

A Critical Investigation of Power and Ideology through the Special Tribunal for Lebanon

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Contents

Table of Figures	iii
Abstract	iv
Acronyms.....	v
Introduction	1
Context and Rationale	1
Approach of the thesis	3
Originality and Contribution to Knowledge	8
Chapter Outlines	11
Chapter One: Theory and Methodology.....	15
Introduction.....	15
Theory	15
Methodology 1: Meta-theory.....	28
Methodology 2: Research Strategy and Methods	39
Chapter Two: The Lebanese State-Society	54
Introduction.....	54
Clientelism and Sectarianism.....	54
Consociationalism	68
Memory.....	77
Conclusion	81
Chapter Three: The STL in the historical structure of world order	82
Introduction.....	82
Contemporary ICL in world order	82
The Historical Structure of World Order: The European Commission for Syria 1860	91
Chapter Four: The Special Tribunal for Lebanon in the Context of International Criminal Law.....	100
Introduction.....	100
International Criminal Tribunals	100
Transitional Justice	104
United Nations Security Council Resolution 1757	106
Appeals chamber interlocutory decision on applicable law 2011	115
Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal 2012.....	122
Conclusion	126
Chapter Five: Walid Jumblatt’s evidence 4-5 th May 2015.....	128

Introduction.....	128
Kamal Jumblatt.....	128
Pax Syriana	135
The turn of the Millennium	138
The Qornet Chehwan gathering	143
Constitutional ammendment and UNSC resolution 1559.....	145
Grudges, revenge and pettiness	149
The Second Bristol Hotel meeting	153
Interim Findings.....	155
Chapter Six: Walid Jumblatt’s evidence 6-7 th May 2015.....	159
Introduction.....	159
Hizballah.....	159
Representative for the victims	162
Defence questioning, the money trail and the Saudi connection.....	167
Politicisation	172
Corruption and Terrorism.....	174
Syrian Tutelage or Occupation?.....	178
Challenging Patrimonial Clientelism and Memory-Making.....	180
Jumblatt: Democratic Party Leader or Sectarian <i>Za’im</i> ?.....	183
Interim Findings.....	188
Historical Comparisons.....	194
Conclusion	201
Thesis Context	201
Research findings	205
Originality and contribution to knowledge.....	214
The research process.....	217
Limitations and avenues for further research	218
Bibliography	220

Table of Figures

Figure 1: Forces	17
Figure 2: Spheres of Activity.....	18
Figure 3: Theoretical Model of the STL in Historical Structure and Analytic Strategy	42
Figure 4: Codes for CDA analysis of transcripts	51
Figure 5: Model of Explanation	53
Figure 6: Mixed Courts and their Political Context.....	206
Figure 7: Historical Structure of ICL.....	207
Figure 8: The Nexus of Clientelist-Sectarian Violence	210
Figure 9: Processes of active and spontaneous memory activation.	211
Figure 10: Emancipatory strategy for overcoming the consociational paradox	213
Figure 11: The historical constitution of Lebanese inferior sovereignty through judicial/political intervention.....	215

Abstract

This thesis looks at a familiar topic for studies on Lebanon, the Special Tribunal for Lebanon, but in a markedly different way. Specifically, it conceives of the STL as a mediating institution between world order and the idiosyncratic Lebanese state-society. Moreover, it conceives of this mediation as existing within a historical structure of world order. It provides explanation and understanding of their dialectical interaction through a critical discourse analysis (CDA) of contemporary court transcripts, and a comparative historical analysis with the 1860 European Intervention in Syria; a political-legal intervention of the nineteenth century. This analysis of the long-term interactions of legal and political power is done with a view to understanding whether its exercise is emancipatory and legitimate or ideological and dominating. The thesis finds that modern Lebanon has been, and continues to be, constituted historically through judicial intervention from world order.

Acronyms

CDA – Critical Discourse Analysis

CLS – Critical Legal Studies

CR – Critical Realism

ECCC – Extraordinary Chambers in the Courts of Cambodia

ICC – International Criminal Court

ICJ – International Criminal Justice

ICL – International Criminal Law

ICTR – International Criminal Tribunal for Rwanda

ICTY – International Criminal Tribunal for the former Yugoslavia

IR – International Relations

ISF – (Lebanese) Internal Security Forces

IS – Islamic State

LAF – Lebanese Armed Forces

LF – Lebanese Forces

LNLM – Lebanese National Movement

LPC – Lebanese Penal Code

MR – Members Resources

PLO – Palestine Liberation Organisation

PSP – Progressive Socialist Party

RPE – Rules of Procedure and Evidence

SAR – Syrian Arab Republic

SCSL – Special Court for Sierra Leone

TJ – Transitional Justice

UNGA – United Nations General Assembly

UNIIC – United Nations Independent International Investigation Commission

UNSC – United Nations Security Council

Introduction

Context and Rationale

This project's empirical focus is *The Special Tribunal for Lebanon* (STL), a tribunal of "international character" (United Nations Security Council 2007, p. 1) established by UNSC Resolution 1757 on 23rd January 2007 to prosecute the alleged perpetrators of the murder of former Lebanese Prime Minister Rafiq al-Hariri and 22 others on the 14th February 2005 via a massive car bomb (Kerr 2012, p. 25). In addition, it has established jurisdiction over three other bombings which targeted prominent Lebanese politicians and journalists, between 1st October 2004 and 12th July 2005 and can, with the consent of the UNSC, establish jurisdiction over crimes from later dates if they can be connected to the Hariri case (Special Tribunal for Lebanon 2018). The establishment of the STL has heavily influenced the political topography of Lebanon for the past thirteen years as the major political parties coalesced into two blocs, known as March 8th and March 14th, which took opposing views of the legitimacy of the tribunal (Kerr 2012, p. 25). March 8th is largely based around the major Shia parties of Amal and Hizballah whilst March 14th is based around the Sunni party *al Mustaqbal* (Future Movement) which Rafik Hariri founded and which is now led by Saad Hariri, his son. The former movement took a pro-Syrian position of opposition to the STL whilst the latter has generally been in support. This political divide subsequently transitioned seamlessly in to divisions over the Syrian Civil War (2011-Present) with Hizballah intervening on behalf of Bashar Al-Assad and March 14th supporting the opposition (Oxford Research Daily Brief Service 2012a). The assassination of Hariri was the catalyst for Lebanon's *independence intifada* or *cedar revolution* in 2005 which secured Lebanon's independence from Syria through massive popular mobilisation (See Blanford 2006, Young 2010). Syria had instituted an internationally backed tutelage of Lebanon in its post-civil war phase through the *Taif* accords in 1989 and cemented it through a bilateral *Treaty of Brotherhood, Cooperation and Coordination* in 1991 (Ziadeh 2006, p. 143). The phase of Lebanon's history between 1991 and 2005 is often referred to as *Pax Syriana* (Blanford 2006, p. 40, Salloukh, Barakat et al. 2015, p. 5). The March 8th alliance spent the years between 2005-2011 either in political opposition or as a minority partner in the national unity government headed by Saad Hariri (Oxford Research Daily Brief Service 2011). This changed on 12th January 2011 when March 8th ministers walked out of the unity government in response to the expectation that the STL was due to hand down indictments implicating senior Hizballah members (Ibid). This it subsequently did, submitting "an indictment to the pre-trial judge on 17 January 2011 [which] was confirmed on 28 June 2011." (Special Tribunal for Lebanon 2018). This

walkout precipitated an election in which March 8th came to power, resulting in violent demonstrations by March 14th protesters (Oxford Research Daily Brief Service 2011). This led to the paradox of a government being obliged to fund and support a tribunal which was trying to prosecute some of its affiliates and which the leader of Hizballah, Sayyed Hassan Nasrallah, intimated was a politicised tool of American and Israeli foreign policy (Knudsen 2012, p. 229). The STL had, indirectly, prompted the fall of Saad Hariri and brought a Hizballah-backed government to power.

It would be tempting to consider 2011 as a transitional moment at which the most prominent question for Lebanon's internal stability moved from being the establishment of the STL to the civil war in neighbouring Syria. However, as previously mentioned, the divisions over the STL transitioned without breaking step to divisions over the Syrian war. This interrelation can best be summarised by the assassination of Brigadier General Wissam Al-Hassan of the Lebanese ISF, known to have been investigating both the Hariri assassination and alleged terrorist activity on behalf of Syria by Lebanese MP Michel Samaha (Oxford Research Daily Brief Service 2012b). The obvious inference was that pro-Syrian forces had undertaken this assassination in addition to those which occurred between 2005 and 2008 (Ibid) and which culminated in a Hizballah military operation in Beirut and mount Lebanon in response to government interference with its communications network (Worrall 2013, p. 242). This earlier conflict was only mitigated after a conference hosted in Doha established a national unity government with mutual veto, which later collapsed after STL indictments were handed down. Moreover, it was around 2012 that reports began to emerge that Hizballah was supporting the Assad regime militarily (Oxford Research Daily Brief Service 2012b), which it continues to do until the time of writing (2019). Domestic conflict over the war in Syria has led to profound governmental paralysis. For example, the Lebanese parliament (elected in 2009) extended its mandate beyond constitutional bounds in May 2013 after Prime Minister Najib Mikati's resignation, again in November 2014 and further extension was only avoided in April 2017 because President Michel Aoun dismissed parliament (Oxford Research Daily Brief Service 2017). Aoun himself had only become President on 1st November 2016 after the March 8th and March 14th stalemate was overcome and the position could be filled after more than two years of vacancy (Oxford Research Daily Brief Service 2016).

This thesis presents a unique historical perspective through its research on the STL and questions what this tells us about the politics of Lebanon, world order and, crucially, their dialectical interaction over time through the prism of law and politics. Particularly, it is the way the STL is conceived in this thesis, using the Critical Theoretical concepts of historical structures, hegemony, ideology, institutions, world order, state-society complexes, social forces, legitimacy and immanent critique (see chapter one), which distinguish it from both the political *and* legal literature currently pertaining to the STL. By utilising the STL as a mediation through which to identify and analyse key

mechanisms and their impact on Lebanon and by demonstrating their historical, rather than contemporary character, it is held that one can better understand this contemporary politics and how its destructive nature might be incrementally overcome. Consideration of world order, particularly as it pertains to International Criminal Law (ICL) and the United Nations Security Council (UNSC), is warranted by the fact that Lebanese politics is particularly susceptible to the vicissitudes of global politics and, as will be demonstrated, has been constructed and constituted in ways which reinforce these dynamics. Moreover, given certain disciplinary predilections and conventions, Lebanon and world order are often discussed separately, rather than as dialectically interacting parts of one ontological whole. In extreme cases, particularly in the sub-discipline of International Criminal Justice (ICJ), this leads to a representation of world order as de-politicised and Lebanon as in need of the disinterested beneficence of ICL interventions. Thus, the historical, structural and conceptual approach taken in this thesis challenge these perceptions, particularly when such representations may help to constitute conditions of dominance or ideological hegemony for the pentarchy of permanent members of the UNSC.

Whether the appointment of key figures to key governmental posts and the election of a new parliament in Lebanon signals an end to paralysis and polarisation between the two camps and whether, in the light of Saad Hariri's surprise resignation (or abduction, depending on one's reading of the event) as Prime Minister whilst in Riyadh on 4th November 2017 (Oxford Research Daily Brief Service 2017b), the Lebanese will be allowed by foreign patrons to reconcile, is an important question. It is not a question, however, which this thesis addresses *directly*. There is clearly much scope for academic work accounting for this most recent phase of Lebanese politics and whilst this thesis may contain insights which pertain to this politics, its core focus is conceptual and historical rather than contemporary and event-based. Nevertheless, the focus in this thesis on the historical operation of underlying mechanisms and the material power relations underpinning the STL may give one the conceptual tools necessary to postulate the dialectical relationships, and therefore likely outcomes, of regional and international events pertaining to Lebanon.

Approach of the thesis

This thesis utilises Critical Theory and the meta-theory of Critical Realism (CR) to construct, pursue and answer its research questions. This approach has not been applied to the empirical case of the STL before, but its core precepts hold particular advantages for analysis, as will be demonstrated presently. In general terms, Critical Theory as a research program emphasises the empirical analysis

of relational social structures (Morrow, Brown 1994, p. 209, Patomaki 2002, p. 117, Wight 2007, p. 15, Fairclough, Jessop et al. 2010 [2004], p. 202) through intensive explication but also through limited comparative generalisation (Morrow, Brown 1994, p. 221). In this way it attempts to account for the historical nature of structural constraints, particularly as they pertain to *domination*, with an eye to *emancipation* from said domination where

Emancipation is the freeing of people (as individuals and groups) from those physical and human constraints which stop them carrying out what they would freely choose to do. War and the threat of war is one of those constraints, together with poverty, poor education, political oppression and so on. (Booth 1990, p. 319)

Here, Robert W. Cox's (1981, p. 132-133) theorising of historical structures of world order is particularly useful as a theoretical guide to the empirical analysis carried out in this thesis. The core concern with emancipation moves some way towards immunisation from political partisanship and encourages an objectiveness related to open and fair mindedness, rather than as value neutrality or a god's eye view. From the perspective of this study, this translates as conceiving of the STL as a mediating institution between world order and Lebanon and a commitment to analysing the concrete social-relational structures in a qualitative, intensive explication. The historical and comparative element arises with a comparative analysis of the 1860 International Commission for Syria, a political-legal intervention of the mid-nineteenth century (See Fawaz 1994, & Rodogno 2012). This approach elaborates the historical and structural development of world order and the striking similarities between this colonial intervention and the nominally cutting-edge hybrid institution of the STL. This approach has the merit of overcoming the prevalent chronocentrism of political and legal literature on Lebanon and the STL. It suggests that legal institutions of world order are not an external variable bearing upon Lebanon as a pre-existing, unitary nation-state. Rather, legal-political interventions have historically constituted, and continue to constitute, the sectarian-consociational polity which now exists.

Critical Theory, also actively encourages supradisciplinarity (Morrow, Brown 1994, p. 13) and an appreciation for the uniqueness of actors, not simply a reduction to a generalised category (Cox 1981, p. 134). These commitments, in tandem with a CR emphasis on ontological reality (Patomaki 2002, p. 72) the unity of science, and plurality of appropriate methods (Lopez, Potter 2001, p. 13), leads to this thesis' approach. The approach combines a critique of the law literature on the STL with an operationalisation of concepts pertaining to the Lebanese state-society derived from the multi-disciplinary literature on Lebanon. The operationalised concepts derived from the multi-disciplinary Lebanon literature used to inform this thesis are *clientelism*, *sectarianism*, *consociationalism* and

memory. These concepts are elaborated in the spirit of CR meta-theory which attempts to account for underlying mechanisms, structures and tendencies which under certain conditions interact to produce results (Lopez, Potter 2001 p. 11, Patomaki 2002, p. 76). Critical review of the law literature assumes that international law is an integral part of the ideational, material and institutional architecture of world order historically (See Anghie 2005) and that an epistemic community is best placed to report on its own meanings, relational structures, rationalisations, preconceptions and practical and ideological blind-spots, whether consciously or otherwise. This approach follows Raymond Morrow and David Browns' (1994, p. 232-237) understanding of literature review as a *non-empirical method of historicist and deconstructive* argumentation. They argue that, while this should never amount to *ad hominum* attacks, nevertheless "such questioning about the contexts of theoretical activity does provide *primaefacie* evidence for difficulties and may facilitate the formulation of suggestive research questions." (Ibid, p. 237). This approach provides a way in which the structural powers, mechanisms and tendencies of the social structure on both "sides" of the mediating STL, namely the legal architecture of world order *and* sectarian-consociational Lebanon, can be elaborated. Critically, it lays a much heavier emphasis on the *dialectical interaction* of these two "sides" and the concomitant potential outcomes for peace, emancipation and justice. As Cox (1981, p. 126) notes in relation to supradisciplinarity

Academic conventions divide up the seamless web of the real social world into separate spheres, each with its own theorising; this is a necessary way of gaining understanding ... the starting point is some initial subdivision of reality, usually dictated by convention. It is wise to bear in mind that such a conventional cutting up of reality is at best just a convenience of the mind.

The case of the STL, Lebanon and wider Middle East international relations illustrate this point well. The emphasis on epistemological division has led to vertical divisions between law and politics, a division which this thesis will demonstrate has practical, theoretical, and ideological implications. Whilst the ontological reality that the forces of law and politics come in to contact in the real world encourages some forays either side of the disciplinary divide (to fully separate the discussion would be impossible), full transgression of disciplinary boundaries is rare. It appears that a Critical Theoretical study which considers law, not simply as a source of empirical information on the STL, but as an epistemic community deeply embedded in the relational-social structure of world order, with a view to analysing its very own "logics-in-use" (Morrow, Brown 1994, p. 235), is not something usually countenanced. Similarly, within the discipline of IR, this division of "the seamless web of the real" has resulted in distinct paradigms of explanation, often displaying a tendency towards what Bassel F. Salloukh (2017, p. 660) has usefully termed "theoretical sectarianism". Furthermore, as he points out,

the problems with this epistemic emphasis is amplified when one comes to study the Middle East, a region which stubbornly refuses to locate itself within one paradigm of explanation (Ibid, p. 660). Salloukh's answer to this issue is to engage with theoretical eclecticism which, he points out, many scholars of Middle East IR have been obliged to engage in by their unruly subject (Ibid, p. 661). This is certainly part of the answer, but it does not address the underlying issue that in IR, politics and law, epistemology is privileged over ontology. This is manifest in the defence of disciplinary boundaries and paradigms and in the reification of certain epistemological concepts, such as horizontal *levels-of-analysis*, which obscure real vertical social-relational structures. What this thesis offers is an integrated meta-theoretical, theoretical and methodological approach which establishes its boundaries through theory but privileges the study of real relational structure.

The core case study subjected to intensive explication through Critical Discourse Analysis (CDA) in this thesis is the four days of testimony provided by Lebanese politician and ex-militia leader Walid Jumblatt to the STL and televised in Lebanon. The theoretical sampling of these particular 470 pages of transcript was driven on the basis that Jumblatt's testimony was most likely to exhibit/interact with aspects of sectarianism, clientelism, consociational democracy and memory, given his centrality to these structures and processes as an ex-militia leader benefitting from a blanket amnesty for alleged crimes in the Lebanese civil war (1975-1990) and his membership of a prominent and ancient family. This was also likely to highlight contradictions within the STL as a nominally impunity ending and extra-political institution. The subsequent fine-grained qualitative and linguistic CDA based on the work of Norman Fairclough (2015) is geared towards an explication of whether the STL challenges or reproduces social norms and common-sense attitudes likely to maintain structures of violence within world order and the Lebanese state-society. Given this qualitative and linguistic approach, the case selected is relatively narrow (though large in absolute terms) but the number of "variables" or aspects of reality analysed are extensive. These include 37 *descriptive* codes designed to identify the formal features of the texts, 10 *interpretive* questions designed to bridge the gap between formal empirical features and the meanings co-created by readers and participants, and *explanatory* analysis related to theoretical and empirical concepts regarding the Lebanese state-society, legal architecture of world order, and Critical Theory, operationalised in chapters one, two and four, historically framed in chapter three and ultimately re-contextualised in the conclusion. Salloukh et al. (2015, p. 4) explicitly highlight the *hegemonic ideology* of the *sectarian system* in Lebanon indicating a renewed concern with Critical Theoretical concepts as emancipatory tools for Middle East IR scholarship. The critique of hegemonic ideology as "systematically distorted communication" (Habermas 1970, p. 205) and "meaning (or signification) [which] serves to sustain relations of domination." (Thompson 1984, p. 4) is central to this thesis and its CDA method. In this

way, it is typical of a Critical Theory research programme which prioritises “interpretations of meaning [which] are sensitized to detecting forms of distorted communication linked to power and strategic (or manipulative) forms of interaction” (Morrow, Brown 1994, p. 262). This sort of qualitative CDA is well suited for an analysis of Lebanon and its place in world order.

However, this sort of analysis has not been done with regard to Lebanon. The most similar study (in terms of topic and data) by researchers on Lebanon and the STL appears to be the research conducted by Sari Hanafi, Are Knudsen and Robert Flahive (2016) which uses quantitative *content analysis* to explain the attitudes of various media institutions in Lebanon towards the STL. Notwithstanding the difference of content, the methodological difference is the most pronounced. As is usual for quantitative research, the number of cases is very large

232 news articles and op-eds [from] five Lebanese newspapers based on their high circulation rates, robust national coverage, and political party constituencies [over] a 1,035-day sampling period. (Ibid, p. 73 -74)

Similarly, for this type of quantitative method, the variables of analysis applied were much smaller. Two structural variables, *type of article* and *type of author*, were *tabulated* along with *content-based* variables related to the *sources cited* in the article (Politicians, Experts, the Public) and the *types of arguments* used (Legal, Moral and Political) (Ibid, p. 79). Thus, the logic of quantitative research necessarily reduces the role of *meaning* to its use by researchers to pre-define their variables and then for the meaning expressed in these news articles to be converted and expressed numerically in tables of incidences and co-incidences, rather than qualitatively. The use of *structure* here is also distinct from the relational conception of structure found in this thesis and rather relates to the structure of the data (type of article and type of author) rather than the relational structure of society. The practical upshot of this methodological difference can perhaps be best expressed in the assumption that the content-based variables (legal, moral and political argument) are taken to be externally related and internally stable, consistent and atomistic. In contrast, the present thesis’ utilisation of qualitative, linguistic CDA, *inter alia*, demonstrates the ways in which these concepts are utilised in actual speech by different actors and how they are conceptually, and concretely, internally related through creative use and combination of discourse types by participants. Methodological plurality can provide complementarity of strengths, weaknesses and findings and it is in this spirit that this thesis provides a CDA linguistic and historically comparative, account.

A final note needs to be made regarding substantive theoretical and analytical choices. Apropos of the injunction to study idiosyncratic actors and underlying mechanisms set forth in this introduction (more fully justified in chapter one), there was a clear choice to be made regarding

whether empirical focus should rest on *key actors*, for example Hizballah and Rafik Hariri, or *key underlying concepts* such as sectarianism or clientelism. The former of these approaches has been undertaken with great success by James Worrall (2013) who utilises *immanent critique* (the analysis of contradictions between an actors' theory and practice) to highlight the hopeful *and* problematic aspects of Hizballah for Critical Theorists. The analysis set out in this thesis may contribute some insights to an update of Worrall's analysis (mostly on the negative side of the docket since their intervention to support a repressive regime), however, an explicit focus on these actors is not the tack taken here.

What one can term a conceptual critical analysis which focuses on long-term structures, relations and underlying mechanisms is undertaken in *The Politics of Sectarianism in post war Lebanon* (Salloukh, Barakat et al. 2015). This analysis emphasises the way in which actors (ostensibly enemies) nevertheless exist and collaborate within a sectarian system against secularising or rights-based civil society organisations. Given the focus on historical structures of world order in this thesis, a broader conceptual understanding in this latter tradition is prioritised. This conceptual approach limits the fine-grained analysis of actors which could be achieved by an actor-based focus, however, conceptual focus lends itself much better and, indeed, is essential for, a historical-structural analysis of this kind. Moreover, notwithstanding Worrall's excellent and necessary analysis of Hizballah from a Critical Theory standpoint, focus on this actor can often be driven by western-centric policy concerns with no emancipatory purpose and can lend an impression that Hizballah is merely a historical (terrorist?) anomaly, rather than an actor (among many historically in Lebanon) which is partially emergent from underlying conditions (for example, political marginalisation of a particular community) engaging in particular strategies of empowerment within the Lebanese state-society complex (for example, construction of parallel institutions). For these reasons, Hizballah and Hariri are considered contextually within wider tendencies and underlying mechanisms of the Lebanese state-society in this thesis. This approach also has the normative merit (arising from the empirical) of considering what is a common set of experiences for Lebanese, rather than surface political or sectarian differences.

Originality and Contribution to Knowledge

Having set out this approach, we can now elaborate the originality of this research which relates to four distinct areas. Firstly, to the best of the author's knowledge, no one has yet conducted an analysis of STL transcripts, particularly those relating to Walid Jumblatt. Secondly, no one has yet adapted and applied the CDA method of Norman Fairclough either to Lebanon generally, or the STL specifically.

Thirdly, comparative analysis of the STL with its nineteenth century antecedent, the European Commission for Syria, is apparently unique to this thesis. Fourthly, the thesis presents an integrated meta-theoretical, theoretical and methodological approach synthesised and elaborated from the work of Critical Theorists and underpinned by CR from a range of fields with a view to practical application for the study of international politics and global society.

