which in many cases is mirrored in the structure of legal, or at least tacit, legitimization of terror groups in the electoral process.¹⁷³ In the morass of intra-national and inter-Arab debate over terrorism and Islamist concepts, there are very few

¹⁶⁹ For a brief explanation of the origins of Hizbollah, *see generally* BACKGROUND NOTE LEBANON, *supra* note 14.

¹⁷⁰ *See* LEBANON FACTBOOK, *supra* note 14. In fact, Hizbollah has become such an entrenched presence in the Lebanese political sphere that, for the first time, an open member of Hizbollah was elected to the Parliament and is serving as a minister. *See* "Lebanon Reborn? Defining National Priorities and Prospects for Democratic Renewal in the Wake of March 14, 2005," Panel I of a Hearing of the House International Relations Committee, Federal News Service (Jul. 28, 2005) (statement of Rep. Tom Lantos). This ministerial appointment has drawn sharp criticism, especially from the United States, which is unable to meet with any members of Hizbollah, in accordance with its policies regarding giving even tacit recognition to terrorist groups. *See id.* (statement of C. David Welch, Assistant Secretary of State for Near Eastern Affairs).

¹⁷¹ Egypt, for example, has been fighting the Muslim Brotherhood for years. *See generally* CARRIE ROSEFSKY WICKHAM, MOBILIZING ISLAM: RELIGION, ACTIVISM, AND POLITICAL CHANGE IN EGYPT (2002).

¹⁷² *See infra* Part III (discussing Syria).

¹⁷³ Again, Egypt is a primary example of this despite its long-time ban on political participation by the Muslim Brotherhood. *See generally* WICKHAM, *supra* note 171.

state-based ways to offer interested Muslims a way out of conflict without engendering suspicion from outside forces and their co-religionists. However, the situation of the Lebanese Christian communities presents such an opportunity for Muslims, as well as for the Christian communities themselves.

The legal framework for religious tolerance in Lebanon already exists. At the same time, there exists a legislative power structure in which Christians could take centralized control of their assigned governmental segments, as well as the appointment powers given to the President (provided that the president himself was not a Syrian pawn). Using these constitutional powers, a united Christian block could start taking corrective measures to rid Lebanon of Syrian presence and the presence of Hizbollah and other such terror groups operating in Lebanon. With the attention garnered by the assassination of Rafik Hariri,¹⁷⁴ and the subsequent attempts on the lives of other anti-Syrian voices,¹⁷⁵ Lebanese Christians and Muslims began vocal protests which resulted in at least the superficial withdrawal of Syrian troops from Lebanon.¹⁷⁶ The withdrawal, however, did not remove Syrian influence from Lebanon, and certainly did nothing to stop terrorist groups from using Lebanon as a training ground and bank through which to launder ill-gotten funds. Currently, intelligence, military, and security analysts attest to Lebanon's role in terrorism,¹⁷⁷ and members of both parties on Capitol Hill are adopting

¹⁷⁴ See BACKGROUND NOTE LEBANON, *supra* note 14.

¹⁷⁵ See *id.*

¹⁷⁶ JOHNSON, *supra* note 38, at 244 – 249 (detailing recent Syrian actions to manipulate domestic Lebanese politics from the local level upwards, as well as Lebanese foreign policy in regards to its relationship with Israel).

¹⁷⁷ See, e.g., *Hearing of the Prevention of Nuclear and Biological Attack Subcommittee of the House Homeland Security Committee on WMD Terrorism and Proliferent States*, Federal News Service (Sept. 8, 2005) (statement of Dr. Daniel Byman, Center for Peace and Security Studies, Georgetown University); Statement of C. David Welch, *supra* note 170; “Lebanon Reborn? Defining National Priorities and Prospects for Democratic Renewal in the Wake of March 14, 2005,” *Panel I of a Hearing of the House International Relations Committee*, Federal News Service (Jul. 28, 2005) (statement of James Kunder,

these views as fact.¹⁷⁸ At the same time, a study of legislative proposals and enactments since September 11, 2001 indicates that the U.S. government is increasingly willing to provide Lebanon with resources to build peaceful institutions,¹⁷⁹ and, especially in the days after Hariri's assassination, a bi-partisan chorus was heard essentially acknowledging that Lebanon is not a willing participant in Syria's policies and calling for a stronger and independent Lebanon.¹⁸⁰

If the Lebanese Christian communities decided to act as a block, rather than breaking down along confessional lines, they could elect MPs who would act in concert (and it is the belief of the author that at least some Sunni members would go along with this to avenge Hariri). Legal protection of religious beliefs already exists in Lebanese statutory law,¹⁸¹ and the Christian communities would still be able to maintain their own

Administrator, Bureau for Asia and the Near East, U.S. Agency for International Development); *“Lebanon Reborn? Defining National Priorities and Prospects for Democratic Renewal in the Wake of March 14, 2005,” Panel II of a Hearing of the House International Relations Committee*, Federal News Service (Jul. 28, 2005) (statement of Dr. Paul Salem, Writer and Analyst, Beirut, Lebanon); *Foreign Assistance Programs for the Near East, Panel Two of a Hearing of the Senate Foreign Relations Committee*, Federal News Service (Mar. 2, 2005) (statement of David Satterfield, Acting Assistant Secretary).

¹⁷⁸ See, e.g., H. Con. Res. 32, 109th Cong. (2005); H. Res. 273, 109th Cong. (2005); 151 CONG. REC. S 4606 (daily ed. Apr. 28, 2005) (statement of Sen. Frist); 151 CONG. REC. H. 1331 (daily ed. Mar. 10, 2005) (statement of Rep. Engel).

¹⁷⁹ See, e.g., S. REP. NO. 35 (2005) (advocating, in a report from the Senate Committee on Foreign Relations, extending U.S. aide money to southern Lebanon for the purpose of assisting in water infrastructural development); H. REP. NO. 663 (2002) (advocating, in a report from the House Committee on appropriations, continued funding of religious and other international organizations working in Lebanon at or above the \$35,000,000 level which had previously been appropriated). Cf. H. REP. NO. 345 (2001) (advocating extending the bar on sending U.S. funds of any sort to Syria).

¹⁸⁰ For an example of pre-Hariri assassination legislation, see Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Pub. L. No. 108-175 (codified at 22 U.S.C. § 2151 (2004)). Some examples of Hariri assassination-based statements, see Exec. Order 13338 (May 11, 2004) (National Emergency with Respect to Blocking Property of Certain Persons and Prohibiting the Exportation and Reexportation of Certain Goods to Syria) (extended by H. Doc. 21 (May 9, 2005)); H. Res. 91, 109th Cong. (2005); S. Res. 77, 109th Cong. (2005). In this context, it is important to note that, in addition to Syrian removal from Lebanon, Lebanese Christians have voiced an overwhelming interest in settling the Lebanese-Israeli dispute and bringing peace on that front. See Haddad, *supra* note 42 (“Lebanese Christian respondents reveal more than 90% in favor of peace with Israel.”). The stated reasons for this desire for peace are both aspirational and pragmatic, with many Lebanese seeing peace with Israel as part of the path towards a more stable and prosperous Lebanese economy. See *id.* (describing empirical findings regarding Lebanese Christian support for Lebanese-Israeli peace).

¹⁸¹ See *supra* Part II.C.

personal status-based courts and councils under such an alliance¹⁸²; the major change would be a change in mindset from thinking of oneself as a part of a separate legal enclave within Lebanon to thinking of oneself as a Lebanese Christian. The disconnect between constitutional, statutory law and tradition could, in this instance, be used to give the Christian communities the strength and reassurance needed to create a power block. In turn, the author believes that this block would be formidable enough to encourage further support from the international community, particularly the U.S., and, provided that the constitutional and statutory provisions allowing freedom of religion were not abridged, would pave the way for a stable and less sectarian Lebanon in the future.

Admittedly, there is a risk that the Christian communities could attempt to overstep legal boundaries. However, considering the negative view taken by the international community to more strife in the Middle East, and the existence of Muslim terrorism groups in Lebanon, to say nothing of recent memories of wartime atrocities, it is unlikely that such a usurpation would happen. Assuming that such a usurpation did not happen, a Christian block would function to offer Lebanese Muslims the benefit of having an ideology to adhere to, while not having to splinter their own communities as much to get to the ideology.