As has been alluded to, the approach of this thesis, theoretical, meta-theoretical and its particular method, is what sets it apart. This thesis has much to contribute to scholars of IR, particularly those concerned with the study of the Middle East. One key benefit of this approach is that rather than an epistemically based, *ad hoc*, retreat to theoretical eclecticism on the basis of an unruly object of study [the Middle East] (See Salloukh 2017), a CR ontologically focused study gives one a philosophically grounded set of reasons and tools for utilising theoretical eclecticism and plurality of methods. The centrality of ontology and focus on concrete relational social structures in this Critical Theory and CR based approach ensures that disciplinary divisions do not determine the questions that can be asked regarding the shape of world order which are crucial for emancipatory politics. Specialists on Lebanon will also find this thesis useful as it overcomes chrono-centrism, synthesises the state of the art in theory about Lebanon, and offers a convincing re-contextualisation of these processes within, and dialectical relationship with, structures and processes of world order. Whilst certainly not a work of ICL, it may well be useful as a meta account of this epistemic community in this particular instance and, by extension, its role in the world and the concrete, material and structural powers it enables and supports. In particular, Critical Legal Studies (CLS) will perhaps be most likely to come across this research given its less self-referential nature compared to ICJ and, to a lesser extent, TJ approaches. Thus, it can be summarised that, whilst the thesis can typically be conceived as coming from the epistemic communities of IR, Politics and Middle East studies, it is unorthodox to all of these disciplines.

Central to its analytic and normative concerns is Critical Theory concerned with human emancipation and an under-girding meta-theory of CR. Its focus on hierarchical relational social structures, positioned practices and institutions within historical structures of world order set it apart from mainstream IR. Heikki Patomaki (2002, p. 21-41, 73-92) has identified the core of mainstream IR (particularly Neo-Realism and variants thereof), as the “levels of analysis problematic” where the levels relate to the individual, state and system. The behaviour of the state is to be explained by recourse to the independent variables of individuals or the system (ibid). More fundamentally, this problematic presumes an *anarchic* (non-hierarchical) system populated by *atomistic* (internally consistent and externally related) *units* (states and individuals) pursuing military-political interests using a mono-logical, instrumental rationality (ibid). In addition, it has been noted that mainstream IR

has tended to display the twin issues of *chronocentrism* and *ahistoricism* (Buzan, Little 2000, p. 18-19). Chronocentrism describes a tendency in IR for scholarship to be driven by contemporary issues and changing policy demands which results in disproportionate attention being given to the present and future, decontextualized from the past (ibid). Ahistoricism describes a limited approach to history, common in mainstream IR, that attempts to discover invariant, universal laws, equally applicable across time and space. This purpose often leads to the anachronistic reading of the present on to the past (ibid). This thesis, by contrast, takes an historicist position utilising limited historical, comparative generalisation to explain and understand change and continuity within, and between, historical structures of world order in a particular case. It thus adopts a view of history which pays “attention to micro-developments that are often governed by contingency but [takes] care to place these within broader patterns of historical development.” (Hobson, Lawson et al. 2010, p. 8) It also focuses on concrete social relations to more fully understand and explain the STL within its context, at the interstice of law, politics and regional and international systems, and which atomism and anarchy consequently do little to explain.

The ontological focus of CR on the *actual* and *real*, rather than an epistemic focus on theoretical and methodological boundaries encourages use of multidisciplinary literature pertaining to complex phenomena and are crucial in the development of concepts for explanation of empirical findings beyond the immediate. Multidisciplinarity is also crucial in the process of theoretically driven sampling. This study demonstrates this process. Finally, utilisation of qualitative, linguistic, CDA undergirded by a CR meta-theory means that the positivist methodological bias towards reifying variables as internally stable and externally related and the concomitant tendency to convert meaningful data into numerical data is problematised and changes the nature of questions which can be asked as a result. Whilst parsimony might encourage one to consider political and legal argument as separate “variables” in a quantitative analysis, this CDA approach allows for their co-occurrence in actual speech and their internal relation.

The thesis does not possess a hypothesis as such, given that it is *not* conducted in the tradition of the hypothetico-deductive model associated with positivism or a quantitative methodology (Morrow, Brown 1994, p. 162). Thus, the proving or disproving of a pre-set question operationalised to provide binary yes/no answers is not what the thesis aims to accomplish. It is better understood as an abductive (rather than inductive or deductive) approach, which “re-describes the observable everyday objects of social science [court transcripts] in an abstracted and more general sense in order to describe the sequence of causation that gives rise to observed regularities in the pattern of events.” (O'Mahoney, Vincent 2014, p. 17). Thus, this approach utilises guiding research questions for the abductive process rather than a hypothesis in the traditional sense. This has the added benefit of

allowing the data to speak in nuanced ways and keep open the possibility that the questions asked at the beginning of the research process might have been misconceived. Rather than being regarded as a problem, this should be welcomed as a way to reflect on research results and conclusions and as a way of advancing fallible and transitive knowledge through the research process.

Research Questions

1. What are the differences and similarities in hegemony, domination and legitimacy in the 1860 commissions and the STL?
2. What ideological, hegemonic and legitimating discursive practices are employed at the STL?
3. How do these strategies inform structural power in international law and politics?
4. What do the 1860 commissions and the STL tell us about hegemonic world order? And what are the implications for Lebanon?

Chapter Outlines

To answer the research questions posed in this thesis, the chapter structure of the thesis is designed to pursue the approach outlined above.

Chapter One

Theory and Methodology, presents a meta-theoretical approach associated with CR which underpins this thesis. This includes, *inter alia*, the concepts of *ontological realism*, *epistemological relativism* and *judgemental rationalism*. From this foundation, key Critical Theoretical concepts associated with Robert W. Cox, Antonio Gramsci, the Frankfurt School and others are defined and operationalised for utilisation in interpretive and explanatory analysis from chapters four to six. These include *historical structures of world order*, *ideology*, *hegemony*, *domination*, *legitimacy* and *historical blocs*, among others. This theoretical discussion explains the significance of the historical case study of the European Commission for Syria of 1860 for comparison with the STL and lays out the precise way in which the CDA method of Norman Fairclough is adapted and applied within a comparative *case study* research design and the *data sampling* applied in this thesis. This includes tables detailing the analytic codes utilised, their meaning, and the use of *qualitative data analysis software*, Nvivo.

Chapter Two

The Lebanese State-Society, undertakes the contextual and historical work of providing a background for Lebanon and its politics and society. It also provides conceptual work through the elaboration of this background through the key phenomena of clientelism, sectarianism, consociational democracy and memory. The chapter utilises multidisciplinary literature emanating from, *inter alia*, political science, sociology, anthropology and history. It is from this multidisciplinary literature that the key phenomena are identified, and the background of Lebanon is elaborated. The concepts defined here are discussed with a view to operationalising their meaning and theorising the ways in which they have historically interacted to produce outcomes, particularly violent ones. These concepts inform the historical case of the 1860 commission discussed in chapter three and are retained for later use in the explanatory phase of the CDA analysis presented in chapters five and six.

Chapter Three

The STL in the historical structure of world order, seeks to contextualise the CDA analysis conducted in chapters five and six. Its purpose is to facilitate comparative historical analysis of the two Lebanese tribunals as two historical mediations reflecting two world orders. This is done with a view to analysing the change which has occurred (and not occurred) regarding colonial and post-colonial practices of law in successive world orders and exploring what implications this has for emancipation in Lebanon and elsewhere. First, the chapter reviews the structure of the STL and situates this explicitly within the contemporary legal architecture of world order regarding *ad hoc*, *hybrid* and *permanent* institutional options. Developing the historical overview of Lebanon from chapter one, the circumstances of colonial involvement in nineteenth century Lebanon and the resulting violence and recourse to a *European Commission for Syria* are elaborated. These discussions frame the analyses in chapters five, six and the conclusions.

Chapter Four

STL in the Context of International Criminal Law, provides a review and critique of the ICL literature as it pertains to the STL using a historicist and deconstructive method. Historicism is achieved by reviewing the literature chronologically to elaborate the ways in which the concerns and assumptions of legal scholars changed or remained the same, from the establishment of the STL in 2007 through key decisions until 2012. Contradictions arising in accounts or arguments, in addition to the application

of insights from chapter two regarding Lebanon, are then used to deconstruct and critique these accounts. The methodological inconsistencies of the STL in making decisions with political implications is highlighted and used to inform the CDA and comparative analysis carried out in chapters five and six. In addition, themes and rationalisations presented by scholars of ICL, such as the preoccupation with *perceptions* of legitimacy and what this author refers to as the “some justice is better than none” discourse, are identified.

Chapter Five

Critical Discourse Analysis of Walid Jumblatt’s testimony to the STL 4-5 May 2015, consists of the application of the qualitative codes and techniques developed in chapter one, the operationalised explanatory concepts of *clientelism*, *sectarianism*, *consociational democracy* and *memory* from chapter two and explanatory insights regarding the structure and debates of ICL regarding the STL from chapter three, to the testimony of Walid Jumblatt. This accounts for approximately just under 50% of the total testimony. The testimony from 4-5th May consists of prosecution questioning of Jumblatt as a prosecution witness. The conclusions garnered from this CDA are organised around three emergent themes from the discourse; *Remembrances and active forgetting*, *Structural power and access to justice*, and *Domination*. These emerging insights inform chapter five and, ultimately, the conclusion. This analysis also includes a recording of Rafik Hariri and a Syrian Regime official analysis, which concludes that the interactional conventions of the speech indicate hostility from the latter toward the former, somewhat supporting the conventional assumption of Syrian hostility towards Hariri.

Chapter Six

Critical Discourse Analysis of Walid Jumblatt’s testimony to the STL 6-7 May 2015, applies the same CDA techniques as the previous chapter to the second half of the testimony of Walid Jumblatt at the STL from 6-7th May 2015. These documents account for approximately just over 50% of the transcripts. These transcripts see the end of prosecution questioning and key interventions from the representative for the victims in addition to defence questioning. The conclusions garnered from this CDA are organised around three emergent themes from the discourse; *Consociationalism*, *dissonance and relativism*, *The nexus of clientelist-sectarian conflict and violence* and *(Il)liberal world order*. Combined with the insights from chapter five, the chapter concludes with a historical comparative analysis which re-contextualises this discourse within a historical structure of world order discussed in chapter three. A comparative analysis is conducted between these findings on the STL, and the 1860

tribunal for Syria. The Comparisons and conclusions here cluster in to six themes; The pentarchy and sovereignty, Executive domination of the Judiciary, The dialectic of intervention, destabilisation and domination, Worthy and unworthy victims, European Commission for Syria Vs The STL: inclusivity vs exclusivity, Consociationalism: from colonial solution to neo-colonial problem.

Conclusion

A conclusion is presented which provides a summary of the thesis. Conclusions are justified from the insights of the analyses carried out from chapters one to six with reference to the research questions. Reflection on the researcher's contribution in addition to potential limitations and avenues for further research will be carried out. Through the addressing of research questions and development of theoretical models, the prospects for emancipation will be assessed.

Chapter One: Theory and Methodology

Introduction

This thesis applies a methodological and theoretical framework developed from the work of Robert W. Cox. It is applied to the empirical problematic of International Criminal Law (ICL) at the STL and its dialectical relationship to the Lebanese state-society. This thesis is pursued in the belief that any account of the historical structure of world order is incomplete without addressing the material and ideational aspects of legal architectures. To develop the Coxian model for application to this particular case, the argument is advanced that Cox's Critical Theory is best understood and applied, not as an example of interpretivism as it is often classified (Lynch 2014, p. 51-52), but as CR in its basic ontology and epistemology. Having demonstrated the compatibility of Cox's historical materialism and CR on key philosophical questions, the chapter employs CR categories to enrich, develop and reinforce Cox's approach for application to the STL. In the process of establishing the compatibility of Cox's approach and CR, the chapter lays out and embellishes the important aspects of Cox's theory for the thesis, which includes discussion of historical structures, hegemony, ideology, institutions, world order, state-society complexes and social forces. This broad framework is modified by key concepts from Frankfurt School scholarship which are pertinent to this study; legitimacy and immanent critique. Having justified the philosophical assumptions and elaborated the theoretical framework through which to view the STL, the work of Norman Fairclough is employed to provide a rigorous method of Critical Discourse Analysis (CDA) which Cox's theoretical framework lacks. The CDA of Norman Fairclough does not pose any compatibility problems given its basis in Critical Theory and CR meta-theory. It presents many important opportunities for the analysis of court transcripts and their social and institutional context. Investigating the historical antecedents of the STL and the previous historical structure of world order as it pertains to the European intervention in Syria in 1860 informs the case study of the STL and provides context to the thick description offered through the CDA analysis. This will provide comparative accounts of the dialectical development and structure of the Lebanese state-society complex and world order through ICL.

Theory

This thesis' theoretical framework builds on the Critical Theory of Robert W. Cox. This was elaborated in a 1981 article in the *Millennium journal of international studies* and further developed in subsequent work (Cox 1983 [1996], Cox 1987, Cox 1992 [1996]). Cox's framework places him at

odds with the mainstream of the discipline of IR. Heikki Patomaki (2002, p. 21-41, 73-92) has identified the core of the IR discipline as what he calls the 'levels-of-analysis problematic'. This problematic can be summarised as 'independent variables' at three 'levels' bearing on the behaviour of the state taken to be the 'dependent variable'. It has been argued that the roots of this problematic can be detected in the work of Hans J. Morgenthau (Koivisto 2010) but was more fully realised during the behaviouralist phase in IR after the second 'great debate', particularly in the work of David Singer and Kenneth Waltz (Patomaki 2002, p. 74). The three analytical 'levels' relate to the individual, the state and the international system. The 'structure' of the system posited by Waltz is generated by the interaction of states and is taken to be *anarchic* (Waltz 1959, Waltz 1979). For parsimony, the state was taken to represent a 'billiard ball' type 'unit' defined solely in terms of its (military) material power and distinguishable from like units only in terms of how much power it possessed. It was taken to exhibit an inside/outside dichotomy, with the former being generally excluded from the disciplinary problematic of IR. This atomistic unit was presumed to pursue its 'interests defined in terms of power' (Morgenthau 1973, p.4) using the singular 'self-interested instrumental rationality' of neo-classical economics, concerned only with relative and/or absolute gains (Patomaki 2002, p.4).

Similarly, these traits were said to be reflected at the individual level. The advent of the inter-paradigm debate in IR introduced pluralism added new actors to the levels-of-analysis problematic and stabilised into the neo-debates from the 1980's which addressed a narrow set of questions associated with the extent to which "rational" states and individuals in an anarchic system could be encouraged to cooperate, often employing some form of rational choice theory. For the international relations of the Middle East, key scholars have highlighted the inadequacy of these assumptions. Fred Halliday (2005) noted that "... it is *above all* in parts of the world where states, and societies, have long been subordinated to structures of global power that the limits of realism, above all an emphasis on the unitary state, are most evident." Raymond Hinnebusch (2015) similarly questioned the utility of the unitary state model in a post-colonial context in which the "... process of state formation ... is very much incomplete". Cox's framework provides an alternative to the levels of analysis problematic by rejecting the basic theoretical assumptions concerning anarchy, instrumental rationality and the atomistic nature of units (states and individuals) and proposing a Critical Theory of world politics.

Cox's framework relies on the social ontology of historical structures represented through the two tripartite models representing *forces* and *spheres of activity*. The model of forces (Figure 1) is taken as ontologically prior to the spheres of activity (Figure 2) out of which it emerges. The model of forces constrains and enables societal actors and defines the form of the social. Their interrelationships are not taken to be determinate, linear or hierarchical (Cox 1981, p.135). Cox describes the forces as 'potentials' (ibid, p.135) indicating that some (but not all) forces may be

present in any given context, that they may manifest in different quantities and/or qualities, or indeed remain present but latent. The most obvious example of this is that both ideas and material forces in the correct quantity and quality are needed in combination for institutions to arise, given that they represent the dialectical manifestation of the former two forces.

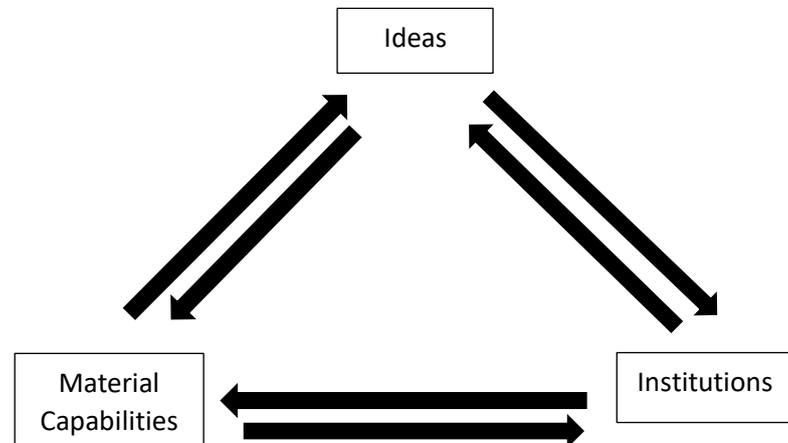


Figure 1: Forces

Source: Cox, R. (1981). *Social Forces, States and World Orders: Beyond International Relations Theory*. *Millennium*, 10 (2), 126-155.

The definition of these forces adds further complexity to the model. Cox defines material capabilities as “productive and destructive potentials.” (ibid, 1981, p. 135). He divides these between dynamic and accumulated forms, with technology typifying the former and raw materials the latter. Similarly, he identifies two types of ideas, inter-subjective and collective images. Cox defines inter-subjective ideas as “those shared notions of the nature of social relations which tend to perpetuate habits and expectations of behaviour...” (ibid 1981, p. 135) that are historically and socially constituted. Collective images pertain to differing and potentially conflictual images of social order held by distinctive groups. It is with collective images that we perceive a realm of the political and conceive of the possibility of emergence for new social forces and new historical structures. Cox further defines the nature of inter-subjectivity as “... the prevailing sense of the nature of the world, or the ‘common sense’ of reality shared among a population” (Cox, Schechter 2002, p.88). This concept of inter-subjectivity as common sense and its tension with the politicised realm of collective images is key to the critical methodology. Institutions coalesce at the interstice of material and ideational forces and are a means of stabilising and reproducing relationships. Cox argues that they “reflect the power relations prevailing at their point of origin and tend, at least initially, to encourage collective images consistent with these power relations.” (Cox 1981, p. 136). However, Cox warns that

institutions may become detached from the forces of material and ideational power, particularly as time goes on. Thus, for the analyst, the question becomes one of the extent to which institutions embody certain forms of power and how well they stabilise the relationships they were created to manage. The configuration of these forces, ideas, materials and institutions are studied, not as universal, but as pertaining to historically specific spheres of activity which are to be studied empirically as such (See figure 2).

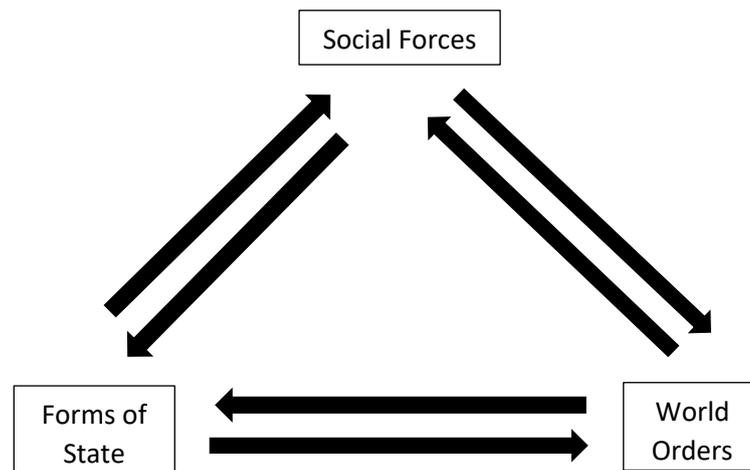


Figure 2: Spheres of Activity

Source: Cox, R. (1981). *Social Forces, States and World Orders: Beyond International Relations Theory*. *Millennium*, 10 (2), 126-155.

These spheres of activity are represented in a triumvirate model, much like the model of forces, which suggests non-linearity, non-determinism and non-hierarchy. Indeed, Cox (1981, p. 138) states that whilst social forces are logically prior to, and under certain material and ideational conditions lead to institutionalisation of, states and world orders, these states and world orders can give rise to, shape or suppress social forces. Social forces have the potential to become transnational and shape the historical structure of states and world order outside their immediate locale. However, Cox somewhat confuses the issue by using the concepts of “spheres of activity” and “levels” interchangeably, the latter being evocative of the mainstream vision discussed by Patomaki (2002) and Koivisto (2010). This may simply be a residue from the process of socialisation into the IR discipline. The actual content and purpose of Cox’s ontology of historical structures represents a significant break with the mainstream. For this reason, this thesis employs the language of “spheres of activity” and to buttress this concept as distinct from the “levels-of-analysis problematic” by utilisation of CR, which will be explained later in this chapter.

The three spheres of activity bear little resemblance to the “levels” elaborated in mainstream sources and challenge the attendant concepts of *atomism*, *instrumental rationality* and *anarchy*. In the first instance, reductionism and atomism are disposed of through the focus on social forces arising out of social relations (Cox 1987, p. 11). In this way, people are not abstracted from their social context which structures the opportunities and obstacles they contend with and which constitute their inter-subjective world views and collective images. Moreover, these ideational aspects are not universally, instrumentally “rational” as the classical economists would have it, but may take myriad and contradictory forms. Whilst it is not denied that instrumental rationality exists in the world, rationality’s singular nature is denied and the obsession with this particular form is shown not to be universal, but the result of a particular world view (Cox 1981, p. 132). Thus, whilst the Coxian model provides the language to speak about important individuals, they are always discussed as historically and socially constituted individuals. This commitment by Cox to social forces as the basic constituent of world politics places him close to the CR ontology, which argues for the reality of society against atomistic positivism and thus reduces society to the smallest “observable” unit, the individual (Patomaki, Wight 2000, Patomaki 2002, Wight 2007, Joseph, Wight 2010).

Having effectively jettisoned atomism and instrumental rationality by taking social forces as the basic constituent of analysis, Cox supplies a distinctly different understanding of the state from the mainstream. Following Antonio Gramsci (1971, p.268), he rejects “Statolatry”, the tendency to *reify* the state by reducing it to “government by functionaries” by proposing a model which employs Gramsci’s famous equation “State = political society + civil society” (ibid 1971, p. 263). Here, political society refers to institutions often taken to be equated with the state (executives, legislatures, judiciary, armed forces) and relating this to civil society which in Gramsci’s terminology referred to “the ensemble of organisms commonly called “private” (ibid, p. 12) typified by “the church, the educational system, the press, all the institutions which helped to create in people certain modes of behaviour and expectations consistent with the hegemonic social order.” (Cox 1983 [1996], p.126). The definition of civil society here is descriptive, not normative, and can in theory be applied with reference to “post-colonial” or “non-western” societies for empirical analysis (See Bilgin, Morton 2002). In total contrast to mainstream IR which, dichotomises the “domestic” and “international” sides of state-societies, and disregards the former or adds it in as an “independent variable”, Cox’s approach is to study how changes in social relations affect the form of political society, how the emergence and distribution of social forces effects governance, and in particular how hegemonic social forces constitute *historic blocs* by forming alliances with subordinate social forces (domestic and/or foreign) and exercising *ethico-political* leadership (ibid 1983 [1996], p. 132). Historical blocs sometimes lead to a tight fit between political and civil society creating the “integral state”, however

this is far from a universal condition. This led Cox to argue that “Gramsci's thinking contains the potential for considering state/society complexes as the constituent entities of a world order and for exploring the particular historical forms taken by these complexes.” (Cox 1981, p. 134). In addition, in employing a social ontology rather than an atomist one, analytical depth for comprehending phenomena, such as imperialism and colonialism, can be attained. These phenomena constitute historically specific hierarchical orders impinging on social relations which in turn affect forms of state and the complex ensemble of relations between social forces and states (horizontally and vertically). They cannot be easily identified through the “levels-of-analysis problematic”. This thesis thus engages with the specifics of Lebanese socio-historical structure (See chapter two) as relevant to the ways in which it interacts with the STL as an institution of world order. An alternative way to consider Middle Eastern states in a non-unitary way is to employ bureaucratic models associated with Foreign Policy Analysis (FPA) (Halliday 2005, p. 29; Hinnebusch 2015, p. 3). Whilst this does indeed represent a useful approach for deconstructing the billiard ball reification, its approach still represents a form of *statolatry* and a focus on *government by functionaries*. Thus, the more inclusive heuristic of state-society complex is employed in this thesis.

As a sphere of activity, the concept of world order is distinct in fundamental ways from the mainstream conception of international system defined in terms of anarchy. A clue to this is in the terms themselves, for how can one discuss order in the world if one assumes it is anarchic (with anarchy being defined in terms of a lack of global government and hierarchy)? Cox argues

It is a misleading oversimplification to regard all interstate systems as essentially the same insofar as they all lack a supreme world authority. The qualitative differences between world orders touch the nature and incidence of wars, the manner of resolving disputes, and the creation and distribution of wealth and poverty. (Cox 1987, p. 7)

In conceiving of order, Cox draws partly on the classic work of Hedley Bull, who stated, “To say of a number of things that they display order is ... to say that they are related to one another according to some pattern, that their relationship is not purely haphazard but contains some discernible principle.” (Bull 2012 [1977], p. 3). Following this definition, order is not defined as the lack of conflict, but as “patterns” and “regularities” in social relations which may be cooperative, conflictual or stable but exploitative (Cox 1992 [1996], p. 148). If we take the example of colonialism, as a set of hierarchical, exploitative social relations, one can see that anarchy cannot describe it, and indeed conceals it theoretically by reifying the international system as collections of atomistic units and individuals. On the other hand, from a world order perspective, colonialism is readily identifiable through analysis of social relations in states and world orders. In Cox’s conception, small states are not simply materially

smaller versions of the great powers. Instead, they are potentially differentiated, *inter alia*, by their agency vis-à-vis domestic and international actors, the complex of social relations which constitute them, their relations with other state-society complexes and institutions in a world economy and the structural diversity of centre and periphery *within* the boundaries of the supposedly atomistic territorial, sovereign state (Cox 1983 [1996], p.137). Hinnebusch (2015, p. 2) argues this is particularly salient in the Middle East where "... the main causes of the Middle East's exceptional war and instability ... [arise from] the peculiar historical construction of the regional system under imperialism ...". Hinnebusch draws on the core-periphery analyses of Marxian Structuralism to describe and analyse hierarchy.