Part III. Syria

A. Christian Communities in Syria

Although they do not share the notoriety of their Lebanese neighbors, Christian communities in Syria are just as historically based. There are several Christian groups in

¹⁸² See *supra* Part II.C.2.B.

Syria, although most literature lumps them together as “Christians.”¹⁸³ It is estimated that 10% of Syrians are Christians of some variety.¹⁸⁴ The Greek Orthodox Patriarch for Antioch and All The East sits in Syria, and many religious and charitable works are carried out through the auspices of the Patriarchate.¹⁸⁵ There are several Uniate churches in Syria, principally Syriac Catholicism,¹⁸⁶ the Melkite Church,¹⁸⁷ the Assyrian Church of the East,¹⁸⁸ the Copts,¹⁸⁹ the Maronites,¹⁹⁰ as well as Roman Catholicism itself.¹⁹¹ One of the often unheard of side effects of the current Iraqi political situation is that the Christian Assyrians (or ChaldoAssyrians), a group which has in recent years come to rely on the Kurds for support and protection, are now being removed from their traditional areas by the Kurds and are fleeing to neighboring countries, including Syria.¹⁹²

¹⁸³ See BACKGROUND NOTE: SYRIA, U.S. DEPARTMENT OF STATE, *available at* <http://www.state.gov/r/pa/ei/bgn/3580.htm> (last visited Oct. 22, 2005) [hereinafter BACKGROUND NOTE SYRIA].

¹⁸⁴ See SYRIA, CIA WORLD FACTBOOK *available at* <http://www.cia.gov/cia/publications/factbook/geos/sy.html> (last visited Oct. 22, 2005) [hereinafter SYRIA FACTBOOK].

¹⁸⁵ See *Greek Orthodox Patriarchate of Antioch and All the East*, ENCYCLOPAEDIA BRITANNICA ONLINE, *available at* <http://www.britannica.com/eb/article-9037927> (last visited Oct. 22, 2005); *Historical Overview*, GREEK ORTHODOX PATRIARCHATE OF ANTIOCH AND ALL THE EAST, *available at* http://antiochpat.org/english/sitefiles/viewcontent.php?content=%241%24Fqww80sV%24LJtl/mpIsne5lz0mZ5kCy0_%241%24cY2fEC.3%242X4rjsf3DqIjEbC53bz6R/_%241%24Fqww80sV%24LJtl/mpIsne5lz0mZ5kCy0b56a92baa0ee987eb7f7e4a179b60efb&id=1&cat=%241%24DdKoSQCb%24FO96gT8jCFwnHPxW4LNZj1_%241%24pCxQHS8F%24GHaBW0fpsqpxYoSn4BE0M/_%241%24DdKoSQCb%24FO96gT8jCFwnHPxW4LNZj150102e124822220aaa78a8e3b2ccba34&catid=3&contentname=Historical%20Overview&catname=Other%20Contents (last visited Oct. 22, 2005).

¹⁸⁶ See Gemayel, *supra* note 34 (detailing the many Christian communities which exist in both Syria and Lebanon).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM 182 – 183 (2004), *available at* <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmcaff/109/109.pdf> (last visited Oct. 22, 2005) (“There are currently only about 800,000 to one million ChaldoAssyrians left in Iraq. Tens of thousands of them fled to neighboring countries such as Jordan and Syria after lethal and co-ordinated church bombings by Islamic extremists killed at least 12 people and injured many more in August 2004.”); *Annual Report on Religious Freedom, House Committee on International Relations*, Federal Document Clearing House Congressional Testimony (Oct. 6, 2004) (statement of Paul Marshall, Senior Fellow, Center for Religious Freedom, Freedom House).