Given the Marxian nature of Structuralism, emphasis remains on the economic nature of the Middle East's peripheral position in world order (*ibid*, p. 2). No doubt, economic marginalisation is a necessary account of the Middle East's position in world order, but there are potentially aspects of hegemonic domination through world order associated with what traditionally would have been accorded to the superstructure, which this account neglects. This is one reason this thesis goes to some lengths to acknowledge, but also move beyond such accounts, to a post-Marxist position based on CR for application to institutions of ICL (as is discussed later in this chapter). This approach allows for the application of the Structuralist insight that "... the region's penetrated client states behave quite differently from fully sovereign states ..." but can apply this to contexts outside of purely economic dependency.

A key ordering principle of world politics is international law. This is particularly so, as it pertains to sovereign rights and duties, for these are at least as much legal concepts as political ones. Logically therefore, sovereignty is likely to display elements of hierarchy and differentiation as constitutive and reflective of world order, permeating institutions of international organisation and state-society complexes. Anthony Anghies' (2005, 2006) work is particularly useful here, he argues that colonialism was not simply a historical episode subject to a radical break. He argues it developed symbiotically with international law whose origin continues to influence world order, particularly through the sovereignty doctrine. As he states, "The acquisition of sovereignty by the Third World was an extraordinarily significant event; and yet, various limitations and disadvantages appeared to be somehow peculiarly connected with that sovereignty." (Anghie 2005, p.2). This adds depth to Cox's notion that differentiation of ostensibly sovereign units in world order is not simply a matter of military power. Anghie shows legal sovereignty itself is stratified in important ways. The present thesis thus takes seriously what the structure, practices and relations of the STL tell one about sovereignty in Lebanon as an example of wider world order. It should be noted here that a crude reductionist

argument which attempts to treat colonialism and imperialism as synonymous with international law is certainly not the purpose here.

Indeed, Anghie himself has pointed to the potential importance of international law as (political) arena through which the claims of the marginalised might be pursued (Anghie 2006, p. 752). Instead, he follows a methodology which traces the ways in which colonial origins produce certain tendencies through “... a set of structures that continually repeat themselves at various stages in the history of international law.” (Anghie 2005, p. 3). This approach is commensurate with the ontology of historical structures and as such informs the framework elaborated in this thesis. Of particular interest is the structure of multi-tiered sovereignty arising from the colonial differentiation between “civilised” (European) and “semi- civilised” or “barbarous” (non-European) peoples in the colonial period which ostensibly came to an end with the achievement of sovereignty by third world states and the establishment of the UN system (Anghie 2005, Rodogno 2012). The question of whether this structure is at all repeated in contemporary world order in some form, is therefore of central importance for Lebanon-STL relations particularly, and world order generally. From here emanates the need for historical sensitivity to Lebanon’s colonial past, its “post-colonial” present, and the interactions it has had with processes of the ICL during formative phases. This thesis focuses on one such episode (in addition to that of the STL), that of the European intervention of 1860 (See chapter three) as a comparative example by which to trace similarities and differences between world orders and to understand the potential impact of legal intervention on the development of the Lebanese state-society complex.

Following Bull, Cox argues that different world orders are differentiated by norms and values which are taken as their *raison d’etre* and not simply by a universal a-historical set of instrumentally rational interests. In the concrete historical structure of particular world orders there is no one-way determinism, but a dialectical and variable set of relations constituting or contesting the normative structure of inter-subjective ideas, collective images and instrumental rationalities (Cox 1981, p.138). Cox follows Giambatista Vico in defining historical structures of world order as traceable through mind in which

Mind is ... the thread connecting the present with the past, a means of access to a knowledge of these changing modes of social reality [so that] ... A proper study of human affairs should be able to reveal both the *coherence of minds and institutions characteristic of different ages*, and the process whereby one such coherent pattern - which we can call a historical structure - succeeds another. (Cox 1981, p. 132-133 *emphasis added*).

From this we can see that, applying Cox's method of historical structures to the empirical example of Lebanon and the STL generates a new problematic comprising a complex set of historical relations. In this problematic, Cox's approach implies that Lebanon should be studied historically as a specific state-society complex in which its material, ideational and institutional aspects should be considered, and not reduced to a unit among like units. Moreover, the STL, conceived as an institutional set of relations in world order, should be considered, not as atomistic, but as related in important ways to a wider historical structure of world order (in this case, the legal and political structure) and as potentially exhibiting "the coherence of minds" characteristic of the age. To denaturalise and compare these contemporary ideas, reference should be made to similar institutions as examples to discern development within historical structure(s). Following this problematic, therefore, this thesis pays close attention to phenomena which typify the Lebanese state-society complex identified in chapter two and the structure of the STL from chapter four. From the second chapter, it is apparent that the Lebanese state-society is not simply a pre-constituted variable with which international law has interacted externally through various tribunals and interventions. Rather its very process of formation from the nineteenth century, resulting from the complex interaction of colonialism, political and civil violence, and constitution creation, was influenced by tribunals and interventions, particularly in 1860 (See Fawaz 1994, Rodogno 2012). Cox's method of historical structures entails a "... commitment ... to discerning parallels and correspondences between different phases of culture that might be separate in time and space." arising from the insight that "... the social world can be understood by looking through history to analyse the changing mental processes of the makers of history." (Bieler, Morton 2001, p. 17). CDA provides a useful method through which to understand the symbiotic development of the historical structures of legal-political world order and the Lebanese state-society. In the process, this will have the critical benefit of de-naturalising and de-universalising the views of the present in addition to offering comparative insights into what has changed and what has endured, what is beneficial and what is not. It is precisely in this context where inter-subjective ideas as common sense become important for order through the concept of hegemony.

The notion of *hegemony* adopted by Cox depends on the dual notion of power as consisting of consent and coercion. This model comes from Niccolo Machiavelli's discussion of the centaur, embodying man and beast (Machiavelli 1988, p. 61). Gramsci makes use of it to distinguish hegemonic and non-hegemonic uses of power (Gramsci 1971, p. 170). For Gramsci, hegemonic orders and uses of power are those which rest primarily on consent (man), where non-hegemonic orders are those based largely on coercion (beast) (ibid, p. 57-58). These aspects should not be thought of as mutually exclusive however, but as dialectically related, with the one which is most prominent in a given order defining that order as either hegemonic or not. As Cox notes "To the extent that the consensual aspect

of power is in the forefront, hegemony prevails. Coercion is always latent but is only applied in marginal, deviant cases.” (Cox 1983 [1996], p. 127). Machiavelli describes this as a relation between “law” and “force” highlighting, as he does so, the important relationship between law, and the hegemonic orders which are Gramsci’s concern. It has been noted that hegemony “is the central concept in Gramsci’s *Prison Notebooks* and the fulcrum around which all other concepts revolve” (Bennett, Martin et al. 1981, p. 192) and to this extent a thorough discussion of the concept and its intersections is warranted.

Gramsci argued that hegemony was to be thought of as emanating from the effective construction of a historic bloc achieved through “economic-corporate” (*instrumental*) concessions and/or “ethico-political” (*ideological*) leadership (Gramsci 1971, p. 161). This was dialectically related to the coercive dominance of enemy groups outside or peripheral to the historic bloc (ibid, p. 57-8). Thus dominance, broadly conceived, is divided between *dominance through coercion*, and *hegemony through consent*. Hegemonic consent is then further subdivided between material and ideological aspects, providing both instrumentally rational motives and normative frameworks for compliance with a hegemonic group (Eagleton 2007, p. 113). This highlights that hegemony is internally related to, but not reducible to, *ideology* (ibid, p. 114). To become hegemonic, a leading group must thus think outside of its immediate self-interest and grant certain concessions to form a historic bloc (Gramsci 1971 p. 181). The ideological aspect of hegemony formed the core of Gramsci’s critique of Marxist “economism” and liberal idealism. The former consists of considering the superstructure of ideas as merely reflecting the material structure (ibid, p. 178, 448). The latter involves a conception of history as the history of ideas removed from material processes. For Gramsci, ideas *are* material forces to the extent that they are produced, have concrete effects on everyday life and organise people (Gramsci 1971, p. 165). Hegemony is thus partially conceived as “the attainment of a ‘cultural-social’ unity through which a multiplicity of dispersed wills, with heterogeneous aims, are welded together with a single aim” (ibid, p. 349). This is a necessary basis for the process of forging an historic bloc for instrumental and/or ideological leadership.

An element of hegemony which was of particular interest to Gramsci was “common sense.” Gramsci describes “common sense” as “folklore”, a historical “sedimentation” of “popular religion”, along with past philosophies combining in “strangely composite... Stone Age elements and principles of a more advanced science...” (ibid, p. 324). Common sense is intimately bound with history and is to be distinguished from an active program of ideological propaganda because of its spontaneous nature. However, hegemonic projects are more likely to succeed in their bid for ethico-political leadership, and ideology is more likely to gain traction, if they mesh effectively with the contours of common sense; contributing in the process to the “stratified deposits” of common sense which succeed them

historically (ibid, p. 324-326). Gramsci, however, held that common sense included “good sense” or elements of nascent emancipatory philosophy (ibid, p. 326). This is where Gramsci indicates the purpose of a Critical Theory, not to instrumentally use common sense for purposes of manipulation, but to illuminate the nature of common sense to lay actors and to develop the “good sense” in their “spontaneous philosophy” (Ibid, p. 326). He argues, “The starting-point of critical elaboration is the consciousness of what one really is, and is ‘knowing thyself’ as a product of the historical process to date which has deposited in you an infinity of traces, without leaving an inventory.” (ibid, p.324). Norman Fairclough (2015, p. 13) has adopted the method of *immanent critique* from the Frankfurt School of Critical Theory as a tool of analysis of common sense in his version of CDA. Immanent critique does not seek a transcendental yardstick by which to critique a given set of ideas, but instead observes their operation in a social context and attempts to highlight *theory-practice contradictions* inherent to them, which allow one to separate the good sense from the common sense and to elaborate alternative forms of social being or to facilitate the critique of existing institutions and exercises of power (ibid, p.12). Very simply, a theory-practice contradiction consists of the theory a person or institution espouses contradicting their practice. Variations on this critique can be found in *practice-practice* and *theory-theory* contradictions where the former consist of contradictory practices and the latter of contradictory sets of theories regarding reality. This is a fruitful, non-moralistic, way of critiquing ideas and practices related to the STL and is one of the reasons Fairclough’s version of CDA is adopted as a method in this thesis.

Cox says of the Gramscian concept of hegemony that it “is loose and elastic and attains precision only when brought into contact with a particular situation which it helps to explain, a contact which also develops the meaning of the concept.’ (Cox 1983 [1996], p. 124). This is even more so for the related concept of ideology. The definitions of ideology are varied and potentially contradictory. Here we shall outline some of the “elastic” aspects of the concepts which will be used in this theoretical framework and which will “attain precision” in the analysis to be carried out in this thesis. Like hegemony, ideology is linked to the concept of power. Hegemony refers to powers’ consensual use while ideology is located at the intersection of beliefs and power where “meaning (or signification) serves to sustain relations of domination.” (Thompson 1984, p. 4). Terry Eagleton points out that ideology becomes hegemonic to the extent that it remains consensual and hidden (and indeed this is a frequent objective of the ideological), but that when ideology is coercive or imposed, it is all the more visible as ideology (Eagleton 2007, p. 112). Both Eagleton and Raymond Geuss outline two broad conceptions of ideology; one sociological (ideology as system of ideas), which are often descriptive, and one epistemological (ideology as falsity), which is often pejorative (Geuss 1981, p. 4- 21, Eagleton 2007, p. 3). The CDA methods employed herein foreground the epistemological version. The systems

of ideas definition can often be encapsulated by reference to culture or philosophy, but this is not to say that there is no overlap.

The epistemological or false view of ideology is contentious. The major objection to the concept centres around the fact that ideologies must contain some truth for them to correspond with the practical common sense and effective inter-subjective communication of their adherents, therefore they cannot be said to be false. In response, Eagleton suggests that ideology can be true on one level and false on another. One way this manifests is as truth through assertion, but falsity through denial or omission. Similarly, following the Saussurian insight that there is no necessary correlation between *signifier* and *signified*, it is possible to show that something is a correct example of language but is false at the level of society if it (re)produces undesirable effects. Eagleton links this to Jurgen Habermas' definition of ideology as "systematically distorted communication" (Habermas 1970, p. 205). The key intersection once again is power. If a discursive utterance is factually accurate as an example of language but produces an effect which buttresses an unjust social order, this can be said to be ideologically false. Another way in which this double operation of ideology works is with reference to epistemology and ontology. This arises out of the fact that "What is subjective in understanding becomes objective through action." (Cox 1992 [1996], p. 145). On this understanding, for example, we can say that whilst the Islamic State of Iraq and Syria (ISIS) campaigns to destroy antiquities because of their supposed encouragement of polytheism are ontologically true events (real objects were destroyed), we can also state that they are epistemologically false, either because they are mistaken in the view that archaeology and worship are similar activities, or because their leadership have ulterior (false) motives for these actions. This last aspect demonstrates Eagleton's insight that denying the existence of falsity would be tantamount to saying a lie was true because it objectively happened (Eagleton 2007, p. 22).

In addition to these general epistemological definitions of ideology as *domination at the level of signification* or as *systematically distorted communication* Eagleton provides a useful taxonomy of sufficient but not necessary manifestations of ideology. The first element is *rationalisation* in the psychoanalytic sense of having a conscious articulated purpose and a sub or un-conscious motive (ibid, p. 52). Rationalisation can manifest in many ways; as rational reasons for irrational desires, as reputable aims for unethical ends or as contradiction between two sets of ideological ideas resulting in contradictory utterance and practice. The second element is *legitimation* which should be considered as a process of hegemonic argumentation and justification where "a ruling power comes to secure from its subjects an at least tacit consent to its authority" (ibid, p. 54). The third element, *Universalisation*, presents ideologies as universally valid, applicable and accepted and often as having always existed, because "ideology is reluctant to believe that it was ever born, since to do so is to

acknowledge that it can die.” (ibid, p. 58). Although, universalisation might be a genuine expression within a historic bloc of universal aggregations of interests, it is also capable of becoming *false universalism* to the extent that the language of universality is used to present particular interests as universal. Richard Falk has used this conception to critique the false universalism of the architecture of international law to the extent that it fails to include and represent Islamic civilization (Falk 1997) and Martti Koskienemmi has argued that all international law is false universalism (Koskenniemi 2011, p. 219). The fourth element, *naturalisation*, is a hegemonic strategy which seeks to overlap and influence common sense. If an ideology can successfully make its own ideas common sense it successfully makes them ahistorical. The prize is to be able to “not so much combat alternative ideas as thrust them beyond the very bounds of the thinkable.” (Eagleton 2007, p. 28). The fifth aspect which Eagleton offers is *mystification* which refers to processes which obscure or suppress certain contradictions arising from the unequal possession and use of power or the “imaginary resolution of real contradictions.” (ibid, p. 6).

All these processes often entail *reification* of social life which means that we begin to see theoretical objects as real or socially constructed objects as natural and universal (ibid, p. 95). Norman Fairclough notes Louis Althusser’s position that reification of the *subject* as unitary, natural and pre-constituted rather than socially constructed is “the elementary ideological effect.” (Althusser 1971 quoted in Fairclough 2015, p. 121). In Fairclough’s view, the subject is placed in subject positions through discourse as an effect of power. The extent to which this is seen as natural is an expression of its effectiveness. Fairclough’s CDA covers the elements outlined above. In addition, he proposes another definition, related to immanent critique, which posits that where discourse has a “theory-practice” or “practice-practice” or “theory-theory” contradictions *and where these contradictions are necessary for the reproduction of social structure and power for particular interests*, this can be said to be ideological (Fairclough 2015, p. 32). The CDA of the practices of the STL in this thesis will refer to these operationalised definitions and elements as part of its ideology critique.

Our previous discussion of domination outlined the way in which it is divided between hegemonic (consensual) and non-hegemonic (coercive) forms. However, this distinction does not address under what circumstances the exercise of power could be considered legitimate. This thesis uses Fairclough and Fairclough’s (2012) definition of *legitimacy* to remedy this potential lack of falsifiability. Legitimacy for them is a special kind of *justification* which operates at two levels. The first level is a justification of action regarding reasons and the second is a justification of those reasons relating to a system of social norms, values and laws (ibid p. 110). They take a mixed procedural-deliberative understanding of legitimate exercises of power where an inclusively agreed procedure must be deliberated inclusively. They hold to the distinction between legitimacy and *perceived*

legitimacy, with perceived legitimacy overlapping with the notion of hegemony. By so doing, they align themselves with Habermas' normative understanding (and against Weber) of legitimacy in the sense that legitimacy is not simply something which is perceived, but is an activity in which the exercise of power is none-exclusively, freely deliberated in conditions which are not distorted through ideological effects (ibid, p. 112).

These theoretical concepts constitute *operationalisations*, that is, working definitions of concepts for application to analysis in this thesis. Operationalisation requires the development of conceptual definitions into operational definitions through the linking of concepts and data indicators. In qualitative studies, this is done during empirical analysis (Punch 2005, p. 46). In this thesis, this is achieved by applying these concepts to the formal features of our texts during the interpretative and explanatory phases of analysis as part of the CDA method elaborated below. The research questions can now be stated.

Research Questions

1. What are the differences and similarities in hegemony, domination and legitimacy in the 1860 commissions and the STL?
2. What ideological, hegemonic and legitimating discursive practices are employed at the STL?
3. How do these strategies inform structural power in international law and politics?
4. What do the 1860 commissions and the STL tell us about hegemonic world order? And what are the implications for Lebanon?

Methodology 1: Meta-theory

Despite Cox's use of a tripartite model of forces which represent the social world as composed of equal parts ideas and materials with an ostensible lack of any one-way determinism, the fact remains that in practice the emphasis in Cox's work (particularly his 1987 magnum opus *Production, Power and World Order; Social Forces in the Making of History*) remains very much *economic production*. Thus, despite the potential of the model which Cox elaborated in 1981, a materialist and (economic) production bias seems to creep back into the definition of social forces and their identities. This is unsurprising to the extent that Gramsci's work, on which Cox largely bases his own, itself contained these same contradictions and thus they have been reproduced in Cox's work. On one level, Gramsci

clearly represents an advance in Marxist thought through his emphasis on the superstructure and its potentially independent role in society vis-à-vis the economic structure. His entire theoretical project in many ways represents an intellectual challenge to both Liberal “voluntarism” and orthodox Marxist “economism” (Bennett, Martin et al. 1981, p. 192). Marxist economism, according to Gramsci, posited a clear distinction between superstructure (ideas) and structure (economic base) and a one-way determinism whereby changes in the latter mechanically produce changes in the former (Gramsci 1971, p. 376). This led logically to its tendency to be dismissive toward ideas in general as explanatory factors in societal change and it was considered impossible that ideology might affect the structure (ibid, p. 376).

Ernesto Laclau and Chantal Mouffe (1985, p. 67) pointed out that Gramsci’s theory of hegemony, through the articulation of historic blocs, was the first and most important conception which moved beyond the orthodox Marxist view that i) revolution could only come through the working class by and for itself and ii) that socialist parties should be concerned with the narrow “economic-corporate” interests of the working class only. Historic blocs potentially represent a formation of interests and identity beyond an instrumental alliance and incorporate other groups not solely determined by an objective position within an economic mode of production. Bennett and Martin et al. (1981, p. 210) note that Gramsci “loosen[s] up” the economic determinism of structure/superstructure relations, however, it is argued here that he still does not abandon the hierarchy.

Thus, determination in the last instance by the economy is evident in Gramsci (1971, p. 161) as he insists on “... the decisive nucleus of economic activity” which undermines the posited ideas – materials parity by inferring they only gain salience in the context of economic production and come “ ... into existence on *the original terrain of an essential function in the world of economic production ...*” (ibid, p. 5 emphasis added). Here, one can infer that social groups/classes are determined (a-historically) by their position in the mode of production. The notion that in any concrete historical situation identity could be determined by anything other than economic production and thus exhibit vertical and horizontal fissures formed primarily, or even partially, at the level of symbols and discourse is alien to this conception. Now consider Cox’s position “The objective delineation of each mode, [of production] ... is matched by an intersubjective content – the common understandings shared by the people embraced by the mode in respect to the relationships and purposes in which they are involved.” (Cox 1987, p. 17). Both views assert that inter-subjective identity arises mechanically from the mode of production. Therefore, when Gramsci discusses the formation of historic blocs, he holds that only the “...hegemony of *fundamental* social groups...” (Gramsci 1971, p. 182 emphasis added) can form the centre of a hegemonic bloc, namely, the bourgeoisie or proletariat.

Laclau and Mouffe (1985, p. 77) note that, in Marxism “The contradiction between bourgeoisie and proletariat is, ... the social and political expression of a primal economic contradiction, one which combines a general law of development of the productive forces with the laws of development specific to the capitalist mode of production.” In this conception, all social groups relate in one way or another to two fundamental classes and these classes and their ideologies are, in turn, determined by their objective position in a closed mode of production. Contra this position, this thesis does not assume social forces are mechanically defined by their place in a mode of production and is, in this sense, post-Marxist. It keeps Cox’s focus on “social relations” but drops the auto-adjunct “of production”. This allows the thesis to keep the benefit of Cox’s model in escaping the atomism, anarchy and instrumental rationality of mainstream IR through a focus on social forces as constituent entities of world politics, whilst remaining agnostic about the material, ideational, productive and discursive elements which give rise to them in any given context. This move liberates Cox’s model of historical structures and his Vichean insights about mind from economism, making it more readily applicable to international law.

This leads to some unorthodox uses of familiar theoretical concepts in this thesis, particularly, the concept of historic bloc. There are two primary reasons for these unorthodox usages. One is necessitated by the post-Marxist approach set out above which decentres economic production in the identification of these phenomena. The second is the question of scale associated with an analysis which moves dialectically between historical structures of world order and state-society complexes. Thus, historic blocs, when applied to international relations by Cox and other neo-Gramscians have been largely applied within the field of International Political Economy (IPE) to describe the formation of (unsurprisingly) economic historical structures undergirded by global historic blocs for promoting hegemonic economic ideology (particularly neo-liberalism). This same approach has been used in political economic analyses of Lebanon at the state-society scale. The purpose here, however, is to provide a post-Marxist approach which can be inclusive of these concerns, but which can be applied to wider concerns in international relations; in this case, the historical structure of International Criminal Law (ICL), hierarchies of legal sovereignty, the complexities of political cooperation, conflict and violence, and the ideological justification for these at multiple scales. Examples of this unorthodoxy can be found in chapters five and six. Here, the analysis purports to identify a link between the regional *Pax Syriana* (the post-*Taif* accord hegemony over Lebanon by Syria) and a global *Pax Americana* which lent its hegemonic legitimacy to Syria’s rule in Lebanon from 1990 to 2005. The analyses posit the nascent emergence of this historic bloc in the 1970’s when Henry Kissinger encouraged Syria under Hafez Assad to intervene in Lebanon to prevent a Leftist victory in the civil war, though this was not properly cemented until the *Taif* accords. One might properly question

whether this might better be characterised as an alliance or some other arrangement, rather than a historic bloc, particularly given the lack of economic centrality.

There are several responses to this. One is that the distinction Gramsci makes between economic-corporate (i.e. instrumental) and ethico-political (i.e. ideological) historic blocs has great utility for understanding the emergence and fall of the U.S.-Syria historic bloc. The argument advanced is that this relationship was constructed on instrumental considerations which persisted for a long time, but which never transitioned to ethico-political. Hence, when the instrumental considerations changed, the bloc fell apart. This kind of analysis is not possible with a simple conception of alliance. Similarly, the analysis of the decline and collapse of the regional hegemony of *Pax Syriana* as directly related to its ostracization from the global hegemony of *Pax Americana* (beginning with the 2003 war in Iraq) is enriched by a post-Marxist conception of historic bloc. Indeed, according to this analysis, U.S. withdrawal of support for *Pax Syriana* was synonymous with the removal of a large portion of its *legitimacy* (a key ingredient of hegemony), the concomitant split of the largely coherent historic bloc of Lebanese politicians, the emboldening of resistance, the relatively rapid need for Bashar al-Assad to resort to coercion, and the end of *Pax Syriana*. This analysis is impoverished if we state simply that the alliance between the U.S. and Syria ended.