B. Syrian Independence and History

The Syrian Arab Republic was established as an independent entity in 1946,¹⁹³ and has remained such until the present day, with a slight interruption in independence occurring during the ill-fated attempt at Egyptian and Syrian unity, the United Arab Republic.¹⁹⁴ Its constitution was not promulgated until 1973.¹⁹⁵ The religious composition of Syria at its founding did not mirror the levels of equality experienced in Lebanon; the majority of the population was Muslim, with Sunnis being the dominant sect.¹⁹⁶

During the early part of Syria's existence, there was political instability and infighting among groups vying for governmental primacy, however political dominance started to coalesce in the 1960s and 1970s with the creation and rise to prominence of the Ba'ath party.¹⁹⁷ Though widely viewed today through the lens of Saddam Hussein's Ba'athist state in Iraq, and the Assad state in Syria, it is interesting to note that one of the fathers of Ba'athism was himself a Greek Orthodox, who established the party as a way to promote pan-Arab unity.¹⁹⁸ The intent of the Ba'ath party was initially secular, with the unifying element being a shared Arab ethnicity rather than religion.¹⁹⁹

At the same time that Ba'athism was coming to prominence in Syria, so too were the Muslim minority Alawis, who were easily outnumbered by Sunnis.²⁰⁰ Alawi leaders began insinuating themselves in the Ba'ath party, as well as governmental and military

¹⁹³ BACKGROUND NOTE SYRIA, *supra* note 183.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ EYAL ZISSER, ASAD'S LEGACY: SYRIA IN TRANSITION 5 (2001) [hereinafter ZISSER SYRIA].

¹⁹⁷ *Id.* at 6 – 8; Khuri, *supra* note 20, at 49.

¹⁹⁸ See ZISSER SYRIA, *supra* note 196, at 5.

¹⁹⁹ See RAYMOND HINNEBUSCH, SYRIA: REVOLUTION FROM ABOVE 20 (2001) (describing the early involvement of Christians – particularly Greek Orthodox – in the Ba'athist movement); ZISSER SYRIA, *supra* note 196, at 26 – 27.

²⁰⁰ *Id.* at 48 – 49, 69 – 72.

apparatuses, and ultimately were able consolidate power and take control of Syria under Hafiz al-Assad.²⁰¹ From 1970 until his death in 2000, Hafiz al-Assad ruled Syria under the guise of being the elected President and Ba'ath party leader.²⁰² In the wake of Hafiz al-Assad's death, his second son, Bashar al-Assad, was elected President of Syria in a move which required a constitutional amendment lowering the age of eligibility for the office of President.²⁰³ Despite his stated desire to bring Syria into the modern world,²⁰⁴ Bashar al-Assad's presidency has thus far been known for its ties to many terrorist groups,²⁰⁵ political repression following a brief period of opening,²⁰⁶ and, most recently, its role in the assassination of former Lebanese Prime Minister Rafik Hariri – the increasingly anti-Syrian figure discussed in Part II of this article.²⁰⁷

In terms of Lebanese relations, Syria has considered Lebanon to be a rightful part of its territory since its founding,²⁰⁸ and has not shied away from saying that its separation from Lebanon is essentially illegal.²⁰⁹ Indeed, the language of the Syrian constitution preamble clearly reflects both this belief and the Ba'athist belief that the

²⁰¹ *Id.* at 67 – 69.

²⁰² See BACKGROUND NOTE SYRIA, *supra* note 183.

²⁰³ *Id.*

²⁰⁴ See FLYNT LAWRENCE LEVERETT, INHERITING SYRIA: BASHAR'S TRIAL BY FIRE 100 (2005).

(describing the statements made during Bashar al-Assad's 2000 presidential inaugural address to Syria).

²⁰⁵ See LEBANON: WHO MURDERED HARIRI? INDEPENDENT PANEL PROBES EX-PREMIER'S ASSASSINATION, UNITED NATIONS NEWS CENTER, *available at* <http://www.un.org/apps/news/infocusRel.asp?infocusID=110&Body=Leban&Body1=> (last visited Nov. 2, 2005); Anthony Shadid, *Syria Feels Heat Over U.N. Report*, WASHINGTON POST, Oct. 22, 2005; *Bush: U.N. Hariri report 'deeply disturbing,'* CNN.COM, Oct. 21, 2005.

²⁰⁶ See BACKGROUND NOTE SYRIA, *supra* note 183; STATE-CIVIL SOCIETY RELATIONS: SYRIA, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, *available at* <http://www.pogar.org/countries/civil.asp?cid=19> (last visited Oct. 22, 2005); LEVERETT, *supra* note 204, at 88 – 95.

²⁰⁷ See *supra* Part II. It is perhaps not surprising that Bashar al-Assad has been at least inadvertently linked to Syrian operations in Lebanon, as before ascending to the presidency he was given control of the "Lebanon file," Syria's terminology for the oversight of Syrian operations in Lebanon. See LEVERETT, *supra* note 204, at 100.

²⁰⁸ See ZISSER SYRIA, *supra* note 196, at 129 – 132; LEVERETT, *supra* note 204, at 3 – 4.

²⁰⁹ See LEVERETT, *supra* note 204, at 3 – 4 (describing the Syrian view that Lebanon, as well as Jordan, was artificially created by the West and should be territorially part of Syria).

partition of the Middle East was illegal.²¹⁰ Syrian claims to rights over the domestic situation in Lebanon only increased with the power of Israel, and often Syria and Israel have used Lebanon as a battleground in their own disputes.²¹¹ The Lebanese civil war proved a situation ripe for Syrian intervention, and throughout the decades of war the Syrian regime did just that, although it intervened for different sides at different times, and was no more averse to providing support to Christian fighters than to Hizbollah during the course of the conflict.²¹²

The years of ceasefire in Lebanon have not seen a relaxing of Syrian control.²¹³ There is perhaps no better evidence of this than the Hariri incident, which has raised the specter of Syrian secret police control over Lebanon and its political actors to an international frenzy.²¹⁴ No longer the elephant in the room of Middle Eastern diplomacy, the Hariri assassination, and the public outcry and investigation which followed, has brought Syrian tactics to the forefront of world politics. In a global atmosphere which widely regards Syria as implicated in nefarious forms of financing and terrorism, this controversy has created a weakened position for the current Syrian regime.

C. Syrian Constitutional and Statutory Law

1. Constitutional Law

²¹⁰ See SYR. CONST. PREAMBLE (2005).

²¹¹ See *supra* Part II; HINNEBUSCH, *supra* note 199, at 155 – 156.

²¹² See HINNEBUSCH, *supra* note 199, at 155 – 156 (describing the Syrian aims in switching alliances during the civil war as framed against the Israeli/Syrian situation); ZISSER SYRIA, *supra* note 196, at 133 – 136.

²¹³ Indeed, a year after the Ta'if Agreement was formalized, Syria and a war-weakened Lebanon entered into the Treaty of Brotherhood, Cooperation and Coordination, which sought to tacitly legitimize the presence of Syria in Lebanon after the conclusion of the war. See ZISSER SYRIA, *supra* note 196, at 129 – 130.

²¹⁴ See *supra* Part II; see also BACKGROUND NOTE LEBANON, *supra* note 14.

The current provisions of the Syrian constitution were enacted in 1973.²¹⁵ Much of the constitutional preamble deals with Ba’athist goals and beliefs, enshrining pan-Arabism as the preeminent constitutional and political principle in Syria.²¹⁶ Theoretically, Syria is “a democratic, popular, socialist, and sovereign state,”²¹⁷ to be run as a republic.²¹⁸ Further, Islam is declared the primary provider of Syrian legislation,²¹⁹ and, although a state religion is not provided for in the constitution, “[t]he religion of the President of the Republic has to be Islam.”²²⁰ At the same time, the constitution also provides that “[t]he freedom of faith is guaranteed. The state respects all religions,”²²¹ and “[t]he state guarantees the freedom to hold any religious rites, provided they do not disturb public order.”²²² Thus, religious rights are both protected and circumscribed by a subjective constitutional standard.

Much of the Syrian constitution reflects the strong affiliation which existed between Syria and communist countries prior to the collapse of the U.S.S.R.²²³ The role of socialism in framing the Syrian legal system is particularly evident in the constitutional provisions regarding categories of allowed ownership,²²⁴ and the rights of owners of real and personal property in their belongings²²⁵; the right of the state to appropriate personal funds and belongings is also set out in the constitution.²²⁶

²¹⁵ See BACKGROUND NOTE SYRIA, *supra* note 14.