Another potential issue relates to scale, where the extension of the concept of historic bloc to the study of international relations means that they are not simply constituted by social forces within a state but are constituted internationally by social forces and multiple states. However, Cox's model of social forces, states and world orders implies that for him, this is not an issue in the discussion of global hegemony. Thus, discussion of *Pax Syriana* and its relation to *Pax Americana* implies, unproblematically, a heuristic for multiple states and social forces interacting. A final objection to applying the concept of historic bloc in this way is that it raises certain apparent contradictions, for example, considering two apparently opposing states like Syria and Israel as forming some part of the global U.S. historic bloc. This objection can be addressed in two key ways. The first is to state that Gramsci gives us the language to describe the differing positions of Syria and Israel in the global U.S. bloc. Whilst Syria clearly occupied a peripheral position based on economic-corporate concerns (instrumental), Israel occupied a core position based on acceptance of U.S. ethico-political (ideological) leadership. Scholars elsewhere have applied Gramscian ideas to describe the formation of hegemony in unorthodox contexts, for example, security integration through hegemonic ideology between states in the global core (See Charbonneau, Cox 2008). The present analysis deals with the other end of the spectrum, where Syria was peripheral, only temporarily brought in, and only by weak attractive forces. Secondly, the *status quo ante* under *Pax Syriana* was war and resistance in the 10% of Lebanese territory occupied by Israel and neo-liberal reconstruction in the remaining area under

direct Syrian control. Despite the conflict and (relatively) limited proxy war in the south, this was the era of peace talks between Israel and Syria. Thus, the presence of violence and antagonism locally does not discount the possibility of two actors occupying positions within the global hegemonic historic bloc. None of this, of course, means that these concepts should not be applied in the more traditional political economy way. Rather, it is an argument that these concepts may have analytical purchase outside of the context of pure political economy. It is in this spirit, which the concept of historic bloc is applied in this thesis.

Laclau and Mouffe argue Marxism holds three theses which lead to economism, which they critique. For the bourgeoisie and proletariat to constitute the inevitable and homogenised antagonists of history, Marxism must posit reductionism to the level of the economy. The first thesis thus posits that the economy consists of endogenous “laws of motion” closed off from causation emanating from the social and political spheres (Laclau, Mouffe 1985, p. 75). The second thesis is that the bourgeoisie and proletariat attain their (inter)subjectivities by virtue of the development of the “laws of motion” at the level of the economy (ibid, p. 75). Finally, the objective position of agents in the mode of production endows them with “historical interests” which are economic in nature. They argue that this is why Gramsci’s theory of hegemony does not include places of work in the category of civil society, despite their relevance as a key location of socialisation and political struggle. In contrast, Laclau and Mouffe argue that “... the space of the economy is itself structured as a political space, and ... in it, as in any other ‘level’ of society, those practices we characterized as hegemonic are fully operative.” (Laclau, Mouffe 1985, p. 76). However, once the economy is opened to human agency it can no longer fill the deterministic role of identity and interest formation posited in Marxism. Laclau and Mouffe moved towards a meta-theoretical approach of post-structuralism in order to overcome the deterministic shortcomings of Marxism. However, this thesis takes a different meta-theoretical approach, that of Critical Realism.

Critical realists are at pains to stress, contra positivism and economic Marxism, that the social world is an open system and does not constitute a closed system in which variables can be isolated and repeatedly tested to look for causation as invariance defined in David Hume’s terms as “constant conjunctions of events” which lead to “whenever A then B” propositions derived from Newtonian mechanics (Patomaki 2002, p. 21). Positivism assumes that society, like a laboratory, constitutes a closed system in which variables are externally related and internally stable/consistent (atomistic) and that they can be isolated in the open system of society from myriad intervening variables (Lopez, Potter 2001, p. 11). CR meta-theory distinguishes itself from its two main meta-theoretical rivals, positivism and interpretivism (with post-modernism considered a variant of hermeneutic interpretivism) (Lopez, Potter 2001, p. 8). Though clearly different, CR holds that these

approaches contain important similarities. Their central debate concerns the appropriateness of positivist methods in social science, with interpretivists holding that social systems are typified by *meaning*, making them different from natural systems and necessitating different methods contra positivists who propose that their version of naturalist methods is appropriate for all sciences (ibid, p. 9). Whilst they disagree on this particular point, they actually agree that positivism is the most appropriate form of *natural* science. CR, however, argues that “in the philosophy of science, positivism had been rejected as an adequate model of science in the 1950's” (Joseph, Wight 2010, p. 1) because “With few exceptions, there are no closed systems in nature or society.” (Patomaki 2002, p. 8). This partition of social and natural science was mirrored by a distinction between *explanation* and *understanding* where the latter was assumed by interpretivists to be appropriate, and the former was thought impossible, in social science. Mirroring this position, the positivists held that the only knowledge worth having was explanatory and that understanding violated objectivity as value-neutrality. Given that CR does not recognise this partition, it argues that both explanatory and meaningful modes of knowledge creation are not only necessary for social science, but interdependent. This is so, because meaningful “reasons are causes” in social science and must therefore be *understood* in order to *explain* outcomes (Patomaki 2002, p. 87, Kurki 2007, p. 366) but, more importantly, CR holds, like positivism, that there is an ontological world external to thought which is amenable to (fallible) human knowledge. However, contra positivism, knowledge need not emanate from value-neutral, infallible human subjects as positivism claims (Patomaki 2002, p. 72).

The second way positivism and interpretivism are similar, is their anthropocentric positions on knowledge and being. For positivism, this amounts to an epistemological position Roy Bhaskar referred to as “actualism,” where what can be empirically observed, quantified and measured was taken to be coextensive with what ontologically exists, leading to its insistence on a singular scientific quantitative method of social science (Lopez, Potter 2001, p. 10). For interpretivism, and post-modernism in particular, actualism manifests itself in the reification of discourse or concepts with a concomitant abandonment of ontological reality on the basis that subjects cannot apprehend the nature of objects outside of discourse. What often results is a *reduction* of reality *to* discourse. The interpretivist *and* the positivist position thus share what Roy Bhasker termed the *epistemic fallacy*, which equates to giving an “epistemological category an ontological task.” (Joseph, Wight 2010, p. 10). In contrast, CR holds a position of *deep realism* where unobservable deep structures and multiple causal forces in open systems generate empirical experiences and observations. It is the scientists’ task to conceptualise the operation and nature of these deep structures beyond immediate sense experience with reference to empirical data. As Jonathan Joseph and Colin Wight (2010, p. 8) argue, “This approach to the philosophy of science [CR] ... indicates a reversal of a long-standing philosophical

orthodoxy and a turn away from epistemological concerns to those of ontology.” Whilst CR agrees with interpretivists that there is no point external to history and society from which to obtain universally objective knowledge and that society is a uniquely meaningful realm (Lopez, Potter 2001, p.4), the retreat to discourse and concepts often results in relativism. CR agrees, contra positivism, and with interpretivism, that knowledge is socially constructed and humanly interested (ibid, p. 7). Nevertheless, due to CR’s ontological emphasis, it is still held, with positivism, that one can have rational *reasons* for preferring one theory of social reality over another (Lopez, Potter 2001, p. 7, Patomaki 2002, p. 9, Joseph, Wight 2010, p. 13).

Thus, the basic position of CR can be summarised as three broad, interdependent propositions; *ontological realism*, *epistemological relativism* and *judgemental rationalism* (Patomaki 2002, p. 8, Joseph, Wight 2010, p.9). *Ontological realism* holds that there is a world external to thought which is *intransitive*, that is, it exists whether we perceive it or not (Lopez, Potter 2001, p. 12). The intransitive realm is held to consist of complex, deep and structured open systems often not directly empirically observable and thus often expressed through metaphor or analogy by scientists (Patomaki 2002, p. 128). The intransitive nature of objects or forces has nothing to do with their natural or socially constructed status, but with the more basic assertion of their existence. Moreover, it is possible for something which did exist to become absent or change, which is a different assertion to it never having existed (ibid, p.8) Thus, intransitive is not synonymous with invariant. It is the structured nature of open, intransitive, systems which leads CR to reject the Humean definition of causes as reproducible, “actual”, constant conjunctions of events and instead view causes as the properties of structures, processes or powers which may be actual or potential, recurring, singular or latent (ibid, p. 8). Similarly, whilst the Humean definition of causality conceives of internally consistent atomistic objects interacting *externally*, the CR account holds that relations of causality can be both external and/or *internal* (Patomaki 2002, p, 108, Joseph, Wight 2010, p. 2).

Another aspect of ontological realism is *emergence*, where the intransitive structured world emerges in layers one from the other. The most uncontroversial instance of this is the social world’s emergence from the natural. The key insight and value of the concept of emergence is that, though the social world emerges out of a pre-existing natural world on which it is dependent for its existence and which in many ways shapes the societies that emerge, the social world is not *reducible* to the earlier layer out of which it emerged. The simple idea that emergent levels have powers and liabilities which are unique to that level militate against reductionism. Thus, a certain nuance is obtained through the dialectical understanding of reality in which emergent layers are influenced by more fundamental layers, but through their emergent powers, they can in turn feedback to influence the shape of the layers out of which they emerge (one need only think of the impact of industrial activity

on the environment to illustrate this point). Thus, we can posit that the STL is emergent out of economic and political structures and processes, but then we can reject any automatic determinism by these levels and study also the emergent powers and properties of law as a system of ideas and the agency of individuals in positioned practices. The question therefore becomes, to what extent fundamental levels determine behaviour and outlook. This question is an empirical and historical one, not one determined by *a priori* reductive theory. However, the fact that CR draws our attention to emergence enables us to perceive the structural influence of layers other than the immediate empirical ones. The critique of Marxism by Laclau and Mouffe can thus be reformulated in CR terms; Marxism's insistence on social explanation and subjectivity being reducible to the level of the economy depends on the economy being conceived as a closed Humean, Newtonian and indeed Darwinian, system with one evolutionary and teleological end point. Once one accepts that the world at all levels is an open system characterised by emergence, it is no longer possible to maintain economic determinism dependent on the reification of the economic "level".

The account of open, intransitive, systems of deep structures in CR necessitates a developed conceptualisation of *structure*, *agency* and *causal forces* and the *tendencies* which result. The conception of structure and agency most influential in CR is the theory of *morphogenesis* developed by Margaret Archer (1995). Archer identifies three aspects of societies which typify them; that they are dependent for existence on people, that they are transformable by human agency and that human agents are moulded by the social structure they exist within (ibid, p. 1). Morphogenesis is based on analytical dualism, which consists of resisting the conflation of agents and structures and instead considering their separate qualities before thinking about their interaction. Archer develops the argument of Roy Bhaskar, that despite their origin in human agency, social structures logically pre-exist *particular* agents in time and that "their pre-existence establishes their *autonomy* as potential objects of scientific investigation and that their *causal power* establishes their *reality*." (2005, p. 27). The issue of pre-existence is central to the theory, for although she accepts that agents may elaborate or transform social structure, this is done by agents who are born into a pre-existing social-structural context (Archer 1995, p. 139). Through this analytical dualism, it is possible to differentiate the properties of structures and agents. The former constitute, *inter alia*, internal and external relations and positioned practices, which bestow enabling and constraining forms of causal or constitutive power (Kurki 2007, p. 363-366, Joseph, Wight 2010, p. 19-20). The latter meanwhile possess, consciousness, reflexivity, intentionality, cognition and emotion (Joseph, Wight 2010, p. 19). It is these differing features and the logical pre-existence of structure, which justify the analytical dualism of morphogenesis.

These considerations lead to CR being defined as a *relational theory of society* (Patomaki 2002, p. 117, Wight 2007, p. 15) a view it shares with Fairclough's CDA (Fairclough, Jessop et al. 2010 [2004], p. 202) and Critical Theory more generally (Morrow, Brown 1994, p. 209). There are two types of relation relevant to this theory, external and internal. *External relations* can be conceived as *regulative* social rules which regulate relations between agents in positioned practices. Accordingly, these external relations are *contingent* and if violated or altered would not change the identity or nature of the agents or positioned practices concerned. *Internal relations* can be conceived as *constitutive* social rules owing to the fact that they constitute the interdependent identities or nature of the agents or positioned practices concerned. Therefore, if they are altered, they *would* change the nature of the identities of the agents or positioned practices concerned. Patomaki helpfully provides the example of a courtroom to demonstrate the difference (Patomaki 2002, p. 107-8). Where a regulative rule might proscribe counsel from making emotional pleas to the jury, constitutive rules of the courtroom are those which demand that there *be* a jury and define their roles relationally to other roles (judge, counsel and others). If the first rule is disobeyed, the nature of the positioned practices of the court are unaltered. However, if one were to change the rules governing jury behaviour or abandon the use of a jury altogether, this would fundamentally alter the nature of the positioned practices of the courtroom.

Within this open system of structures, agents and practices bound by internal and external relations, Patomaki (2002, p. 78) provides a CR definition of *causal forces*; "Insufficient but **Non-redundant** element of a complex that is itself **Unnecessary** but **Sufficient** for the production of a result". This definition stands in contrast to the Humean model of "whenever A then B". As Patomaki argues, "In open systems, probabilistic empirical invariances that seem to connect phenomena are often causally unrelated." (ibid, 76). Thus, just because a cause was triggered does not mean it will be again, or that the same result could not have been arrived at through other causes. Patomaki, advocates the conception of societies as composed of *causal complexes*

It can thus be argued that there are five necessary elements of social being in any relational causal complex (K) capable of producing events, episodes, and tendencies (and the like), namely; historically constructed and socially positioned corporeal actors (AR); meaningful historically structured action (AN); regulative and constitutive rules implicated in every action and constitution of actors (RU); resources as competencies and facilities (RE); and relational and positioned practices (PRA). Together these form the sufficient but unnecessary complex for the production of a result. Hence there is never a single cause but always a causal complex $K = \{AR, RU, RE, PRA, AN\}$. (ibid, p. 78)

Referring back to the earlier discussion of state-society complexes and world order and the particular examples of Lebanon and the STL, these can be conceived as causal complexes. For example, Lebanon is externally *and* internally related to both international and domestic society through the STL and the STL, in turn, is externally *and* internally related to Lebanon and international society. Though Cox's model confused the issue by conflating *spheres of activity* with *levels*, application of the insights of CR allow us to consider society in his model as describing all routinised human interaction including what we regularly term "the international". World order is simply the name we give to the structural properties and positioned agents and practices from micro to macro scales in networks of social interaction. This fully elaborates the reason why conception of atomistic actors and compartmentalised levels in traditional IR is inappropriate when considering such phenomena, they would be incapable of apprehending the internal and external relations, for example, of national legal systems, ICL, the STL institution and state practices. Moreover, while positivism is "event" centred and looks for constant conjunctions of events as *causality*, CR is "thing" centred and looks to describe and account for the various types of things, their powers and their potential interactions (Lopez, Potter 2001, p. 11). This leads it to search for tendencies rather than universal laws. The search for tendencies gives more predictive latitude and nuance to multi-causal and emergent phenomena than the search for universal laws in an open system which are nearly always thwarted by the open nature of that system.

The second major component of the CR approach after ontological realism is *epistemological relativism* (Patomaki 2002, p. 8, Joseph, Wight 2010, p. 12). Human knowledge is considered *transitive* and socially constructed. Knowledge's social determinants are manifold, everything from the language in which it is expressed, the scientific antecedents from which one progresses, cultural blind spots, normative purposes, funding, competition and jealousy in institutional contexts. Science is also historically bound, there is nothing guaranteeing progress, and the transitive knowledge of today can quickly become obsolete. Openness to change and challenge in epistemic communities is what validates scientific knowledge and constitutes higher reflexivity (Patomaki 2002, p. 1, Eagleton- Pierce 2009). CR rejects two dichotomies common to positivist approaches. Hume's "guillotine", by which explanation of the intransitive is separated from normative discussion (Patomaki 2002, p. 25), and Karl Poppers' assumption that explanation and prediction imply each other (Lopez, Potter 2001, p. 6). Rather they hold that knowledge is humanly interested and that "we can derive ethico-political judgements from truth-judgements." (Patomaki 2002, p. 10). Further, it is possible to explain and describe objects in an open system, but prediction is much less likely and the two are not symmetrical. Despite all the limitations of fallible knowledge, CR holds that "knowledge cannot be reduced to its sociological determinant of production." (ibid, p. 9). This is because, despite the fact knowledge is

transitive; the objects of knowledge are intransitive. This leads to a position of epistemological caution not relativist nihilism. It also leads logically to the *Critical* part of CR. It is in the space between intransitive reality and transitive knowledge that errors both factual *and* ideological, can be located (Lopez, Potter 2001, p. 14). If one did not have some concept of intransitive reality, it would be meaningless to speak of ideology, that is, a systematic distortion of communication which prevents one from perceiving intransitive reality. Indeed, interpretivists who limit their analyses to understanding are limited to *describing* belief systems and are unable to offer convincing evaluations of those beliefs. This was a trend in the study of Middle Eastern IR which was critiqued vociferously, and convincingly, by Halliday (2005). He argued

it would be a mistake to swap an external, imposed set of categories for one based on a simple acceptance or 'understanding': for the vantage point of the regional actor may contain its own illusions, its own distortions of history and of text, its own warped animosities towards other peoples in the region. (ibid, p. 32)

In CR terms, the existence of an intransitive reality outside of fallible and transitive knowledge means that one's positionality does not, in and of itself, determine the correctness of one's perspective. This is not to say there are not issues of access to expression or advantages to be had from certain marginalised perspectives. These insights also recommend an approach based on the Critical Theory tradition of ideology critique pursued in this thesis, for the detection and critique of ideology on a systematic basis, regardless of whether this ideology emanates from a western or regional source. The pursuit of purely interpretive analyses centred on epistemology, by contrast, run the risk of overlooking "old-fashioned deception and self-delusion." (ibid, p. 33). CR holds that ethical principles are related to the nature of reality. Thus, whilst understanding is essential, one must move beyond this, using immanent and explanatory critique. This may mean that the social scientist critiques the understandings of lay actors (Patomaki 2002, p. 1). The heartening position of CR regarding knowledge, is that social science is possible because social relations are possible. These activities depend on *meaning* "an intransitive dimension of reality exactly as is molecular structure." which human beings navigate daily (Lopez, Potter 2001, p. 13). Thus, "[Realism] does not demand a single scientific method. Rather it demands that scientific methods be appropriate to their objects." (ibid, p. 13). All this leads to the third aspect of CR, *judgemental rationalism* where, despite the fallibility of knowledge, it is possible to prefer some truth claims to others (Patomaki 2002, p. 9, Joseph, Wight 2010, p. 12). With regard to the Middle East, this means that

The 'non-western', the 'subaltern', the 'non-hegemonic' also need to be held to rational, and empirical, account. They too can mislead, lie, fabricate and, as the record of the Middle East

shows too well, kill, especially those whose discourse is contradictory to theirs. (Halliday 2005, p. 33)

All of this leads to a particular approach to reflexivity and positionality in this thesis. Epistemically, this author acknowledges that they are neither Lebanese, nor a proficient Arabic speaker, but an aspiring academic from Britain from a white, working-class background. Does this hold implications for this author's access to certain sources and their potential unconscious biases? Undoubtedly. Are there things which this author may have missed empirically or incorrectly interpreted? Almost certainly. This requires reflection on their own assumptions as they carry out work, this is a process this author consistently agonises over. However, the understanding that there is an intransitive reality external to all forms of fallible, intransitive human knowledge justifies the scientific endeavour of this thesis. Despite this author's identity, it is possible for them to alight upon things in the intransitive structure of world order worth communicating. Higher reflexivity can only be achieved through openness to challenge from the scientific community, including Lebanese academics. If a Lebanese academic or Arabic speaker is able to add to, critique, or dismantle this work based on their unique skills and perspective *and* reasoned argument, this is to be welcomed for the advancement of social science. However, this author's identity and positionality does not preclude them, *a priori*, from conducting (however fallible) social science research, any more than a Lebanese or Arab academic automatically makes correct analyses free from conscious or unconscious biases or factual inaccuracies. Identity too often functions as an *ad hominum* justification for discounting or circumventing certain arguments or positions. Considerations of access and language skills are, however, legitimate, and this is why they informed the selection of this case study. The STL is by nature a multilingual and multicultural internationalised space where meaning is negotiated between various identities and positionalities. The object of study in this thesis is not simply the minutia of Lebanese politics, but its dialectical operation with world order. The fact that there is no god's eye perspective through which to observe these interactions does not imply that communication of meaning is impossible for the participants, or that a monolingual British social scientist cannot say meaningful things about it.

Methodology 2: Research Strategy and Methods

This thesis' research strategy can be characterised as *hermeneutic structuralism* (Morrow, Brown 1994, p. 24). It is hermeneutic to the extent that it seeks understanding of meaning but structural in the sense of wishing to describe and explain relational social power structures. The strategy is dialectical because "... from a critical perspective, both social psychological and macro-

structural analytic moments are implicitly dependent on theoretical and empirical work focused on mediations ...” (ibid p.220) with positioned practices as observable mediations of the dialectic of structure and agency. Raymond Morrow and David Brown (1994 p. 221) in identifying this research strategy, identify its key purposes as *intensive explication* and *comparative generalisation*. They state, “By the term [intensive] explication we intend the research logic of empirically lifting into view the underlying semantic, sociocultural, and structural relations that are constitutive of historically unique actors, mediations, and systems, respectively.” (ibid p. 212). This involves the “thick description” associated with a case study research design. Moreover, “Comparative generalization is a logic complementary to intensive explication. Here, the strategy is one of comparing the patterns disclosed through intensive explication across a finite set of historically comparable cases (actors, mediations, or systems). This step may be accomplished in order to make limited generalizations ...” (ibid p. 212). This involves the making of historical comparisons which are appropriate for the investigation of historical structures. Thus, certain methodological commitments suggest themselves as part of this strategy, namely, *qualitative*, *historical* and *discursive* approaches. A *qualitative* approach’s primary purpose is to provide a *thick description*. The point of thick description is to investigate phenomena in depth, in context, with an emphasis on the complexity and intersections of the phenomena *in situ*. When paired with hermeneutic interpretation this implies that the meanings and understandings of actors is part of that context (Punch 2005, p. 144). In this regard, *historical* research which interrogates accounts of past events theoretically and empirically is ideal for providing another dimension of context to qualitative studies (Berg, Lune 2014, p. 315). It offers opportunities for both comparative generalisations and a way of escaping chrono-centrism (ibid p. 316). This strategy also favours a *discursive* understanding of “language as social practice determined by social structures.” (Fairclough 2015, p. 51) where “The study of ... discourse is concerned with the analysis of meanings in social life.” (Morrow, Brown 1994, p. 262). According to Ruth Wodak (2008, p. 3-4), discursive approaches share a concern, *inter alia*, with natural language of actors *in situ*, large basic units of analysis (Texts and Discourses), and “focus on dynamic (socio) cognitive or interactional moves and strategies.” and social contexts of “language in use”. This thesis adopts these approaches as part of its research strategy. Fundamentally, the central question of such a strategy is “what concepts are required to understand the data available and to bring into focus the processes or mechanisms that are really at work?” (Ackroyd, Karlsson 2014, p. 21). In this project we have identified the concepts associated with the Lebanese state-society complex in chapter two, those associated with the structure and discourse of ICL in chapter four, framed historically with recourse to the 1860 commission in chapter three and the critical analytical concepts in the present chapter for application to a theoretically identified specific case in chapters five and six. This is all done in order to “synthesise from the available ideas

and relevant data an account of what is happening to key social mechanisms and processes” (Ibid, p. 21). This focus on “key social mechanisms” is what justifies a non-representative study, such as this one, as discussed below under sampling.

Research Design: Case Study

The objective of a case study research design is to offer thick description of a phenomena, where complexity and context are explicated (Punch 2005, p. 144). However, due to the boundary of real cases being fuzzy, a firm and explicit boundary must be established by the researcher to make the project manageable (ibid, p. 144). The central case study in this project is the STL, specifically the testimony of Walid Jumblatt. The contextual boundary is established by supplementary discussion of the 1860 European intervention in Syria. Both of these are discussed apropos of the key concepts and phenomena identified throughout this thesis. The case study seeks to develop both comprehension of the immediate case and of theory. With recourse to the ontology of historical structures, the research supplements the STL case study with historical context of the European intervention of 1860, which is considered as a potential constitutive antecedent to the STL and as an example of the wider phenomena of ICL and world order politics intersecting and impacting on the Lebanese state-society. Thus, taken together, we can make limited comparative generalisations. Stephen Ackroyd and Jan C. Karlsson (2014, p. 31) note that, generative mechanisms and causal explanations are often best identified through intensive case study investigation, but that

there will be variations in the way a generative mechanism works itself out in given situations. Comparative research helps to clarify both the nature of a mechanism and the range of variation in both process and outcome that can occur.