²¹⁶ See SYR. CONST. PREAMBLE (2005).

²¹⁷ SYR. CONST. CH 1. PT. 1 ART. 1.

²¹⁸ *Id.* at art. 2.

²¹⁹ *Id.* at art. 3.

²²⁰ *Id.*

²²¹ *Id.* at art. 35.

²²² *Id.*

²²³ See generally LEVERETT, *supra* note 204, at 54 – 55.

²²⁴ SYR. CONST. CH. 1. PT.2 ARTS. 14, 16.

²²⁵ *Id.* at art. 15.

²²⁶ *Id.*

Interestingly, the Syrian constitution's plain meaning expresses a respect for the individual in criminal matters²²⁷ and specifically states that “[n]o one may be tortured physically or mentally or . . . be treated in a humiliating manner.”²²⁸ These tenets are applied more stringently in word than in practice under the Syrian regime according to official reports.²²⁹ Again highlighting the disconnect between constitutional jurisprudence and practices of the Syrian regime, the constitution guarantees “[e]very citizen . . . the right to freely and openly express his views in words, in writing, and through all other means of expression. . . . The state guarantees the freedom of the press, of printing, and publication in accordance with the law.”²³⁰ The right to publicly gather and protest is also guaranteed in the Syrian constitution, tempered by the express proviso that “[t]he law regulates the exercise of this right.”²³¹

Electoral districts are defined under Syrian constitutional law as being formed by a set number of peasants and workers per area, and are not drawn according to sectarian affiliations.²³² Nominally, the People's Assembly – the Syrian legislative branch – has wide-ranging constitutional powers,²³³ however in reality the associates of the Assad regimes have wielded these powers from within legislative and ministerial circles.²³⁴ The

²²⁷ *Id.* at arts. 28, 29

²²⁸ *Id.* at art. 28

²²⁹ *See generally* BACKGROUND NOTE LEBANON, *supra* note 14; SYRIA FACTBOOK, *supra* note 184.

²³⁰ SYR. CONST. CH. 1. PT. 4 ART. 38.

²³¹ *Id.* at art. 39

²³² *Id.* at art. 53.

²³³ *See id.* at ch. 2 pt. 1.; LEGISLATURE: SYRIA, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, *available at* <http://www.pogar.org/countries/legislature.asp?cid=19> (last visited Oct. 22, 2005).

²³⁴ *See* BACKGROUND NOTE LEBANON, *supra* note 14.

constitution sets out many powers for the President as well,²³⁵ including a place on the Syrian Supreme Court²³⁶ and the High Council of the Judiciary.²³⁷

2. Syrian Statutory Law

Constitutional protections aside, all Syrians are entitled to suffrage from age 18 onwards,²³⁸ as long as they are not members of the military or police forces,²³⁹ or immigrants to Syria.²⁴⁰ Despite these protections, Syrians lack the ability to directly change their government at the federal level under the electoral law,²⁴¹ and have the most open electoral options at the most basic levels of political elections.²⁴²

In terms of personal status, Syrian law recognizes the same set of religious courts for determining status-based questions as does Lebanese law.²⁴³ These courts fit into a judicial structure in Syria which is heavily linked to the regime at the helm.²⁴⁴

The constitution is essentially ineffective in the face of emergency laws which have been in effect for decades in Syria²⁴⁵; these rules include the applicability of marital law to the general population, especially political protesters and dissidents.²⁴⁶

Additionally, the emergency laws are routinely used in Syria to control the media and its

²³⁵ See SYR. CONST. CH. 2 PT. 2.

²³⁶ *Id.* at ch. 3 pt. 1 art. 139.

²³⁷ *Id.* at art. 132.

²³⁸ ELECTIONS: SYRIA, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, available at <http://www.pogar.org/countries/elections.asp?cid=19> (last visited Oct. 22, 2005).

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* The election laws for local elections were drastically amended in April, 2005 to allow for greater electoral freedom for positions lesser than those of the governor. *Id.*

²⁴³ JUDICIARY: SYRIA, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, available at <http://www.pogar.org/countries/judiciary.asp?cid=19> (last visited Oct. 22, 2005).