The key purpose of historical comparison in chapter three is thus to identify the variations and continuities in mechanisms identified in the thesis regarding the STL, with one eye on future emancipatory potential development and the likelihood of conservative or creative structural elaboration. Figure 3 demonstrates how the thesis focuses analysis on the mediations of the STL and the European Commission for Syria of 1860. Bold italics indicate the type of analysis carried out in each instance. Two-way blue arrows indicate posited relational structures between mediations and their respective world orders and regional contexts. Two-way green arrows indicate the dialectical reading of historical structure taking place between the nineteenth century mediation, the twenty-first century mediation, and likely alternative futures given the propensity for structural reproduction or transformation.

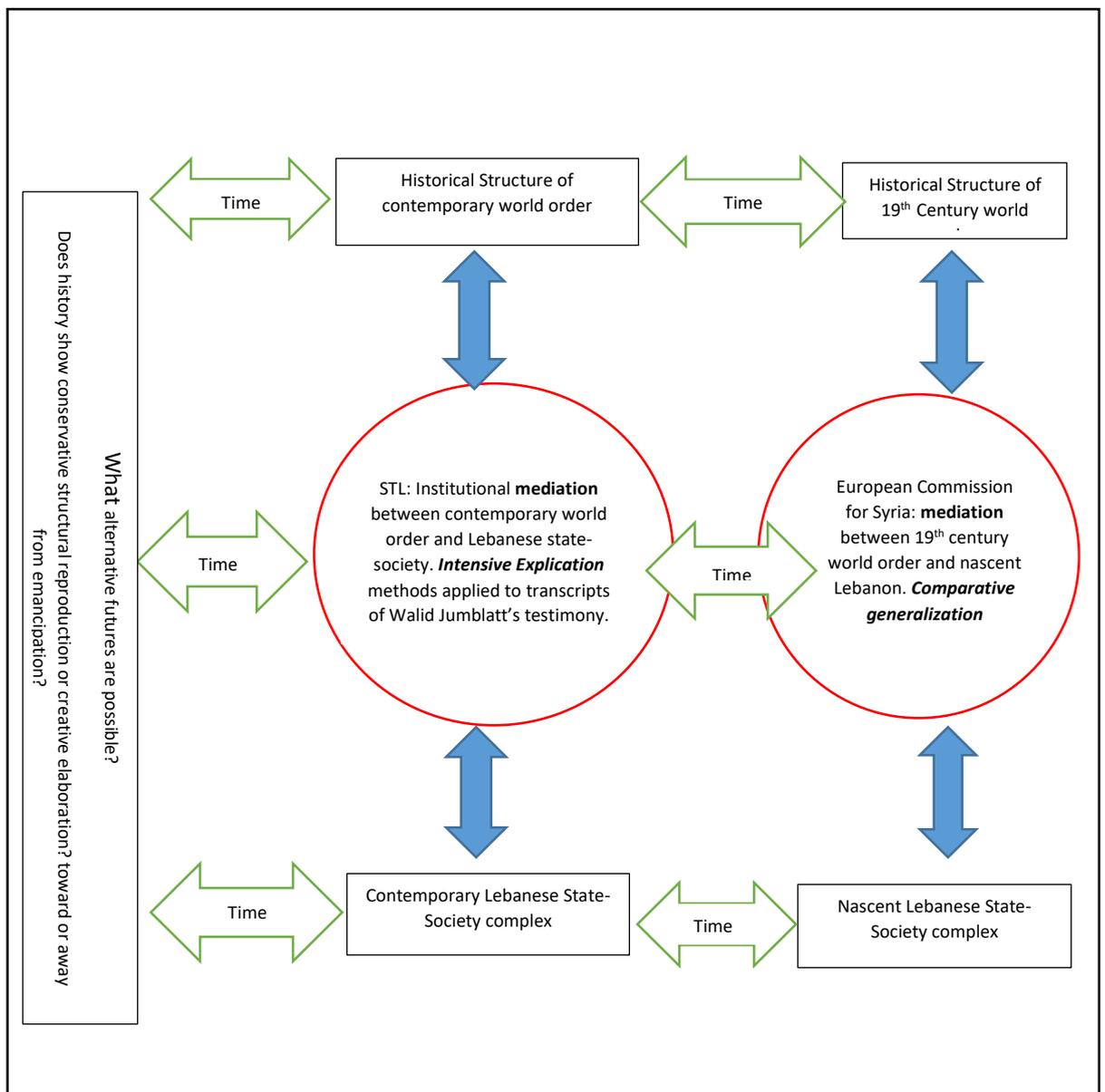


Figure 3 Theoretical Model of the STL in Historical Structure and Analytic Strategy

Sampling and Data Collection

Critical theory and CR's mode of investigation and analysis is based on a relational conception of structure where "Social structure refers to internal and external relations of a positioned practice" (Patomaki 2002, p.117). The purpose of empirical investigation in Critical Theory and CR therefore becomes to elaborate concrete relations and interactions between concrete actors in positioned practices to identify causal elements which are sufficient, but not necessary, for the production of a result. This stands in contradistinction to the compositional definition of structure common to statistical categories which search for formal relations of similarity and dissimilarity between categories established by the researcher (ibid, p.117). This latter approach, which is often associated with the methodology of positivism, requires that for the formal categories represented to be valid and reliable, they must be representative of an overall population which they are taken to represent. However, this representativeness question is moot for text selection in critical, qualitative research, as its aim is not analysis of formal relations between formal categories across large populations of quantitative data or even to make a representativeness claim, but rather a claim about causal mechanisms which exist in the world and produce tendencies and results.

One can render the difference thus; that positivist methodology is concerned with samples which are representative *relative* to some overall population. CR, conversely, is concerned that the sample or text-selection's *absolute* size, quality and relevance mean that the concrete actors and social relations which are posited can be adequately analysed to identify generative mechanisms (or their absence). Thus, "sampling is guided by theoretical rather than probabilistic considerations." (Berg, Lune 2014, p. 238). As Morrow and Brown (1994, p. 251 *emphasis added*) note, intensive case study research designs analyse "small numbers of cases in terms of a great number of individual properties. The primary question becomes that of explicating the operations of causal processes and meaning structures in a *single* or limited number of cases." In this thesis, four court transcripts were selected because of the key witness participating, Walid Jumblatt. This was done on the basis that this individual has been central to Lebanese politics for decades and represents a political dynasty which stretches back to feudal times, thus interacting with processes and structures of clientelism, sectarianism, consociational democracy and memory operationalised in chapter two. Moreover, he is a former militia commander who benefits from the Lebanese amnesty law (the only one of this group to attend the STL). Thus, theoretically, he sits at the interstice between elite Lebanese political practices and world order within the mediation that is the STL and this is why his testimony has been selected for intensive explication. This reflects the meta-theoretical view that

Contrary to the view of many positivists, it is the well-chosen and well-made case study, rather than the statistical inference, that is often crucial in the development of scientific knowledge,

especially in applied subjects such as biology, medicine and social science. (Ackroyd, Karlsson 2014, p. 24)

Thus, operationalised concepts and phenomena from chapters one and two in addition to the historical and comparative framing of chapter three and the review of the ICL literature on the STL in chapter four, all inform the intensive CDA techniques of chapters five and six and constitute the overall qualitative, historical and discursive approach of this thesis. Throughout the thesis, all these elements are brought into dialogue. As a result of the CR ontological emphasis on emergent, intransitive reality, this thesis identifies and synthesises ideas from a variety of sources and utilises this knowledge to select a fairly narrow but deep case study for intensive explication through CDA techniques utilising “a great number of individual properties” (Morrow, Brown 1994, p. 251). This case’s narrowness is offset by historical comparison for verification of generative mechanisms and variation in historical structure. In reflecting on this kind of intensive case study, Ackroyd and Karlsson (2014, p. 25) note the case in natural science of malaria where, statistical inference was unable to account for the generative mechanism by which it was transmitted. It was Ronald Ross’ intensive case study approach which finally explicated the statistical correlation of malaria with water and insect presence.

[this] research, which is taken to have definitively solved the problem of the cause of malaria, was published in the *Lancet* on the basis of the identification of the malarial infective agent in ... two mosquitoes. As far as is known, nobody suggested that the research was invalid or that the real cause of malaria had not been found on the grounds that the two mosquito cases were unrepresentative.

Similarly, the approach of this thesis is warranted and justified as an investigation into the generative mechanisms present in the theoretically informed and intensively analysed case of Walid Jumblatt’s testimony at the STL. It is further justified by application of comparative generalisation to trace the development and presence of these mechanisms and their function historically.

The data identified for collection is, as follows: STL court transcripts compiled by the tribunal and available via the STL website’s electronic archive. This secondary data from primary sources is rich in detail of the social interactions of key actors and reflects real speech in context which is ideal for CDA (Wodak 2008, p. 3-4). This data is richer than any primary data which could have been obtained through, for example, interviews since the key actors would be bound by secrecy laws while the case is live. Moreover, potential guardedness by participants is somewhat circumvented as their purposes (to give evidence on Hariri) are different to the researcher’s purposes (analysis of hegemony, ideology and historical structure). A thorough critique of the transcripts by someone on these esoteric subjects could not have been in their minds when they were engaged in these activities, but they embody them

(sub)consciously through their speech. As previously mentioned, the four transcripts (470 pages) in which Walid Jumblatt addresses the court have been selected for the reasons expounded. This forms the central case study data subjected to intensive CDA techniques. Historical comparative generalisation will be carried out by discussion of this data in comparative ways with secondary sources detailing the politics surrounding the 1860 European Commission for Syria in order to discuss the development of world order(s) and the role of international law as a tool of hegemony or legitimacy across time. The data collection methods in all cases can be described as unobtrusive in the sense that data collection is “independent of the processes that produced it.” (Berg, Lune 2014, p. 288).

The CDA of Norman Fairclough

The CDA procedures this thesis employs are taken from the 3rd edition of Norman Fairclough’s work, *Language and Power* (2015). Underpinning this approach is a meta-theoretical position of CR and a theoretical position of Critical Theory interested in the conceptions and manifestations of power, ideology, hegemony and common sense, which this chapter has set out, and is therefore compatible theoretically and methodologically. Therefore, what remains is to set out the approach to language and the procedures which this method employs.

In Fairclough’s CDA, language and society share an internal relation whilst remaining irreducible to each other (emergent) (ibid, p. 56). As a result of this, the order of discourse is not a separate phenomenon from social order, but rather social order viewed through the prism of language. A *text* is considered a product of wider discourse which consists of the *social processes of production* and provides cues for *social processes of interpretation* of the text (ibid, p. 57). The *formal properties* of a text are considered as *traces* of the processes of production and as *cues* to the processes of interpretation. However, interpretation is not a transparent process where meaning can be read directly from formal properties. Interpretation only arises from the interaction of the cues in the text with what Fairclough terms Members Resources (MR); the cognitive and social resources and procedures inside actors’ heads which allow them to understand meaning. These include, *inter alia*, *frames*, *scripts* and *schemata* for *things*, *relations* and *activities* respectively (Ibid, p. 168-170). These are all culturally and ideologically variable. The types of discourses and practices drawn upon from the social, institutional and situational order of discourse position and constitute the subject (ibid, p. 62). However, despite this structurally deterministic aspect, agency is possible through the creative use of discourse types and practices to create novel subject positions.

Fairclough makes a distinction between *power in discourse* and *power behind discourse*. Power in discourse generally relates to control by powerful participant(s) of the *contents* of discourse (knowledge and beliefs), the types of *relations* between participants and/or the *subject* positions they can occupy (ibid, p. 75-76). Power in discourse can be expressed overtly through *interruption* or *directive speech acts*, such as *orders* or *questions*, or covertly, such as through *requests*. Power behind discourse is to do with the structural aspects of social order and the access restrictions this places on certain groups and individuals (ibid, p. 83). This can manifest through the exclusivity of certain institutions on some arbitrary basis or other. Whatever the manifestation, the point is to remain sensitive to the question of who has access to certain spaces and discourses.

Fairclough links the interpretation of discourse to common sense and ideology through the idea that ideological common sense refers to the unreflective acceptance of discursive conventions (ibid, p.102). As stated earlier, meaning is not transparently extracted from formal features of text but is a result of the combination of textual cues with MR. This is what Fairclough refers to as *coherence*. Thus, coherence is something which is achieved rather than simply being an objective property. Coherence might be achieved through the interpretive procedure of automatic gap filling where the social knowledge is so common sense that spaces in text are unconsciously filled in the process of interpretation (ibid, p. 104). At the other end of the spectrum, the implication of the cues in a text might not be common sense and may need a conscious process of inferencing to make sense of. This might be so if the interpreter does not have the same cultural or ideological MR as the one addressing her.

Fairclough provides a three-stage guide to his version of CDA, which consists of a *description phase*, *interpretation phase* and an *explanation phase*. In the description phase, the formal features of the text, which constitute the traces of the production process and the cues actors draw upon in interpretation, are highlighted. The interpretation phase Fairclough describes is where “the analyst must draw upon her own MR (interpretive procedures) in order to explain how participants draw upon theirs.” (ibid, p. 176). Self-awareness and intention are what distinguishes the analyst’s use of interpretation and that of the participants. The explanation phase comes full circle and uses theory to explain what is happening in the text’s formal features and the interpretations of participants (ibid, p. 176). Fairclough’s three phases are broken down into discrete sets of questions to be asked of the texts under analysis. However, he is at pains to stress “- it is a guide and not a blueprint.” (ibid, p.129). Here, this author has created a table to demonstrate the conversion of these general questions into codes or specific questions to aid in the analysis of court transcripts of Walid Jumblatt at the STL, which contribute to the understanding of the case study of the STL and comparatively to historical structures of world order. This thesis uses Fairclough’s blueprint extensively during the description phase, but

rather less with regards to the interpretation and explanation phases. The reason for this is that the theoretical and empirical concepts and frameworks developed in this thesis are better equipped to provide interpretation and explanation of Lebanon and world order than Fairclough’s general guide of British society. What has been retained from Fairclough’s phases are those aspects useful for analysing the text or those which overlap with the concerns of the overall approach set out in this chapter. For example, the questions surrounding the *determinants* and *effects* of discourse, how they are (re)produced or used creatively in the explanation phase is directly related to how we assess the development of historical structure *a la* Cox. Interpretation and explanation phases in the analytical chapters five and six largely draw upon the concepts set up in chapters one, two, three and four of this thesis to interpret and explain outcomes in the STL transcripts.

Terminology

1. **Experiential Values** – Traces and cues to contents of participant’s MR (Knowledge and beliefs).
2. **Relational Values** – Traces and cues to the nature of the social relationships of participants.
3. **Expressive Values** – Traces and cues to the speaker’s evaluation of some part of reality.
4. **Sentence Subject (the actor) – S**
5. **Sentence Verb – V (action, state or occurrence)**
6. **Sentence Object (object on which the actor acts) – O**
7. **Sentence Compliment (attribute of the actor) – C**
8. **Sentence Adjunct (extra information not necessary for the sentence to be grammatically complete) – A**
9. **Simple sentence – 1 clause**
10. **Complex sentence – 2 clauses and above.**

<u>Descriptive Phase General Questions</u>	<u>Analytic Questions or Codes for identification in the text.</u>
What are the experiential values of words?	<p>1 a. Oppositional Re-wording (Re-wording with an explicitly or implicitly differing ideological framework)</p> <p>1 b. Over-wording (The use of literal repetition of words, synonyms or hyponyms which indicates preoccupation of the speaker with that phenomena or concept)</p>

<p>What are the relational values of words?</p>	<p>2 a. Euphemisms (Non-direct vocabulary used to avoid negative assessment by others)</p> <p>2 b. Formal Vocabulary (Formal vocabulary which is not technical and could be exchanged for plain language e.g. <i>luncheon</i>. Taken as an indication of relational power)</p> <p>2 c. Informal Vocabulary</p> <p>2 d. Polite Vocabulary (Taken as an indication of relational power)</p> <p>2 e. Technical Vocabulary (Formal vocabulary which is technical and therefore non-replaceable with an informal term e.g. <i>statute</i>)</p>
<p>What are the expressive values of words?</p>	<p>3 a. Negatively valued Vocabulary (Culturally and Ideologically context dependent)</p> <p>3 b. Positively valued Vocabulary (Culturally and Ideologically context dependent)</p>
<p>What metaphors are used?</p>	<p>4 a. Metaphors '[...] a means of representing one aspect of experience with another [...]' (ibid, p.136). Can be used ideologically.</p>
<p>What are the experiential values of Grammatical Features?</p>	<p>5 a. Negation (Negative grammatical form of sentence e.g. 'It is NOT'. Often used to contradict opponents in the intertextual context)</p> <p>5 b. Passive sentence structure - OVS</p> <p>5 c. Event or non-directed action – SV (Subject acting without an object of action)</p> <p>5 d. Attribution process – SVC (A subject's attributes are explicit)</p> <p>5 e. Action process – SVO (A Subject is shown to be acting on a given object)</p> <p>5 f. Agentless passive process – OV (A process occurs with no subject or agency)</p>

	All of interest with regards to what participants and processes are revealed or concealed through grammar.
What are the relational values of Grammatical Features?	<p>6 a. Declarative sentence – SV ... (Speaker as giver of information, less powerful relation)</p> <p>6 b. Grammatical Question - Use of ‘what, why, when, where, how’ and through sentences beginning with linking verbs V (Speaker as asking for information, a powerful relational position)</p> <p>6 c. Imperative sentence– VO or VA (Speaker making a request for action, a powerful relational position)</p> <p>6 d. Obligations and Permissions – Modal Auxiliary Verbs; May, Might, Must, Should etc. (Related to respect and politeness, relationally significant)</p> <p>6 e. Is the pronoun ‘We’ used? (inclusive or exclusive?)</p> <p>6 f. Is the pronoun ‘You’ used? (inclusive or exclusive?)</p>
What are the expressive values of Grammatical Features?	<p>7 a. Categorical commitment to proposition as true or false through negation and linking verbs e.g. Is/ Is not. (Indicates certainty on a given topic)</p> <p>7 b. Assessment of probabilities – Modal Auxiliary Verbs e.g. May, Might etc. (Indicates uncertainty or nuance)</p>
How are simple sentences linked together?	8 a. Logical connectors (Divided into adversatives e.g. <i>but</i> and causal e.g. <i>therefore</i> indicating what the speaker expected or did not expect, what their common sense is and how they view the world)

	<p>8 b. Complex sentence coordination (2 or more clauses connected through a <i>coordinate conjunction</i>. Indicates both clauses are deemed important)</p> <p>8 c. Complex sentence subordination (2 or more clauses connected by a <i>subordinate conjunction</i>. Indicates one clause is backgrounded as an afterthought)</p> <p>8 d. Intra-textual connections (References to previous parts of the text providing coherence)</p> <p>8 e. Inter- textual connections (References to texts outside the one being analysed which form part of the discourse)</p> <p>8 f. Text – situational connections (References in the text to the situation it is part of e.g. court hearing)</p>
<p>What are the interactional conventions?</p>	<p>9 a. (Re)formulations – Of one participant’s language in the words of another</p> <p>9 b. Ambiguity or silence (Discursive tactic of less powerful participants resisting those with relational power)</p> <p>9 c. Control of contents or topic of discourse (Power in discourse to determine the topic and relevance often through asking questions)</p> <p>9 d. Enforcement of explicitness (Often used by powerful discourse participants)</p> <p>9 e. Interruptions (Disruptive use of power in discourse)</p> <p>9 f. Turn-taking conventions</p> <p>I, self-selection?</p> <p>II, Non-self-selection.</p>
<p>What larger scale structures does the text have?</p>	<p>10 a. Are there predictable elements in a predictable order?</p>

<u>Interpretive Phase General Questions</u>	<u>Analytic Questions or Codes for identification in the text.</u>
<p>What is the situational context and discourse type?</p>	<p>1 a. What are the markers of power and social distance? (Referring to relational formal features of the text)</p> <p>1 b. What is going on in this situation? I, What Schemata (activities) II, What Scripts (purposes) III, What Frames (topics)</p> <p>1 c. Who is involved (in what subject positions?)</p> <p>Note: As the analyst, this author is drawing on MR gained through the researching and development of concepts in chapters 1, 2, 3 and 4 to inform this interpretation rather than simply common sense.</p>
<p>What are the intertextual contexts and presuppositions present?</p>	<p>2 a. Inter-textual context I, Negation as rebuttal to inter-textual text II, Presupposition cued by ‘the’ definite article and subordinate clauses</p> <p>2 b. Speech Acts I, Direct Speech Acts II, Indirect Speech Acts</p> <p>Note: As the analyst, this author draws on MR gained through the researching and development of concepts in chapters 1, 2, 3 and 4 to inform this explanation rather than simply their common sense.</p>

Figure 4: Codes for CDA analysis of transcripts

Explanatory Phase

The *explanatory phase* is interested in *structures* as relations of power, in *processes* as practices of struggle and in the dialectical interaction between *social order* on the one hand and *discourse and MR* on the other (See figure 5). Of central importance is the question of whether social structure is reproduced conservatively or creatively and for positive or negative effects. "Reproduction is for participants a generally unintended and unconscious side-effect ... of production and interpretation ... The objective of the stage of explanation is to portray a discourse as part of a social process, as a social practice ... determined by social structures." (ibid, p. 172). Explanation also draws more explicitly on relevant theory, and for the purposes of this thesis, this refers to the concepts elaborated in chapters one, two and four particularly. Nevertheless, Fairclough provides three important analytical questions for the explanation phase.

1. **Social determinants:** what power relations at situational, institutional and societal levels help shape the discourse?
2. **Ideologies:** What elements of MR drawn upon have ideological character?
3. **Social Effects:** How is this discourse positioned in relation to struggles at the situational, institutional, and societal levels? Are these struggles overt or covert? Is the discourse normative with respect to MR or creative? Does it contribute to sustaining existing power relations, or transforming them?

With regard to the position of the analyst, Fairclough notes that during the phase of interpretation the analyst is doing essentially the same thing as the participants and that this is the only access which the analyst has to the MR which is inside participants heads (ibid, p. 175). There is only one difference, but an important one; that the analyst is reflexively self-aware when undertaking interpretation, which the participants often are not. During the phase of explanation, the gap between analyst and participant widens when the analyst draws explicitly and systematically on theory to offer explanations.

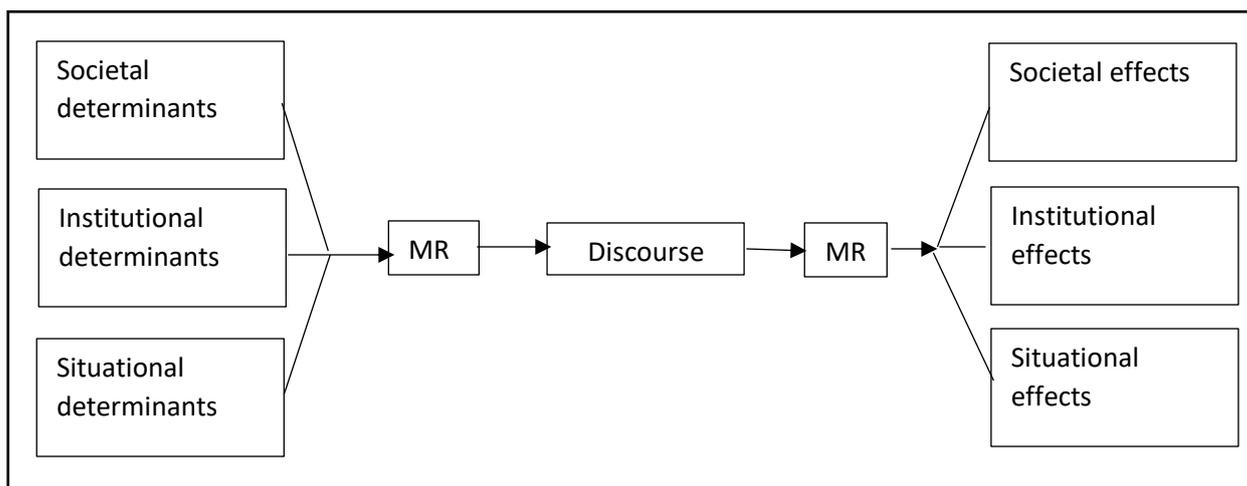


Figure 5: Model of Explanation

Source: Fairclough, N. (2015). *Language and Power 3rd edition*

Nvivo computer assisted qualitative data analysis software (CAQDAS) is utilised for analysis in this thesis. Nvivo is a tool for data analysis. This software allows codes (See figure 4) to be created and for sections of relevant text to be connected to that code so it is identifiable as a particular phenomenon. One advantage this offers is that the same section of text can be attached to as many codes as one wishes. This author has also made use of the *query* feature, to allow for the systematic coding of particular words across all relevant documents simultaneously. This has two advantages. The first is that it saves a large amount of time which would be spent doing this manually. The second is that it ensures consistency. It is important to recognise that Nvivo is a tool and not a method. Where Nvivo has not been able to assist in the procedure of the CDA method, it has been set aside for more traditional techniques. This is the case with *grammatical features* for which manual techniques were required. Chapters five and six now apply this methodology to the transcripts of Walid Jumblatt from the 4-7th May 2015 and use this, in dialogue with material from chapters one, two and four, framed for historical comparison from chapter three, the threads of which are drawn together in the conclusion.

Chapter Two: The Lebanese State-Society

Introduction

This chapter consists of a discussion of four social phenomena which typify the Lebanese state-society complex according to the literature; clientelism, sectarianism, consociational democracy and memory. *Clientelism* and *sectarianism* are often discussed interchangeably with the concept of *confessionalism* in the literature. However, this thesis takes the approach of considering them as separate phenomena for conceptual clarity and then thinking about how they interact and exist within a *causal complex* afterwards. These phenomena are discussed under one heading because of the key debate relating to the relative responsibility of each for different types of violence. Given the centrality of violence to the concerns of this thesis, it makes most sense to discuss these phenomena dialogically. Often, the literature also discusses a *confessional or sectarian system* which appears to consist of these phenomena combined within the state structures of *consociational democracy*. Once again, for the sake of conceptual clarity, emphasis is laid on consociational democracy which will allow one to consider it in isolation and as part of a wider state-society complex. However, after separate consideration of these aspects, their dynamic interaction is considered towards the end of the chapter. Finally, the chapter considers the importance of *memory* in Lebanon. These elements will inform the way the thesis considers the interaction of the STL with Lebanon (See chapters five & six).

Clientelism and Sectarianism

Are Knudsen's (2010, p. 2) article in *Mediterranean Politics* begins with the stated aim of addressing two questions; "how prevalent were political assassinations in post-civil war Lebanon; and what made Lebanon vulnerable to this form of political violence?" It aims to analyse political violence in the post war period, supplementing studies conducted regarding the civil war period itself. A content analysis of primary and secondary data of assassinations and attempted assassinations in Lebanon since independence in 1943 is conducted. This was necessary due to the lack of official statistics on the subject in Lebanon. This tabulation of assassinations provides the context of discussion of Lebanese pre-war *clientelistic* society and a demonstration of the widespread and historical nature of political assassinations in Lebanon. Knudsen defines Lebanon's clientelistic society through reference to key terms. Firstly, reference is made to the *Za'im* (pl. *Zu'ama*), the feudal bosses which populate the higher

echelons of Lebanese society across sectarian affiliations (ibid, p. 2). He then outlines the enforcement and conscription role of the *Qabadays*. The bottom rung in the typology belongs to the *clientele*, that is, ordinary Lebanese who will seek patronage for a certain service from the powerful *Za'im*. In return the *Za'im* expects his clients to reciprocate, particularly through voting correctly in elections which secure the interests of the *Za'im*. The *Qabaday's* role is thus to enforce the arrangement. With this typology in mind, Knudsen makes the argument for a "functional link between clientelism and violence." (Ibid, p. 6). However, this violence is not simply exerted in a vertical fashion by the *Zu'ama* via their *Qabadays* on to their clientele, but also horizontally against rival *Zu'ama*. As a specific case for examination, Knudsen highlights the case of Akkar *Za'im*, Mohammad Al Aboud's assassination in 1953, citing Michael Gilsenan's (1996) study of the clientelistic society of rural northern Lebanon.

A curious anomaly arises between the two accounts. In Gilsenan's work the typology is different; those at the top of the class structure are referred to by the Ottoman Turkish honorific *Bey*. Similarly, the middle ranking class are referred to as *Aghas*, also a term of Turkish origin. Finally, "the landless of the plains and foothills, the *fellahin*, are for the most part direct personal subjects of the lords power, poor sharecroppers and agricultural labourers" (Ibid, p. 13), thus providing a more specifically socio-economic description of those at the bottom of Lebanese feudal society. Michael Johnson (2001) offers clarification, firstly by highlighting the different systems present in rural and urban contexts and then by suggesting differences pertaining to regional practices. In the first instance rural bosses obtain honour and standing through demonstration of complex genealogies and narratives pertaining to their family origin going back as far as the seventeenth century (Ibid, p. 25). City bosses emanate from notable families of the city who came to prominence in the nineteenth and twentieth centuries but who gradually attained the title of *Za'im* once they had successfully engaged in local and/or national politics. With reference to regional differences, Johnson also draws on Gilsenan's study and makes it clear that the use of Turkish honourifics is a local phenomenon practiced in the northern most province of Akkar, even though similar patterns of landlord feudalism existed in different areas by another name (Ibid, p. 42). Thus, the main understanding that can be garnered from Johnson of these taxonomies, is that in many rural areas it related to an essentially feudal landed system. On the other hand, as Johnson puts it "The urban merchants and financiers might have been rich, but they did not hold a monopoly of economic resources in the way landlords did in relation to land ... just as there was a free economic market, so there was a market in political leadership" (Johnson 2001, p. 40). On this understanding, the clientelist system described by Knudsen accounts for both a neo-feudal rural sub-type and more proto-liberal urban one.

There is an apparent disagreement when scholars discuss the degree of responsibility for political violence which resides with the pre-civil war clientelist system in general and the *Zu'ama* in particular. On the one hand, despite its inherent violence, the clientelist system afforded a social order which imparted a kind of stability over a substantial period. This view is present in the work of Michael Johnson. Johnson makes his case about clientelism by arguing three points. Firstly, that the Maronite and Sunni *Zu'ama* of Beirut were responsible both for the independence of Lebanon in 1943 and for the return to peace and development for a decade after the 1958 short civil war (Ibid, p. 5). Secondly, that the 1975 war was generated by exogenous factors, such as the presence of armed Palestinian groups, rather than the clientelist system *per se* (Ibid, p. 6). In conclusion, he states that, conceptually, a distinction should be made between *Zu'ama* feuding on the one hand and wholesale sectarian conflict on the other (Ibid, p. 16). This is central to Johnson's theorising of violence in Lebanon. The crux of Johnson's argument rests on the practice of *mediation*. For Johnson this is a defining feature of the feud, a social relation in which violence is permitted, but with a sense of proportionality in order that it does not threaten the social order and does not transgress certain societal norms, such as the harming of women which was seen as *Haram* (Forbidden) (Ibid, p. 64). Johnson contrasts this limited blood feud violence with the violence of sectarian conflict. Indicative of this latter form of conflict is ethnic cleansing, massacres and, significantly, crimes of a sexual nature such as rape or genital mutilation, in an effort to humiliate and annihilate the sectarian other. Moreover, Johnson makes the case that evidence from the civil war suggested that the majority of these crimes were perpetrated by forces which were confessionally homogenous, such as the Maronite militias during the Karantina massacre or the Druze during the War of the Mountain. In essence, Johnson argues that "It would seem that a single community, convinced of its moral superiority and with a strong sense of solidarity, was more likely to impose communal punishment on a large scale" (Johnson 2001, p. 62). By contrast, perpetrators of these kinds of crimes, he argues, were rarely inter-sectarian alliances such as the LNM.

The argumentative and evidential trajectory presented by Knudsen on assassination contradicts Johnson's claim that *Zu'ama* feuding and confessional conflict are materially distinct. Knudsen's differing perspective on the issue of political violence in Lebanon may be a function of his paper's topic, which is specifically to do with the development of assassinations in the twentieth and early twenty-first centuries. A cursory glance at Knudsen's table of assassinations demonstrates a disturbing propensity for this kind of violence among the elite. These conflicts can rightly be termed feuds and yet the attempts on the lives of high ranking politicians, ex-prime ministers and heads of political parties, make Johnson's assertion that feuding does not by its nature upset the social order look suspect. One might ask whether any society with an instituted practice of assassinations and honour based vengeance amongst its elites and populous can be stable. Though Knudsen does not

implicate all *Zu'ama* to the same extent, he describes the process by which traditional *Zu'ama* politics became transformed in the modern state by their creation of political parties and ultimately, militias (Knudsen 2010, p. 6). In the run-up to the civil war Knudsen argues that, "political violence was instituted through the creation of militias ... The *Zu'ama* were the political centre for the creation of militias and *the rallying point where members of confessional groups sought protection and leadership.*" (Ibid, p. 7 *emphasis added*). This statement comes much closer to direct implication of *Zu'ama* in sectarian homogenization, militarisation and ultimately conflict. Whilst there may be truth in the argument that this was a result of the stimulus of the PLO operating from Lebanese territory as Johnson contends, it still does not absolve the *Zu'ama* of their responsibility for this process and ultimately the civil war in which this issue formed the pretext under which nationalist leaders of different stripes could pursue their visions of a purified Lebanon. In addition to establishing that *Zu'ama* politics was directly implicated in the formation of militias, and that in turn these militias were the groups which conducted violence, feudal, sectarian or otherwise, during the bitter civil war; it also contends that the war changed the character of these assassinations as the maelstrom of conflict provided ample motivation and opportunity for the skills and technologies of assassination to become diffused, especially, under the direction of foreign militaries and intelligence agencies. This imbued a bitter legacy of car bomb assassinations in contemporary Lebanon (Ibid, p. 18).

The cases of Kamal Jumblatt and Bashir Gemeyel illustrate the relationship between feuding and sectarian violence well. Both of these assassinations occurred during the civil war which allows one a view of the nature of the emotions involved among sectarian groups when their *Zu'ama* are assassinated. Kamal Jumblatt was the leader of the left wing revolutionary pro-palestinian, pan-Arab LNM at the outbreak of the civil war, which opposed the Maronite Christian establishment and its various militias (Hazran 2010, p. 165). Jumblatt was assassinated in March 1977 (Johnson 2001, p. 62) by unidentified gunmen (Knudsen 2010, p. 3). The response from many of Jumblatts sect, the Druze (heterodox Seveener Ismaili Muslims), was to massacre Maronite Christians in retaliation. Bashir Gemayel by contrast, was the youngest son of Pierre Gemeyel Sr, founder of the influential right wing Maronite Christian party and militia the Phalange. Bashir rose to prominence as leader, not only of the Phalange militia, but the umbrella military command for Christian right wing forces in Lebanon, the LF (Johnson 2001, p. 66). It is important to note that in attaining this position and consolidating his power, Bashir mercilessly destroyed his Maronite Christian rivals, in particular he perpetrated the Massacre of Ehden (July 1978), allegedly using forces led by a young Samir Geagea, in which Tony Farangieh, son of former president Suleiyman and leader of the Marada Brigade, was killed along with his wife, daughter and approximately forty others. In addition, he prosecuted a campaign against another former president, Camille Chamoun, again by targeting his son Dany and his militia, the Tigers.

This time the son was allowed to live, although that cannot be said for the 150 civilians killed in the assaults on Safra and Amsheit (Khalaf 2002, p. 241). Bashir Gemayel was assassinated in a bomb blast at the Phalange party headquarters in 1982 just before his assumption of the post of president (Johnson 2001, p. 36). He had been targeted before, in one such incident his baby daughter was killed in a car bomb. Though responsibility for this event was never fully established, Suleyman Farangieh Sr considered this a satisfying instance of revenge (Fisk 2001, p. 76). Similarly, upon hearing of the demise of Gemayel himself, Farangieh only regretted that it had not been he who had done the deed (Johnson 2001, p. 37). Despite this lurid background, the confessional Christian militias, like the Druze, did not proceed to consider guilt, but embarked on two massacres in the Palestinian refugee camps of Sabra and Shatila which featured all the associated hallmarks of sectarian massacre enumerated by Johnson such as rape, sexual mutilation and humiliation (Ibid, p. 9 & 225). In both cases then, assassinations which arose from particularly modern, internationalised and deadly feuds led directly to sectarian retribution based on pre-existing sectarian *frames* and *scripts* (See chapter one). It is commonly suspected, if not universally accepted, among academic sources that both Kamal Jumblatt (Hirst 2010, p. 121) and Bashir Gemayel (Johnson 2001, p. 225) were assassinated on behalf of the Syrian regime of Hafez al-Assad, possibly by members of the SSNP. These examples at least, indicate that assassinations are connected causally, and constitutively through common societal norms, to acts of sectarian massacre and ethnic cleansing. Moreover, these acts are perpetrated against, in the language of Samir Khalaf (2002, p. 1-21), “surrogate victims”, whereby the guilt of the perpetrator is at best assumed, at worst irrelevant, and relegated to secondary importance behind the desire for cathartic violence.

The arguments and insights of both Knudsen and Johnson with regard to clientelism, sectarianism and violence have aspects to recommend them. With the former, it is demonstrable historically that violence was integral to the clientelist system, that feuding and assassination gradually became more pronounced, and that the *Zu'ama* were responsible for the formation of many militias; the principle antagonists and perpetrators of sectarian violence during the civil war. Similarly, Johnson's view that clientelist feuding and sectarian violence should be considered conceptually distinct, owing to their differing scale and to the nature of the violence seems convincing. However, Johnson's inference that conceptual distinction or differing origin equates to non-causality within a *causal complex* (See chapter one) is subjected to severe pressure once one highlights the recurrent theme and historical instances of assassinations and massacres located closely in temporal and spatial terms.

Nizar Hamzeh provides a longer historical typology of clientelism which extends the typologies enumerated above. Hamzeh's (2001) paper *Clientelism, Lebanon: roots and trends* has two interlinked hypotheses. Firstly, he claims that "despite the establishment of modern Lebanon, clientelism has evolved and persisted along with other 'modern' forms of participation." (Ibid, p. 167). Secondly, he asserts that the clientelist systems' penetration of state and society restricts the development of rational and universalistic policies and reduces citizen participation in politics to a superficial affair. He analyses the relationship between clientelism and the Lebanese political system, to discuss the development of different forms of clientelism over time and finally in order to speculate on how clientelism might develop in the future. Conceptually, Hamzeh defines clientelism as a social relationship which is dyadic, hierarchical and usually personalistic (Ibid, p. 167). His historical typology of clientelism in Lebanon demonstrates that within the core strictures of what constitutes clientelism, at least five different forms and modes are identifiable from the eighteenth century up to the present; *patrimonial, Zu'ama, political party, militia and Islamist* (Ibid, p. 170). In this account, patrimonial clientelism starts at least as far back as the eighteenth century in mount Lebanon with the *Iqta* system, a hierarchical feudal structure based primarily on the relationship between lords and peasants. Landowning lords (*muqata'jis*) would allow peasants to work the land for them in exchange for security and protection. Land was administratively divided into *muqata'as* (districts) run by notable families. Hamzeh argues that the mode of the relationship between the landed peasants and the families was based on personal loyalty to a family name. Cooperation rested upon what he calls mutual "perceived vulnerability" which involved the "exchange of support for protection." (Ibid, p. 169). Hierarchy in the *Iqta* system was not restricted to the relationship between peasants and noble families, but was also a feature of the relationship between families. The most numerous families at the bottom of the structure were the *Muqata'ji* families who ran the districts. Above them however were the *Sheikhly* families and above them the princely titled *Amir's*. Within mount Lebanon the feudal structure was presided over by the leading *Amir* family, which in the late-eighteenth and early-nineteenth centuries was that of the Shehabs. Hamzeh also highlights how the internal hierarchy related to the wider context of Ottoman suzerainty, namely that the responsibility for mount Lebanon was divided between the three Ottoman vilayets of Damascus, Sidon and Tripoli. The *Amir* of the mountain had to have his contract with the Sultan ceremonially renewed each year by the Pasha of one of these cities. The diadic, patron-client relationship was therefore present outside the mountain and went all the way to Constantinople and found its ultimate expression in the supreme authority of the *Sublime Porte*. There are two observations to be made here. Firstly, the clientelistic relationship with the Sultan constituted, if not an international relationship in the modern sense, certainly an intra-regional and inter-cultural instance of clientelism. Secondly, the whole *iqta* system, from the peasants

in Lebanon to the Sultan in Constantinople, constituted a pyramid structure premised on a single patron. Clientelism in this phase seems to have only one ultimate patron, and all other patronage relationships were subservient to it, fed into it, reinforced it, and were mediated in its name. Hamzeh's observations about the *lqta* system also have significance for wider debates in the literature regarding sectarianism and nationalism. Simply put, this debate is between a "primordial" school, who see sectarianism as pre-modern and hardwired in Lebanon (Salloukh, Barakat et al. 2015, p. 3), and a "post-culturalist" school who, to a greater or lesser extent, see processes of modernisation constructing sectarian identity (Ibid, p. 3). Hamzeh states that the *lqta* system relied on the hereditary, patrilineal assumption of patronage duties by the feudal family of a *muqata'a* over a religiously heterogeneous group of peasant clients whose loyalty was based on family, not sectarian, affiliation. In short he argues that, before 1841, the *lqta* system was non-sectarian, placing him within the post-culturalist camp. On this account, clientelism in Lebanon, as a social structure, pre-dates sectarianism.

Hamzeh's historical typology goes on to outline *Zu'ama* clientelism as the form which became dominant at the beginning of the twentieth century. His discussion of the hierarchical structure of *Zu'ama* clientelism mirrors closely the discussion elaborated at the beginning of this chapter, but he makes a few choice observations about the rationale and modes of *Zu'ama* clientelism. Firstly, he observes that, in the sense that politics was still a hereditary and family oriented affair, it was akin to the preceding patrimonial form. The new families differed from the old in their lack of grand genealogies, the fact they owed their influence to the modernising efforts of the Ottoman state and French mandate authorities, and the fact that the patronage they provided depended on their intermediary role between nascent Lebanese state institutions and their clients. These aspects seem peripheral to Hamzeh, and indeed though the particular form may have changed, patrimonial lords followed some similar practices. The aspect of change that Hamzeh is at pains to draw out as marking a fundamental change, is that, in addition to kinship loyalty, sectarianism became more important as an organising principal for the *Zu'ama* (Hamzeh 2001, p. 171). This places Hamzeh somewhat closer to Knudsen than Johnson on the proximity of *Zu'ama* and sectarianism. Indeed, Hamzeh mentions Johnsons thesis that the *Zu'ama* at local levels suppressed sectarianism among their clients for their own rational self interest in political and economic stability (Ibid, p. 171). However, Hamzeh concurs with Knudsen that the civil wars of 1958 and 1975 both featured *Zu'ama* engaging in sectarian violence, and thus, that they bear a large responsibility for it. To reinforce the point about *Zu'ama* collusion with sectarianism, Hamzeh notes their political activities. Firstly, he argues that the *Zu'ama* were obliged to make confessional arguments if they wanted to be elected because, despite some exceptions, the majority of electoral districts were confessionally homogenous. Moreover, in order to remain effective as patrons, they needed election to ministerial posts in order to provide patronage

(Ibid, p. 171). Here we see a glimpse of how clientelism and sectarianism interact within a confessional consociational democracy such as Lebanon. Intra-sectarian feuding and conflict is incentivised because ministerial positions, sources of patronage, are handed out by sectarian quota (See Salamey, Payne 2008). Meanwhile, because electioneering takes place largely among homogenous voters, sectarian rhetoric, or at least arguments formulated in sectarian terms, are encouraged.

Hamzeh next discusses political party formation, which he argues took very different directions depending on their position on the political spectrum. Firstly, he presents the Maronite Christian parties of the right as maintaining the core tenets of *Zu'ama* clientelism, a leader from a notable family, the propagation of sectarian arguments and the maintenance of a vertically based patronage system. To these familiar aspects he adds the influence of nationalist ideology (Hamzeh 2001, p. 173). Given that the purported aim of these parties was the defence of the status quo in Lebanon (Khalifa 2001, p. 131), this continuity should not be surprising. Even here, we might wish to question the veracity of making a clear distinction between sectarianism and nationalism given that both are forms of identity politics which might possess an internal relation (See chapter one). This makes the difference between party directed and *Zu'ama* clientelism even more negligible, reducing it simply to a matter of size and institutional organisation. With regard to the secular left parties, Hamzeh argues that they did in many cases become heterogenous, that their patronage networks partially changed toward becoming horizontal not vertical, and that most importantly they “invoked ideological programmes independent of any specific act of clientelistic exchange.” (Hamzeh 2001, p. 173). Though political parties can become a powerful platform for making collective claims on material resources, or for creating the basis for new identities, leftist political parties ultimately failed to become more inclusive or to generate a new non-clientelistic mode of political engagement.

With the beginning of the civil war of 1975 Hamzeh states that the *Zu'ama* and political party forms of clientelism were marginalised by the rise of militias who engaged in “repressive clientelism”, which more than any other form utilised “unrestrained corruption and extortion” (Ibid, p. 175). The actual networks of patronage in his account receded to include only the members of the militias vis-a-vis their patron, and reduced citizens to the status of victims. Moreover, some militias effectively annexed state organs in order to fund themselves (See Hourani 2010), thus undercutting traditional forms of patronage. Hamzeh claims that this form more than any other, was beholden to international patrons. With regard to the relationship between *Zu'ama*, party and militia clientelism, he states

Although some militias were still controlled by sons of traditional *Zu'ama*-Amine Jummayyil's Phalange, Dani Chamoun's Tigers militia and Walid Junblat's Progressive Socialist Party militia – others like the Sunni Murabitoun (Sentinels), the Maronite Lebanese

Forces, the Shia Amal (*Afwaj al-Muqawamah al-Lubnaniyyah*), and the Party of God (*Hizbullah*) were led by figures who had arrived recently on the political scene. (Hamzeh 2001, p. 174)

This statement is worth analysing because it typifies some common ontological and epistemological problems epitomised by the use of typologies.

With regard to the former problem, there is an important omission from the key militias active at the outset of the civil war of 1975 (excluding the Palestine Liberation Organisation, due to their Palestinian, rather than Lebanese, identity), that of the Marada Brigade of Sulayman Farangieh Sr. Farangieh was the president of Lebanon at the time of the outbreak of war and came to the presidency by using his son Tony and their militia to storm parliament and force a resolution in a dispute over the election of 1970 (Fisk 2001, p. 76). Frangieh's rise to power involved an alleged involvement in the massacre of the rival Douaihy family at Meziarah Maronite church near Zghorta in 1957 (Fisk 2001, p. 67, Mugarby 2008, p. 185). Farangieh was accused of the murders but never convicted due to the general amnesty in Lebanon after the 1958 short civil war and his self-imposed exile in Syria (Mugarby 2008, p. 185). This sort of deadly internecine feuding and hereditary inheritance of family power marks the Farangiehs out as the archetypal *Zu'ama* family and their central political role in the formation of the LF running up to the civil war marks them as a major omission in Hamzeh's account. There are two anomalous examples of non-traditional militias mentioned which are somewhat misrepresented, the Murabitun and the LF. The former, whilst not led by a "traditional" *za'im* was led by Ibrahim Qulaylat, former *Qabaday* to rival Sunni *zu'ama* Sa'ib Salam and Osman Dana and veteran of the 1958 civil war (Johnson 2001, p. 56). Thus, whilst the Mourabitun were not led by a "traditional" Zaim, they were led by a man who was intimately familiar with, and was a product of, the clientelist system and thus cannot be said to be entirely divorced from clientelism and *zu'ama* politics. The latter example of the LF is an anomalous one because in the early phases of the war (1975-76) the LF was an umbrella organisation for many major Christian militias; Phalange, Tigers, Tanizim and Guardians of the Cedars (Maasri 2009, p. 26). However, under the influence of Bashir Gemayel and his internecine conflicts with the other Christian militias, it became essentially an extension of the Phalange, incorporating the weaker militias. After Bashir's assassination, his ex-leutenants (or, perhaps, *Qabadays*) Samir Geagea and Elie Hobeika rebelled against the Phalange to assert the independence of the LF and then proceeded to squabble with each other over its leadership. In this sense, it can be argued that they were very much a product of the clientelist system.

Highlighting the potential issues with the empirical particulars of the above quote is not intended as pedantry, but rather as instructive. They potentially highlight ontological and

epistemological problems of *reification* (See chapter one). The common assumption of a fixed category of *Zu'ama*, *Qabaday* or any other categorisation have two interlinked problems, namely, a privileging of structure over agency and an implicit conception of subjectivity as unitary natural and preconstituted. Both aspects are clearly present in both Hamzeh and Johnsons' discussion of Ibrahim Qulyat. Hamzeh describes Qulyat as a newcomer, not a *Za'im*, because he did not hail from one of the "traditional" *Zu'ama* families; Johnson does something similar when he consistently describes Qulyat as an "ex-Qabaday" rather than a *Za'im* (Johnson 2001, p. 124). Qulyat did however become the patron within his militia, he was in effect a *de-facto Za'im*. So why then is there a tendency in some literature to deny him the recognition of *de-jure Za'im*? First, to critique Hamzeh's categorisation of Qulyat we need to deconstruct what he means by "traditional". As described earlier, Hamzeh defines *Zu'ama* clientelism in his typology as those families which came to prominence as *neuveau riches* in the late-nineteenth and early-twentieth centuries, somewhat displacing the preceding patrimonial form. This is an account shared by many other scholars (See Johnson 2001; Khalifa 2001; Chorev 2013). Thus, even by his own standards, these *Zu'ama* families he refers to as "traditional" were in the last century, newcomers themselves. They had imposed themselves on the patrimonial structure by utilising new resources and configurations of power available as the Ottoman state modernised and integrated with the world economy. However, despite the fact that Qulyat was exercising his agency, indistinguishable from a *Za'im*, in the civil war, scholars were reticent about granting him recognition because he did not have a certain pedigree. This problem emanates from scholars being unwilling to transgress their own reified typologies and categories in theory, even when Qulyat was busy transgressing these distinctions and asserting his agency in actuality. Thus, the accounts of Qulyat and others like him tend toward determinism through reification of their scholarly typologies. *Zu'ama* and feudal families were newcomers at some point, but subsequently perpetuate the myth of the permanence of their power, status and family name. Whilst it is impossible to avoid using typologies, their heuristic nature must be born in mind lest one unwittingly mirror the rationales and normative outlooks of *zu'ama*.