²⁴⁴ *Id.*

²⁴⁵ STATE-CIVIL SOCIETY RELATIONS: SYRIA, UNITED NATIONS DEVELOPMENT PROGRAMME, PROGRAMME ON GOVERNANCE IN THE ARAB REGION, available at <http://www.pogar.org/countries/civil.asp?cid=19> (last visited Oct. 22, 2005).

²⁴⁶ *Id.*

messages.²⁴⁷ During an attempted reformation of Syria's laws in 2005, the Assad government promulgated rules purporting to require that the prosecutorial body involved in holding prisoners state a reason for the detention within five days of the onset of the detention²⁴⁸; importantly, however, security and terrorism related crimes do not fall under the terms of these legal changes.²⁴⁹

None of these laws are directed at religious groups in particular, as the focus of the state is more the control of the population as a whole – especially given the status of the ruling Alawi elite as a minority religion within the Syrian Muslim population. The state apparatus has made itself into an all-encompassing bureaucracy in order to subjugate the religious and class differences which existed from the time of Syrian independence onwards, and has at least facially completed part of its task.²⁵⁰

D. Possibilities for the future

The strength of the Christian communities in Syria is difficult to assess because of the lack of information available, however it is clear that there are such communities involved in active worship and religious works.²⁵¹ It is also clear that the forced migration of Assyrians from Iraq to Syria is an evolving situation²⁵² which, over time, could result in a political issue for the Syrian regime, as well as Syrian Christian leaders.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ See HINNEBUSCH, *supra* note 199, at 84 – 85 (describing the role of the state bureaucracy in Syrian society); Raymond A. Hinnebusch, *Class and State in Ba'athist Syria* in SYRIA: SOCIETY, CULTURE, AND POLITY (Richard T. Antoun and Donald Quataert eds. 1991) (describing the educational apparatus established under the Assad regime); LEVERETT, *supra* note 204, at 24 – 25.

²⁵¹ In addition to the existence of churches and Christian religious organizations in Syria, perhaps the best measure of the presence and vivacity of Christian communities in Syria is that 10% of the population does identify itself as Christian.

²⁵² See HOUSE OF COMMONS FOREIGN AFFAIRS COMMITTEE, FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM 182 – 183 (2004), *available at* <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmfaaff/109/109.pdf> (last visited Oct. 22, 2005).

While tensions might not be overtly brewing within Syrian Christian communities, the increasing international scrutiny on the Assad government could easily lead to greater disturbances in the social and political order in Syria, which in turn could cause sectarianism to come to the forefront of Syrian politics, as an issue in Muslim and Christian communities. Given these considerations, it is important to note that analysts and U.S. lawmakers have steadily increased their stated beliefs that Syria has been and continues to be a source of support for terrorist groups,²⁵³ their financiers and arms providers,²⁵⁴ a place of severe political repression,²⁵⁵ and a state involved in repeated incursions into the sovereignty of Lebanon.²⁵⁶ The Hariri controversy may be the most visible chapter in this escalation of international hostilities with the Syrian regime, however the Syrian Accountability and Lebanese Sovereignty Restoration Act of 2003 enacted by Congress and signed into law by the President²⁵⁷ is an indication that skepticism about the propriety of the Syrian position in Lebanon existed before the death

²⁵³ See LEVERETT, *supra* note 204, at 10 (stating that Syria was first placed on the United States' state-sponsored terrorism watch list in 1979; it has not been removed since); Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Pub. L. No. 108-175 (codified at 22 U.S.C. § 2151 (2004)).

²⁵⁴ See LEVERETT, *supra* note 204, at 12; *Iraqis Nab Alleged Top Terror Financier*, ASSOCIATED PRESS, Oct. 19, 2005, available at http://www.foxnews.com/printer_friendly_story/0,3566,172810,00.html (last visited Oct. 22, 2005) (stating that a senior financier for the Iraq insurgents was apprehended in Iraq after Syria forced him to leave the country); *IRS Docs Detail Ties Between Syria, Iraq*, ASSOCIATED PRESS, Jul. 27, 2005, available at http://www.foxnews.com/printer_friendly_story/0,3566,163721,00.html (last visited Oct. 22, 2005); *Financing of the Iraqi Insurgency, Joint Hearing of the Terrorism, Unconventional threats and Capabilities of the House Armed Services Committee and the Oversight and Investigations Subcommittee of the House Financial Services Committee*, Federal News Service, Jul. 28, 2005 (statement of Rep. Sue Kelly); *Terror Financing in the Middle East, Senate Banking, House and Urban Affairs Committee*, Federal Document Clearing House Congressional Testimony, Jul. 13, 2005 (statement of E. Anthony Wayne, Assistant Secretary, U.S. Department of State).

²⁵⁵ See 151 CONG. REC. H. 3163, 109th Cong. (daily ed. May 11, 2005) (statement of Rep. Ros-Lehtinen); H. Con. Res. 18, 109th Cong. (2005) ("Expressing Concern Regarding Violation of Human Rights by Syria.").

²⁵⁶ See BACKGROUND NOTE LEBANON, *supra* note 14; H. Con. Res. 32, 109th Cong. (2005) ("Expressing the grave concern of Congress regarding the occupation of the Republic of Lebanon by the Syrian Arab Republic"; this bill was introduced nearly a month before the Hariri assassination); H. R. 1141, 109th Cong. (2005) (introducing the "Lebanon and Syria Liberation Act").

²⁵⁷ Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Pub. L. No. 108-175 (codified at 22 U.S.C. § 2151 (2004)).

of Hariri, and will continue on after the conclusion of the investigation into his assassination.

In this context, Syrian Christian communities stand in a position to influence not only their status, but also the future of Syria by taking action to undermine the Assad regime, at the most extreme, or at least to enforce their constitutional rights and force the abrogation of emergency and statutory laws which serve only to abridge the rights guaranteed to all Syrians under the constitution. Certainly, there is risk involved in this course of action, and perhaps the best way to encourage this type of agitation is through members of the Syrian diaspora living abroad, as well as funding and legislative actions by the U.S. and its allies to assist these communities. By creating a shared identity outside of the state apparatus, Syrian Christians would create a way to circumvent repressive politics while at the same time acting confidently in their constitutional rights and privileges. With adequate support, this could prompt regime changes which would open society for all Syrians and stop Syrian incursions into Lebanon, thus further raising the international prestige of Syria as a whole and promoting greater regional stability.

In this context, Lebanese and Syrian Christian communities would do best to work in tandem to promote their agendas within the legal frameworks which protect them in their respective countries. The current disconnect between the provisions of the Lebanese and Syrian constitutions and their respective statutory laws is not insurmountable, especially as constitutions tend to engender a more exalted status in society than do legislatively promulgated laws, which can be more easily done away with.

Part IV. Conclusion

This article has discussed the Christian communities in Lebanon and Syria, as well as the legal protections guaranteed for citizens of Lebanon and Syria under their respective constitutional and statutory laws. Emphasis has been placed on certain aspects of legal life in both countries, as the author believes that these areas are key testing grounds for the connection between constitutional protections and everyday life – and in this test both countries fail. Brief historical sketches have been offered in order to provide a background for the religious and legal discussions of the article, and also to illustrate why Christian communities in these countries would function best when they function as a co-religionist block rather than within the framework of their own sects.

Admittedly, the courses of action advocated in this article would require all communities to put away sectarian interests, which is much more easily advocated than achieved in reality. However, the reality of the current political situation in the Middle East, and international relations as a whole, is changing to the point where alliances with groups which share at least some communal interests are becoming more necessary than in the post-World War II era of self-determination and group segregation for statehood purposes. Both legally and politically, now is the time for Christian communities in Lebanon and Syria to come together to help reshape their states in ways which previous conflicts have not allowed. The story of Babel, reflected in modern Christian community conflicts such as that experienced in Lebanon, is a constant reminder of what happens when societies divide over a common aim; it is hoped that a bringing together of Christian communities may take them from the ruin of collapse and failure to a path towards a state which embraces its enunciated respect for religious freedom.