This is an issue which is pertinent to this thesis which deals with Rafik Hariri who was born in Sidon to a modest family and has no *Zu'ama* genealogy (Blanford 2006, p. 13-39). He was the first in his family to make significant amounts of money or have an impact on the Lebanese political scene. He shunned violence in favour of business and became part of the Lebanese diaspora in Saudi Arabia during the civil war where he made his fortune (Ibid, p. 14). Nevertheless, there are many indicators of *Zu'ama* status and behaviour from Hariri's life (and death). Hariri acted as the client of King Fahd of Saudi Arabia in Lebanon, an internationalised dyadic relation of patronage (Baumann 2012, p. 129). In the wake of the Israeli invasion of 1982 demolition teams began "cleaning up" which "... involved the

destruction of some of the district's most significant surviving buildings and structures ... without recourse to official institutions, on what critics argued were false pretenses and in total disregard for the then-existing (1977) plan for reconstruction ..." (Makdisi 1997, p. 667). This was directly attributed to Hariri on behalf of his patron, King Fahd of Saudi Arabia (Baumann 2012, p. 130). At the same time, Hariri's construction company OGER Liban commissioned plans for the redevelopment of Beirut and were arguably turning this vision in to a *fait accompli* by further clandestine demolitions in 1986 and 1991. In 1991 OGER, managed to appropriate the public CDR and thus the primary state planning body came under the direct control of Hariri's private construction company (Makdisi 1997, p. 670). In 1991, law No 117 was passed by decree which, *inter alia*, stipulated that the establishment of a real estate company designed to "reorganise" properties in the war damaged centre of Beirut would be establishable, but only with the agreement of the council of ministers chaired by the Prime Minister (Mugraby 2008, p. 181). In addition, the council of ministers could appropriate property by decree and offer remuneration through a category of judges not attached to the judiciary, leaving property owners with no recourse to law (Ibid, p. 181-2). Reinoud Leenders (2012, p. 62-64) provides some evidence for the problematic, damaging and potentially corrupt nature of these "appraisal committees". The first category of issues he identifies are to do with their indeterminate status as public or private institutions. He notes that the Lebanese Higher Judicial Council itself ruled on the 21st of February 1994 that the committees did not form part of the judiciary (ibid, p. 63). This, he argues, makes the legality of the decisions issued by judges participating in these committees, and their mere participation itself, questionable (ibid, p. 63). In 1992, Hariri became Prime Minister and, as Mugraby notes (2008, p. 181- 182)

Only one company claimed the benefit of this law [law 117]: Solidere ... Solidere was launched with fanfare under the open patronage of Prime Minister Hariri, its founder and largest shareholder. It held itself to be *the* company and it is clear that a whole public law was originally designed to serve it.

In the event, property owners, leaseholders and tenants had their property appropriated in a direct transfer of title and deed from the land registry to *Solidere* on the word of Hariri's political ally, Fouad Siniora (Ibid, p. 183). Law 117 stipulated that the shares offered to property owners by the appraisal committees should be related to the value of the original property (Leenders 2012, p. 62). However, some property owners claimed that their property was undervalued (ibid, p. 64). Leenders presents several pieces of evidence which suggest these claims are valid. Firstly, the committee judges often failed (or were unable due to continued demolitions) to conduct site visits (ibid, p. 64). Moreover, *Solidere* assessments were used *in lieu* of site visits, a problem given *Solidere's* economic interest in

acquiring property as cheaply as possible (ibid, p. 64). Lastly, many assessments commenced before the final plan for reconstruction was unveiled which may have caused the price of property to rise (ibid, p. 64). All of this framed in a context where the committee judges' wages were eventually shown to be paid by *Solidere*, rather than the state, creating a direct conflict of interest (ibid, p. 64). Another notable land grab made by Hariri utilised similar methods to appropriate, without compensation, the land on the *Al Amine* Mosque society which had been using donations to purchase land for a mosque in martyrs square since 1950 (Mugraby 2008, p. 184). By the 1990's, the society was opposing the redevelopment project of *Solidere* and thus

On 20 August 2002, Presidential Decree No. 8572 was issued under the signatures of President Lahoud, Prime Minister Hariri and Minister of the Interior Elias al-Murr, dissolving the association. Based on this decree, the ownership of the real estate was administratively transferred to the Islamic Awqaf Department that reports to the office of the prime minister, a de facto expropriation. (Ibid, p. 184)

Hariri proceeded to build the *Al Amine* mosque on this land and his body is now entombed next to it. Whilst never a militia commander, Hariri apparently showed no qualms about causing harm to those below him for his benefit and that of his clients, or, more generously, in his pursuit of his vision of a reconstructed Lebanese *entrepot*. Whilst Hariri and his supporters presented his projects as the antithesis of sectarian clientelism and couched it in neo-liberal terms acceptable to the IMF and World Bank, the appropriations and corrupt colonisation of public institutions for monopolisation, personal wealth and cronyism is largely similar to the colonisation by the Phalange of state institutions during the years of militia dominance (See Hourani 2010). In this way, this behaviour displays similarity to that of the repressive militia clientelism identified by Hamzeh, but without guns. In addition, the pursuit of electoral success through sectarian patronage, the creation of a political party as a personal vehicle, the apparent heredity of the Hariri name through his son Saad, and the veneration he receives as a martyr from ordinary Lebanese all point toward designation as a *Za'im*. This thesis will maintain the heuristic that Rafik Hariri constitutes a *Za'im* within the wider spectrum of what that entails. Indeed, Hannes Baumann (2012, p. 134) has argued that, owing to the scale of his personal wealth and the national scale of his philanthropic ventures, Hariri should be considered a 'super Zaim'.

The final and potentially most important epistemological problem with typologies is highlighted by Ussama Makdisi (2000) in *The Culture of Sectarianism; Community, History, and Violence in Nineteenth-Century Ottoman Lebanon*. The thesis of his book is that the culture of sectarianism in Lebanon, is a product of modernity, not a tribal or primordial phenomenon. Makdisi investigates the changes taking place between the late-eighteenth and mid-nineteenth centuries, the

violence arising from the period of Egyptian occupation and withdrawal (1831-1840) and particularly the conflict of 1860. Key explanations for the elaboration of sectarianism are found by Makdisi in the extension of European cultural hegemony into the mountain, spearheaded by missionaries and travel writers, in an atmosphere of Ottoman indifference to its underdeveloped periphery and the modernizing Ottoman reforms of the *Tanzimat*, in particular the *Gulhane* decree (themselves a response to European hegemony). Makdisi provides a useful definition of sectarianism as “deployment of religious heritage as a primary marker of modern political identity” (Ibid, p. 6). Makdisi is quite unequivocal about how religion became a “primary marker”; he states that, from the middle of the eighteenth century, European travellers and missionaries developed a typology of people in Lebanon based on their religious sect, they produced knowledge in these terms and developed a self referential discourse which explained the Lebanese communities in this way (Ibid, p. 23). Makdisi’s case is that these supposedly objective, scientific, enlightenment discourses had more to do with “European fantasies” and orientalist biases than with reality. This is exemplified, in the idea that Lebanon was a mountain refuge perennially under threat from Ottoman Islamic despotism. Moreover, similar to Hamzeh, he notes that the primary identity marker before this was family name; whether you belonged to the nobles (and clergy) or the *fellahin* (Ibid, p. 38). Makdisi’s methodology follows from the work of Edward Said, particularly his work on Orientalism, and by extension it fits broadly with Foucauldian perspectives on knowledge, power and modernity. Thus, Makdisi constitutes a critical approach to epistemology which appreciates that typologies can constitute reality and become a resource for the expression of power through knowledge. Moreover, it demonstrates that meaningful reasons for (inter)action can become causes in themselves.

Whilst this “gentle crusade” of missionaries and writers was occurring, Makdisi shows how the international and regional environment began to change and how the dialectical relation between the two began to fundamentally alter society in Mount Lebanon. Firstly, missionary movements were reflective of, and agents for, the increasing European presence in the Ottoman Empire generally and the Levant in particular. He mentions *the capitulations*, unequal trade agreements between the Sublime Porte and European powers which allowed the latter to be subject to their own laws in Ottoman territory (Ibid, p. 21). He elaborates on the way in which European imperial rivalry, particularly that of Britain and France, began to create a new geography of identity in mount Lebanon where “... the French increasingly traveled, resided, and felt most comfortable in the Maronite parts of Lebanon, whereas the Protestant travelers explored and recommended the hospitality of the Druzes with increasing vigor.” (Ibid, p. 24). This naturally followed from European typologies which were based on religion, the assumption of inherent differences between communities and blindness to any notion of organic heterogeneity in culture and society in the mountain. Therefore, intervention

by European state or non-state actors entered through the vector of religious sect. More concretely, Napoleon's invasion of Egypt set in motion changes which threatened the integrity of the Ottoman Empire. In the power vacuum left by the departure of the French, Muhammad Ali Pasha became ruler of Egypt and by 1831 he had conquered greater Syria, defeated the Ottoman army and advanced into Anatolia. Thus between 1831 and 1840 mount Lebanon found itself under the military occupation of Muhammad's son, Ibrahim Pasha. Makdisi considers this to be the point at which the *iqta* system in mount Lebanon was irrevocably changed, as these events gave rise to the Ottoman *Tanzimat* which would attempt to modernise the empire which ensured that the European great powers would increase their activities within the empire (Makdisi 2000, p. 51). The Egyptian occupation ruptured the pyramid hierarchy of the *iqta* because the maronite *Amir* Bashir Shehab and some Maronite *Sheikhs* and commoners collaborated with Ibrahim, even taking up arms against the Druze, whilst many Druze *Sheikhs* resisted in the name of the Sultan, some suffering exile as a result (Ibid, p. 53). In addition, the Ottomans were forced to initiate a European alliance to defeat Muhammad Ali, further cementing European involvement in its affairs. Thus, the defeat of Ibrahim and his retreat from Syria in 1840, created a power vacuum in addition to the contradictory messages of the *gulhane* decree, which promised both a respect for traditional prerogatives *and* equality for all Ottoman citizens. In this context Makdisi (2000, p.62) states

The fluid political situation of 1840 allowed the indigenous elites to make new political claims that invoked mythologized sectarian pasts. Their petitions and letters that spoke of an historically Christian or Druze Mount Lebanon revealed an incipient culture of sectarianism in its moment of production.

Makdisi's concern here is with an elaboration of how sectarian discourses began to reconstitute the identity of the mountain's inhabitants in times of political upheaval and reform. However, if we consider clientelism, as defined by Hamzeh as relationships of a dyadic and asymmetrical nature, we see that the key shift is of a social and political universe in which the Sultan is the only ultimate patron, to one in which international and then regional powers begin to impose themselves as potential sources of patronage. Furthermore, as Makdisi (2000, p.61) illustrates "The point of contact and collaboration between the Great Powers and the local elites was communal." Thus, the logic of clientelism, which had always expressed itself regionally whilst maintaining a rigid hierarchy and stability, took on a chaotic and sectarian form as more patrons established themselves at the regional level. More fundamentally though, assumptions of sectarianism by Europeans eventually contributed to the constitution of that reality in Lebanon, or, at the least, its activation and politicisation from a latent state.

These upheavals ushered in a period in the mid-nineteenth century which was to see unprecedented escalations in violence, international intervention and ultimately a nascent form of nation-building in Lebanon. The attempt to return to a nominal status quo after the Egyptian occupation failed almost immediately, with clashes between Druze *Sheikhs* attempting to restore their privileges and Christian *fellahin* who would no longer be ruled by Druze *Sheikhs*. The issue of whether the Christian *fellahin* refused to submit because their overlords were Druze *Sheikhs* or **Druze Sheikhs** is difficult to determine, however, the Christian *fellahin* of Kisrawan did evict their Maronite *Sheikhs*, the Khazins (Ibid, p. 97). It is likely that both elements played their part as religious discourses of the newly empowered, assertive Maronite clergy mixed with enlightenment French revolutionary discourses around emancipation, freedom and equality. This represented one of the first instances of a recurring phenomena in Lebanese politics and society which Samir Khalaf (2002, p. 98) identifies as the tendency to move from issues of “divisible goods” to “indivisible principles” during conflicts, which gives them an intractable quality. Thus, the violence of 1841 around *Dayr al-Qamar* was serious enough that the emirate of Qasim Shehab, was abolished and replaced by a system devised externally by the Great Powers and the Ottoman Empire as they vied to pursue their divergent interests; the system of the two *qa'immaqamiyas* (Districts). This first solution, in 1842, split the emirate in two, ‘Christian’ north and ‘Druze’ south, a solution which totally overlooked the demographic realities of the regions (Ziadeh 2006, p. 57). As the restive Christian populations of the southern *qa'immaqamiya* continued to protest at Druze overlordship, and violence continued, the Ottoman official Shakib Effendi arrived to update the system by grafting on to each region an administrative council representing sectarian minorities. Though the British agent Richard Wood had first suggested a confessional power-sharing solution four years previously, this was the first time that one had been instituted. One can thus clearly see the DNA of the modern Lebanese state, with its esoteric mix of sectarian powersharing, clientelist politics and their “internationalisation”.

Consociationalism

The particular makeup and development of Lebanon’s political system has attracted considerable attention from political scientists concerned with the nature of divided, fragile and/or post-conflict states, particularly with regards securing democratic practices and managing conflict between communities. Of particular note is the large literature on *consociationalism*. The consociational literature was not originally concerned with Lebanon particularly, but considered it a useful case study, for comparative political theory and for theory-building (See Lehmbruch 1974). However, scholars began to apply this model to understand Lebanon’s particular development and consequently brought

more Lebanon specific knowledge to bear upon it (See Dekmejian 1978). Thus, there are now two parallel but overlapping trends; the Lebanon as case study for theoretical elaboration in political science approach (See Drake, A., & McCulloch, A. 2011) and the consociationalism as an explanatory concept for analysis of the Lebanese political system (See Salamey, Payne 2008). Consociationalism has now permeated some of the academic work on Lebanon and is often a part of the conceptual tool kit required to understand it (See Hamdan 2012, p. 39). Consociationalism refers specifically to power sharing arrangements in divided polities. An influential definition by an influential theorist of consociationalism, Arend Lijphart (1969, p. 216), identifies it as “government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy.” In Lebanon, this elite cartel was first forged by the Maronite and Sunni elite in 1943 with reform of the 1926 constitution and verbal “national pact” (Salamey, Payne 2008, p. 453). The former was drawn up under the French league of nations mandate authorities which instituted a political “hegemony” of Maronites over other confessional groups and the ultimate executive power and veto of the French high commissioner (Ziadeh 2006, p. 94, 114). The independence constitution reallocated the powers of the French high commissioner to the President of the Republic. Meanwhile, the verbal “national pact” between representatives of the Maronite and Sunni “pragmatist” elite represented by Bechara El-Khouri and Riad El-Solh, agreed to divide executive and legislative positions in government between the different sectarian groups according to population based on the 1932 census. This census showed a Maronite majority of 54% (Salamey, Payne 2008, p. 455). Thus, the Maronites got the Presidency, the Sunnis the Prime Ministership and the Shia followed by attaining the speakership of parliament in 1947 (Ziadeh 2006, p. 118). The legislature, executive and public office positions were distributed on a 6:5 ratio in favour of Christians *vis-a-vis* Muslims. A tacit system developed from this, whereby particularly prestigious jobs were claimed by sectarian communities as their sole prerogative, either with the consent of other sects or with some claim they were “divinely” inherited (Ibid, p. 118). However, as Ziadeh (2006, p. 119) points out, the most powerful office in the land was by far the Maronite Presidency, which inherited the right to dismiss the Prime Minister and rule by decree from the French high commissioner, leading to a lingering feeling of ‘*Ghubn*’ (injustice) among other sects. The *Taif* accords, which finally ended the 1975-1990 Civil War, and the concomitant constitution essentially retained this system whilst updating the parliamentary ratio to a 50:50 split and transferring executive powers from the Maronite president to the council of ministers overseen by the Sunni Prime Minister.

In addition to this kind of “grand coalition”, Lijphart (1995, p. 276) later argued that an “ideal-type” consociational democracy should employ *mutual veto*, *proportionality* and *segmental autonomy*. Mutual veto on important issues is something which has been introduced *ad hoc*

depending on the relative balance of power after an election and the practical need to create functioning governments of “national interest” (See Oxford Research Daily Brief Service 2014). However, in one important case, veto power has been refined and institutionalised (though often violated). Marie Joelle-Zahar (2012, p. 66) notes that this process began in the 1958 short civil war which was triggered largely by President Camille Chamoun’s attempt to join the US-led *Baghdad Pact*, violating the foreign policy neutrality agreed upon in the “National Pact” by Khouri and El-Solh at independence. The *Taif* constitution of 1989 rectified this by requiring that a parliamentary vote on foreign treaties and declarations of war was required, wresting this executive power from the Maronite Presidency. Veto power has led to the virtual paralysis of state institutions in the recent past as most substantive issues have been hostage to polarised positions.

With regards to proportionality, the picture is less clear. Lebanon’s sectarian division of seats in parliament is still based on the 1932 census carried out under the French mandate authorities. The key problem with this is that it no longer, if it ever did, represents the demographic reality. It has more to do with allaying the fears of Christian marginalisation. As such, the system remains rigid, the key example of this is that the approximately 400,000 Palestinians in Lebanon are not politically represented or properly socially integrated, a problem potentially ready to be emulated by a new generation of Syrian refugees. However, the fact that a census is used at all allows authorities and supporters to claim that the system is proportional. Imad Salamey and Rhys Payne (2008, p. 470) argue that the system is not truly proportional and that it constitutes “quoted confessionalism”. In their view, only once seats and government positions are apportioned by vote share, will the system truly attain the status of consociationalism. One might add that only once the Palestinian community are given the vote will it be entirely democratic and inclusive.

Finally, segmental autonomy is probably the most rigidly implemented aspect of the consociational ideal type in Lebanon whilst also being one of the most injurious to personal liberties. The main issue is that sectarian segments may be autonomous, but individuals and groups are not able to exercise full autonomy in creating new, non-sectarian “segments”. As Paul W. T. Kingston (2013, p. 88) notes in his study of Lebanese civil society, the greatest expression of this segmental autonomy is the power of the sectarian religious institutions in matters of personal status law; marriage, divorce, inheritance and child custody. Kingston elaborates how the French mandate authorities, in their desire to secure alliance with the patriarchal, clientelist and sectarian elites of the country, struck a deal in which the central state would not intervene in matters of personal status. This ensured that sub-state religious institutions retained tight legal control of their communities, especially of women and children. Kingston (2013, p. 88) notes, “Particularly consequential ... in

Lebanon has been the use of this institutionalized power to police the movement across communal boundaries, especially with respect to cross-communal marriage [the restriction of which] freeze Lebanon's sectarian divisions in place." Maintenance of the personal status regime not only reflects, but constructs, Lebanese society as segmented and under control of sectarian/religious elites. Lijphart (1995, p. 275) argues that, regarding segmental autonomy, self-determination rather than pre-determination is preferable. Though he is primarily talking about self-determination of ethno-sectarian *segments* through proportional representation, he also specifically states that secular individuals and parties should be extended the same rights (Ibid, p. 285). This would make sectarian identity optional rather than obligatory and loosen the grip of religious authorities.

Opening space for secular identity is highly difficult in Lebanon given "the absence of a civil personal status law regulating the family affairs of Lebanese electing to marry outside sectarian affiliations and courts." (Salloukh, Barakat et al. 2015, p. 33). Bassel F. Salloukh et al. (2015, p. 32-33) note, similar to Kingston, that the institutionalisation of this sectarian personal status regime, along with the consociational system in general, trace their lineage to European interventions in the mid-nineteenth century, through French colonial rule, to the present. Nevertheless, they note that Lebanon has seen some changes in the recent past, first with an initiative begun by Talal El-Husseini in 2007 allowing one to expunge sect from ones' state records by exploiting an already existing decree allowing one to move sect (Ibid, p. 36). This encouraged many Lebanese to leave their sect without signing up to another, creating a *de facto* civil identity in the liminal space. It is worth recalling that in 1975 at the outset of the Lebanese civil war, identity papers were used by militias of both sides to identify civilians for murder (Fisk 2001, p. 79). Thus, an administrative act becomes somewhat radical in the fight for emancipation from violence. Some Lebanese used this liminality as a basis to create *de facto* civil marriages from 2012, in effect, inviting legislators to catch up.

Prominent members of the sectarian/political elite, including Saad al-Hariri, Jumblatt, and Aoun, and also President Suleiman, favored adopting a civil marriage law. The Prime Minister Najib Miqati avoided the debate altogether, arguing that it is inappropriate to consider this sensitive issue with the country passing through a difficult political crisis. Most intriguing was the reaction of the country's religious elite, however. The Council of Maronite Bishops argued that religious and civil marriages may coexist, while the Higher Islamic Shi'a Council and Hizbullah denounced civil marriage in no uncertain terms, as did the Sunni Mufti Mohammad Rashid Qabbani. He declared every Muslim who enters into a civil marriage to be a sinner, who was bound to be denied proper Muslim burial rites. (Ibid, p. 37)

It is interesting to note this phenomenon, given the supposedly all-encompassing narrative of Sunni-Shia antipathy driving the Middle East in the twenty-first century. It points to the existence of an entrenched personal status regime within this particularly sectarian, clientelist, consociational system in Lebanon. At present Lebanese personal freedom and politics are still over-determined by religious institutions and sectarian elites. Thus, consociationalism has become entrenched in the academic discourse on Lebanon owing to its ability to describe empirically many of the power-sharing and other institutions of the country. However, it should be noted that with consociationalist scholars, consociationalism is not always simply an empirical description, but a normative “call for consociationalism” (Salamey, Payne 2008, p. 451). This may not at all be desirable and a nuanced empirical understanding, with a normative view to emancipation from structures of domination and violence, is privileged in this thesis. Consociationalism in Lebanon was instituted through colonial interventions based on conceptions of primordial stable identities and which have constructed the reality of sectarianism. Consociational scholarship which emphasises a conservative reliance on the “elite cartel” are likely to be damaging in the Lebanese context given this elites proclivity for clientelist practices and sectarian politics.

Bassel F. Salloukh, Rabie Barakat, Jinan S. Al-Habbal, Lara. W Khattab, and Shoghig Mikaelian’s (2015) study *The Politics of Sectarianism in Post-War Lebanon* conceive of consociational politics as simply the political layer of a deep “sectarian system” through which sectarian elites maintain control of “sectarian fiefdoms” within the Lebanese state-society where sect functions as an extended “clientelist network”. Rather than place their faith in the sectarian elite, they note that the consociational, sectarian system maintains an unjust “political economy” through an “ideological hegemony”, which makes “... it difficult for most people to even think of viable alternatives to the political economy and ideological hegemony of the sectarian system.” (Ibid, p. 3). This analysis also brings in to view the ways in which, despite differing origins, sectarianism and clientelism have converged to produce a consociational and sectarian system in Lebanon. This is how, from the perspective of Lebanese civil society, issues such as civil marriage take on an emancipatory impetus and are “... but one battle in a long struggle to undermine the institutional edifice assembled to reproduce sectarian subjects.” (Ibid, p. 37).

From the perspective of world order, Marie Joelle-Zahar (2012, p. 64) notes the propensity for “patron seeking behaviour” in the relations between Lebanese consociational factions and foreign powers. Her explanations emanate from a conception of the Lebanese state-society as weak and soft. The state is weak in the sense that it acquiesces to clientelist and sectarian parties and leaders. Moreover, society is conceived as soft due to its receptiveness to transnational ideologies. This

prompts Joelle-Zahar to posit that the reasons for this weakness and softness come from what she calls “credible commitment problems”, “framing”, and the negative repercussions of foreign intervention on domestic institutional rules. The first set of problems means that the state cannot or will not deter sub-state actors from using force against the state or against other sub-state actors. Neither can it assure communities that they will not be marginalised in the political system or that they will be physically protected from sub-state groups, the state itself, or foreign powers (Ibid, p. 67-70). This leads to the second tendency, whereby factions attempt to attract foreign patrons to their causes in order to balance against other domestic factions with which they have a security dilemma. This is done, Joelle-Zahar argues, through ‘framing’ their domestic rivals as the common enemies of their faction and of the potential patron-state, intimating an overlap of interests (Ibid, p. 71). Finally, she contends that, if and when, intervention is solicited from an external patron, this intervention has further undermining and destabilising effects, particularly on the constitutional consociational safeguards which are meant to ensure the Lebanese state can assure its various factions. This has the effect of initiating further rounds of patron seeking behaviour from the other factions. In regards to intervention, Joelle-Zahar looks at both Syrian and Western variants. When Syria became the guarantor of Lebanese stability after the signing of the *Taif* agreement, it was primarily Maronite factions which opposed its role, represented by general Michel Aoun who launched, and lost, a military campaign against Syrian forces in 1990 and subsequently went into exile in France. Due to Maronite hostility to its role, Syria proceeded to impose selective justice in order to emasculate the LF by imprisoning Samir Geagea, whilst a blanket amnesty was instituted for the other wartime *Zu’ama* (Blanche 2012, p. 157). Syria then made plans for elections in 1992 which the Maronite factions boycotted, stating that elections would be invalid under the *Taif* constitution if their community was not represented (Zahar 2012, p. 71). In 2000, electoral district boundaries were redrawn in order to minimise the effectiveness of the Maronite vote.

Joelle-Zahar argues that the U.S. and France demonstrated they were no less willing to undermine the basis of consociational assurance and cooperation for their own strategic ends (Ibid, p. 79). The main mechanism for the increased western activism in the early 2000’s was the UNSC in which the U.S. and France drafted resolution 1559 calling for all Lebanese and non-Lebanese militias to disarm, thus increasing the insecurity of Hizballah and the Shiite community. In addition Joelle-Zahar notes that the West supported the outcome of the 2005 election despite reports of “vote buying” on behalf of March 14th candidates (Ibid, p. 75). Thus, the March 14th government of Fuad Siniora felt empowered to refuse March 8th a minority veto which would have helped assure them that they would not be marginalised. This became salient when Shia ministers resigned from the cabinet in November 2006 over alleged complicity of March 14th with Israel in the 2006 war and March

8th objections to the STL. The remaining unrepresentative government was the one which approved the statute of the STL, violating *Taif* constitution principles of confessional representation and consensus on issues of national interest and foreign policy (Ibid, p. 77). A minority vote and a concomitant national unity government was only achieved after the stalemate erupted into open violence in May 2008. This government was in turn brought down in January 2011 as a direct result of the STL's issuing of indictments to Hizballah members. Joelle-Zahar provides an elegant realist-constructivist account of the dynamics which reproduce and perpetuate inter-factional security-dilemmas and foreign intervention. However, the binary representation of states along a weak-strong axis has the problematic tendency to promote fixes which increase the strength of the state in a region prone to authoritarianism. Hanna Ziadeh (2006, p. 167) argues the contradiction of the weak Lebanese state is to provide some measure of pluralism, civil society and press freedom, despite its flaws. Whilst increased strength through promotion of the productive economy and underdeveloped regions, and provision of civil rights and duties might be desirable, they are prone to corruption, unless constitutional checks and balances exist, are respected and enforced. Strength in this sense must be contrasted with a crude strength of the military and intelligence institutions.

The assumption of a weak state or state failure in Lebanon, in both academic and official discourse, has been challenged recently by scholars with an interest in the Lebanese state, its relation to society and its production of sovereignties and forms of governance where traditional accounts contend there should be none. The empirical work has addressed a broad range of institutions, regimes and state-society relations, from financial and security arrangements to Palestinian refugee camps (See Hourani 2010, Kosmatopoulos 2011, Fregonese 2012, Stel 2014, Muawad, Baumann 2017). Jamil Mouawad and Hannes Baumann (2017) contend that, theoretically speaking, the weak state assumption relies on the Westphalian determination of relative weakness *vis-à-vis* other states, and the Weberian understanding of the state's power *vis-à-vis* sub-state societal actors. They note that this often leads to the consideration of the Lebanese state as "... irrelevant, or absent" (ibid, p. 66). Sara Fregonese (2012, p.656) notes the dire consequences of the Weberian ideal model which posits a state's sovereignty as largely identified by its possession of "a monopoly on the legitimate use of violence within its territory" (Biersteker and Weber 1996, p. 14 quoted in Fregonese 2012). These dire consequences not only arise from a theoretical description of the state, which is by no means universal, but more importantly from the normative argument that this *should* reflect state-society relations, and if it does not, militarised violence and foreign intervention are justified in imposing this reality (ibid, p. 656). An example of this kind of argument can be found in the work of Nikolas Gvosdev (2011) of the U.S. Naval War College. Fregonese (2012, p. 656) notes that these approaches tend to consider sovereignty in a zero-sum way "as either managed by the state or totally absent ... [justifying]

the need for military intervention to ‘strengthen’ sovereignty.” Contra this position, Fregonese proposes a theory of the Lebanese state using the concept of hybridity, where sovereign functions are achieved through complex state-society relations, institutions and regimes which do not conform to rigid state-society distinctions (ibid, 657).

This approach better describes empirically what sovereignty looks like in the Lebanese context, as well as serving the normative purpose of undermining supposed remedies which rely on military intervention. The concept of hybridity relates to this thesis in several ways. Firstly, in Fregonese’s work, and that which follows it, it is largely a concept necessitated by mainstream IR approaches which impose rigid distinctions between state and society, sovereignty and anarchy, legitimacy and illegitimacy. The approach in this thesis is one of following the injunction to study state-society complexes empirically as idiosyncratic, rather than by applying an ideal type. Thus, these approaches arrive at a similar place for similar purposes, namely, to unsettle inaccurate and damaging mainstream categories. Secondly, it is important to note that the language of hybridity arises, not only in these political accounts, but also in the legal literature on Lebanon and the STL. Considering the distinctions, similarities and potential internal relations of these forms of hybridity is a contribution which this thesis can make to the discussion. As Fregonese points out, mainstream academic and diplomatic approaches consider conditions of political/military hybridity in state-society relations as evidence of a lack of sovereignty. However, in the discourse of International Criminal Law (ICL) on the STL, the creation of hybrid legal institutions like the STL (hybrid because they contain some mixture of national and international law and/or personnel) are touted as the means through which incomplete Lebanese legal sovereignty can be fulfilled (See chapter four). Thus, despite appearance to the contrary, agents of world order do not oppose all forms of hybridity, legal forms of hybridity emanating from world order and international society are to be welcomed as the disinterested solution to the supposed lack of legal sovereignty in Lebanon (despite the apparent contradiction which arises when local laws are displaced by internationally formulated ones contra the text of the STL statute, see chapter four). Hybridity arising from some constellation of domestic state-society improvisation are to be decried as the antithesis of sovereignty. However, the purported answer to these problems, in both cases, involves intervention. In the first case, military intervention is touted as the answer to undesirable state-society hybridity to restore sovereignty, in the latter, the imposition of hybrid tribunals is allegedly a mode of sovereign completion. Fregonese (2012, p. 659) argues “we should see Lebanon as a constellation of hybrid sovereignties”; it is in this spirit that this thesis adds a type of hybridity to the discussion by transgressing the law/politics distinction, drawing attention to the dynamics of conflict between world order, state and social forces, highlighting the historical antecedents of legal intervention, hybridity and colonialism in Lebanon, and the common

denominator of seemingly contradictory approaches to sovereignty and hybridity, namely, power. This thesis thus seeks to make a modest contribution to the emerging literature on the Lebanese state.

Hanna Ziadeh's (2006) study *Sectarianism and Intercommunal Nation-Building in Lebanon* traces the constitutional development of Lebanon via "sectarian ruptures, communal compromise and constitutional continuity." (Ibid, p. 11). As his particular interest is modern nation-building in the Middle East, he selects the violence of 1841 and the concomitant creation of the *qa'immaqamiyas* 1842 and the *nizam* of Shakib Effendi 1845 as the starting point of his study. This is because they provide the first texts which constitute a basis for the legalistic demarcation of space, creation of powersharing institutions, and formalisation of limited local decision making and partial international recognition (Ibid, p. 55). Ziadeh applies this methodology to four more ruptures and texts, to trace the development of the Lebanese state; the civil war of 1860 and the establishment of the *Mutasarriffiyya*, World War One and the creation of Grand Liban in 1920, World War Two and the Republic of the National Pact, the Civil War of 1975-90 and the *Taif* constitution of 1990. This highlights the mutually constitutive processes of violence, external intervention and rounds of nation-building. However, Ziadeh's central concern is the highlighting of a central contradiction which appears in all of these documents; the simultaneous acceptance that sectarianism is normatively undesirable, whilst writing it into the constitution and leaving it open for resolution at a later date. This contradiction, in Ziadeh's view, leads to instability, insecurity and violence. The two logical solutions which present themselves are either to secularise the constitution forthwith or alternatively, to accept sectarian representation as a permanent and inalienable feature of the Lebanese state-society and give it a permanent place in the constitution. Ziadeh's argument on practical and ethical grounds opts for the latter, arguing that the Lebanese penchant for communal powersharing has developed to become more truthful about its purpose; to balance the interests of the sub-state communities with that of the central state vis-a-vis other communities. This moves him to argue that

With the 'second independence' from Syria, Lebanon can more than ever stake a claim for its right to be itself; always diminutive, openly communal, often contested – and yet less, compared with many of its Arab neighbours, constructed and dependent on the efficiency of a state oppression machine in the hands of a well organised minority. (Ibid, p. 168)

This is an important counter argument, especially for those coming from a western, ostensibly secular modernist perspective in which the knee-jerk reaction is to consider sectarian power-sharing and identity anathema. Indeed, Johnson makes a similar argument about the clientlist system, namely that, though it was violent, it performed a function which westerners should not condescend toward. These are important insights which should be considered carefully and balanced against the benefits

of the secularisation of politics in concrete situations and always with a view to strategic attainment of emancipation from violence and oppression.

Memory

The last phenomenon salient for both the exposition of this thesis and the Lebanese state-society complex is that of memory, particularly of war and violence. Literature dealing with Lebanon's collective memory spans many disciplines and approaches; Literary Theory (Cooke 1987), Sociology (Khalaf 1994), Political Science (Barak 2007, Larkin 2012) Anthropology (Haugbolle 2010, Volk 2010, Knudsen 2016) and Social Psychology (Licata, Klein et al. 2012). In history too, memory plays a role. Makdisi (2000) elaborates how under Ottoman rule the Lebanese political class were subject to a dual regime of retribution and forgiveness in times of rebellion. The latter amounted to an amnesty and official forgetfulness in which transgressions were obliterated in return for renewed fealty to the *Porte*. As the changes associated with modernity set in and the nature of political violence changed from an elite affair of limited feuding to sectarian mobilisation, Makdisi argues that Ottoman peacemaking retained this particular element. Thus, in his *reglement* of 1845, Sakib Efendi instituted this formulation with the Lebanese elites through the principle of *mada ma mada* (let bygones be bygones) (Ibid, p. 86). It is interesting to consider the amnesties which the Lebanese politician-Zu'ama granted to themselves after the short civil war of 1958 and the long civil war of 1975-90 as part of an extended trajectory (See Mugarby 2008). In these cases too, an official formula was used, that of *la ghalib la maghlub* (no victor, no vanquished) (Haugbolle 2010, p. 70). It is the latter conflict, and the more contemporary concerns associated with it, which have generated the largest body of literature in recent years, intersecting as they do with wider academic and policy concerns around justice, peace and reconciliation.

The prevailing political reality of Syrian hegemony after the *Taif* accords consisted of warlord amnesty, integration and a reconstruction project led by Rafik Hariri which physically obliterated 85% of the buildings in downtown Beirut creating a literal and metaphorical *tabula rasa* (Volk 2010, p. 108) leading to accusations that the political establishment was pursuing a policy of official amnesia, rather than one of truth telling and reconciliation. One manifestation of this was official discourses of *la ghalib la maghlub*. Another was the (mis)appropriation of the "war of others" discourse which implied the civil war was, in fact, no more than a set of proxy wars fought on Lebanese territory which the Lebanese themselves took little part in and were merely victims of (Barak 2007, p. 53). The Lebanese sociologist Samir Khalaf (1994) argued that Lebanese society was largely complicit in amnesia as it

understandably wished to forget the war. It is the theme of amnesia, official or otherwise, which has become a central concern for most scholars interested in collective memory in Lebanon. It has, however, come under sustained critique. Oren Barak (2007, p. 50) critiques the notion on the basis that distinct civil society actors subverted official amnesia both during and after the war. Moreover, he asserts that the concept of collective memory itself might be problematic given the distinct experiences, identities and interests of different sub-state groups. This leads him to differentiate between state, political society and civil society when wishing to analyse differing modes for remembrance of the war. Sune Haugbolle (2010, p.8) in his study *War and Memory in Lebanon* uses the concept of “memory cultures” in place of “collective memory” in order to indicate the heterogeneity of memory. The memory cultures he identifies begin with a diffuse group he terms “memory maker”, which coalesced before the civil war ended through cultural productions in various media. These memory makers were of the “creative class” and potentially constituted marginalised but, in some respects, privileged sets of voices (Ibid, p. 9). These memory makers critiqued the amnesiac Lebanese state-society after 1990. In varying ways, they promoted a discourse empowering the voices of victims and challenged heroic discourses of sectarianism and violence.

Simultaneously, Haugbolle (2010, p. 10) identifies a political society which continued to produce “hagiographic” accounts of the war and of their political identity and community. This type was bound up with the deep-seated cultural motif of the martyred leader, which still symbolically demarcate the different quarters of Beirut, post-war. Haugbolle demonstrates that, between and within these categories, there was complexity of difference and contradiction. For example, some “memory makers” focused on the officially acceptable figure of the Lebanese civilian victim, but some produced more daring works focusing on militia fighters. Similarly, the various sectarian memory cultures obviously differ in the specific martyrs and symbols they eulogise, but remain similar to the extent that they use these symbols at all. The issue of memory overlaps with central issues for the Lebanese state-society, particularly nationalism and therapy. Haugbolle argues nationalism is clearly linked to memory (and selective forgetfulness) in any society and is part of forging collective national narratives and identity. Even with difference, there has to be enough of an inter-subjective overlap of memory in order to maintain national cohesion. With regard to therapy, Haugbolle notes a propensity among his Lebanese interlocutors, shortly after the war ended, to speak of a “hiatus of history”, where war in times of peace seemed unreal or where peace in times of conflict feels similarly abstract and distant. These symptoms mirror what Samir Khalaf (2002, p. 232-233) terms the

scars and scares of war (which) have left a heavy psychic toll which displays itself in pervasive post-stress symptoms and nagging feelings of despair and hopelessness. In a culture generally

averse to psychoanalytic counselling and therapy, these and other psychic disorders and fears are more debilitating.

Haugbolle attempts to theorise some of the traits he observed with reference to *affect*, *symbol* and *trauma*. Simply put, this relates to how experiences are integrated into the narratives of individuals and communities. As Haugbolle notes, trauma occurs when events are of a magnitude or nature that they cannot be positively integrated into this narrative. As he argues, this impells many into amnesia or to seek nostalgic half-memories; either of pre-war Lebanon, anti-war activities during conflict, or in the cloistered sectarian hagiographic and heroic narratives of the war (Ibid, p 73). The retreat into sectarian enclaves is clearly detrimental to the possibility of a future Lebanon free of conflict and Haugbolle makes some interesting observations about this particular strain of cultural production. Firstly, he notes that it is allowed to perpetuate through a sense of embarrassment, and concomitant amnesia, in wider Lebanese society about the uncivil violence which afflicted Lebanon for so long. Thus, he states that

Talking about the war may have been shameful for everyone in a public context, but inside the smug intimacy of their sectarian memory culture, people allowed themselves to entertain any measure of nostalgic and self vindicative notions of the past. (Ibid, p. 182).

Whilst it is important to remember that this research took part in the era before the assassination of Rafik Hariri and the *Independence intifada*, the danger of self-referential, self-righteous narratives which might later be used as justification for violent action is still a real concern. Indeed, a U.N. Economic and Social Commission for West Asia (ESCWA) focus group report on sectarian tensions among youth after this period noted distinct trends associated with self-victimization in the present, self-righteousness and selective memory of the civil war, and powerful manichean self-other dichotomies which “reinforce narratives and myths that demonize and dehumanize the other.” (ESCWA 2009, p. 15-16). What this report also highlights, and what subsequent research has begun to focus on, is what Craig Larkin (Larkin 2012, p. 56) has described as “post-memory”, namely a situation in which people who did not experience traumatic events directly do so vicariously through private family discourses, political party propaganda and sectarian inscriptions of public space. Larkin’s focus on post-memory forms part of a scholarly move away from considering the origins of sectarian identity and politics and toward the ways in which sectarianism is reproduced across generations, particularly through memory making (Ibid, p. 43).

A final, but important, aspect of memory cultures and post-memory is *martyrdom* and subsequent *memorialisation*. Knudsen (2016, p. 2) has argued that the proclivity for creating and

memorialising martyrs in Lebanon arises from the excessive numbers of victims of violence, among both the *Zu'ama* leadership and the civilian population, and the concomitant dearth of justice and accountability. On this account, impunity accounts, to a large degree, for the culture of martyrdom. Knudsen (2016, p. 1) argues that "All the Lebanese sects engage in the iconography memorialising slain leaders and cadres." This universal practice of the Lebanese is, nevertheless, largely sectarian in nature where slain sectarian leaders with brutal war time records are memorialised (selectively) within their own communities and reviled without (Ibid, p. 2-3). He argues, furthermore, that martyrs are used to "bolster the credentials of present-day political leaders" (Ibid, p. 7-8) and therefore memorialisation and memory becomes a source of political and social capital. An important instance of this is Kamal Jumblatt, the late father of Walid Jumblatt leader of the PSP, who has been "... turned into [his] sect's only martyr, metonymically representing all of the Druze community." (Ibid, p. 9). Moreover, given the context of the cross-sectarian cedar revolution as a result of his death and his subsequent laying to rest in a multi-confessional space (martyrs square), Knudsen (2016, p. 7, 10) argues Rafik Hariri has bucked the sectarian trend of martyrdom and has become a locus of national memorialisation and an inter-faith saint.

Martyrdom, Knudsen (2016, p. 2) notes, was previously a response to impunity and a recognition of the reality that "The truth will be contested and justice denied due to lack of evidence and the politicisation of the judiciary." However, memorialisation of Hariri was and is accompanied by demands for truth and, in this way again, Hariri stands as a separate case. This leads him to argue that "... seeking the 'truth' behind Hariri's murder will metonymically represent the truth for all [Lebanese victims]" (Ibid, p. 8). It is very useful to consider the ways in which Hariri has become a national martyr transcending narrow sectarian memorialising and the ways in which the quest for truth regarding his martyrdom has been symbolically attached to those of all Lebanese martyrs. However, as Craig Larkin (2012, p. 56) reminds us, nationalism and sectarianism are not necessarily "antithetical". Moreover, the pursuit of truth for Hariri as representative of justice for all Lebanese has the problematic tendency to assume that international justice is less politicised than national. This narrative might also serve to perpetuate a class-based differential between the weight accorded to *Zu'ama* victims and normal civilians along with the marginalisation of claims for justice for civilians, as an end in itself. As chapter three and four both demonstrate, the pursuit of justice for *Zu'ama* and its suppression for non-*Zu'ama*, is a very long tradition in Lebanon. Finally, whilst the scale and appeal of Hariri beyond his immediate sect point to potential as a national martyr, this potentially overlooks the divisions over justice for Hariri both political (March 8th and March 14th) and sectarian (tendency for Shia representation and monopolisation by parties opposed to the STL). This last aspect potentially

amounts to false universalism, despite the undeniable expansion of Hariri's memorialisation beyond his own sect.

Conclusion

This chapter has discussed the concepts of clientelism, sectarianism, consociationalism and memory whilst providing some historical context to the Lebanese state-society. This has been done with a view to understanding, explaining and (re)contextualising the discourse analysis carried out in this thesis. A key finding of the present chapter is that clientelism predates sectarianism in Lebanon. Moreover, the violence associated with these phenomena differ in scale and type. Nevertheless, it was also found that, ontologically, these phenomena, and their associated forms of violence, now exist within an institutionalised sectarian system in which clientelist *assassination* often cause, or make more likely, sectarian *massacre* or conflict. Thus, the dynamics of clientelist and sectarian violence are best conceived as consisting of a *nexus of clientelist-sectarian violence*. Consociationalism is the form of power-sharing designed to deter and assure through an elite cartel in Lebanon which has its roots in the colonial nineteenth century. It is problematic in that it sits atop a sectarian system in which sectarian identities are reproduced and secular identities are marginalised through empowerment of sectarian elites and religious institutions at the expense of the state, thus generally precluding the emergence of non-sectarian societal segments. The consociational mechanism of veto designed to assure and deter is an interesting case which has only been applied partially and often violated in Lebanon. This is a recurring theme to be considered in the analyses ahead.

The question of amnesty for wartime *Zu'ama* and amnesia regarding victims in addition to the culture of martyrdom were identified as key aspects of memory in Lebanon which have often reflected and reproduced the sectarian divisions of society. Moreover, martyred leaders are often instrumentalised to enhance the social capital of *Zu'ama*. Current scholarship on memory emphasise the plurality of memory in Lebanon through *memory cultures* and their inter-generational, reproductive quality through emphasis on *post-memory* in conditions of official and unofficial amnesia. These concepts are used throughout this thesis in the following chapters and analyses to understand and explain outcomes. These concepts will also be considered in chapter four which provides a critical review of the ICL literature regarding the STL. From this perspective we might ask to what extent these unique aspects of Lebanon's state-society are understood and described in this literature and how they might be affected by the unique dynamics of ICL and world order.

Chapter Three: The STL in the historical structure of world order

Introduction

In chapter two, this thesis outlined a heuristic of the Lebanese state-society complex by operationalising key concepts. In chapter four, ICL literature pertaining to the STL is reviewed and the structural constraints and discourses particular to this ad hoc, hybrid institution, their origins and development, are elaborated. Chapters five and six utilise these analyses to interpret and explain the *power in* and *power behind* discourse at the STL during the testimony of Walid Jumblatt. This chapter's purpose is to frame these discussions, providing an outline of the contemporary ICL system and historical context of the European Commission for Syria of 1860. Apropos of the methodology and theory set out in chapter one, the purpose of this approach is to examine the morphogenesis of the historical structure as it pertains to both ICL, the Lebanese state-society complex, and their dialectical interactions over time. This is done with reference to key mechanisms and their functioning in differing contexts. The key question of this approach is whether historical structures of world order have been elaborated consciously or unconsciously, conservatively or transforming, towards human emancipation from violence and inequality or away from it, and what the potentials are for future development given these structures and tendencies.

The structures under examination are the principles of the legal stratification of sovereignty, the relationship between the executives and judiciaries in these cases, the relationship between intervention and destabilisation, the principles of worthy victimhood and access to justice, the principles and degrees of inclusivity and exclusivity between contemporary and historical tribunals and commissions in Lebanon, and the historical link and development between legal interventions and consociationalism. This guiding concern is pursued with a view to the satisfactory answering of the thesis research questions in the conclusion. The added benefit of this approach is to question the chrono-centrism in the accounts of the STL particularly, or ICL in general. Particularly, the question of whether rupture or continuity inherits between the post-colonial and colonial world orders is central. It will also facilitate an analysis of where development (progressive or regressive) has taken place over time.

Contemporary ICL in world order

The STL is a hybrid institution in that it utilises national and international judges and a mix of national and international law (Cerone 2012, p. 50). The exact nature of this hybridity is discussed in more detail in chapter four. However, certain differences between the STL and other hybrid tribunals, specifically the Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Courts of Cambodia (ECCC), were organised as a treaty signed between the national government concerned and the UN (Ibid, p. 50-51). By contrast, the treaty between the Lebanese government (or the March 14th aligned elements of the government) and the UN could not be signed, and it was thus brought into being by the UNSC using its Chapter VII prerogatives (see chapter four). Thus, in this sense, the STL is more like the ad hoc International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), established through the chapter VII powers of the UNSC on the basis that these crimes were threats to international peace and security. However, the STL is different to these ad hoc courts in that its statute stipulates that it is to apply the *national* definition of terrorism, not a core international crime like the aforementioned ad hoc tribunals. Early suggestions of the inclusion of a core crime of *crimes against humanity* in relation to the entire string of political murders was allegedly rejected because “The U.S. feared that the inclusion of war crimes and crimes against humanity within the Tribunal’s jurisdiction would lead to difficult questions as to why its temporal jurisdiction did not extend to the [2006] armed conflict with Israel” (Cerone 2012, p. 55). Moreover, this would have been against the interests of the *Zu’ama* in Lebanon who were former warlords. Given the core narrative aim of ICL as ending impunity (reflected in the language used by the UNSC which justified the establishment of the STL) abrogation of the 1991 amnesty for such crimes would have been a distinct possibility *or* its continuation would have been highlighted more obviously as a theory-practice contradiction. The limitation of jurisdiction to the national crime of terrorism then also has the effect of backgrounding previous crimes and criminals and presenting a legitimate face in which the rest was forgotten in light of this most recent and serious crime through its framing as *terrorism*. It was this fear of core crime jurisdiction which led to the *quid pro quo* in which the U.S. and Russia excluded abrogation of immunity for foreign, that is Israeli and Syrian respectively, officials (ibid, p. 55). Thus, it seems, impunity is at the heart of the STL, not as something to be ended but as something actively pursued through jurisdictional limitations and structural mechanisms of world order. However, even this picture is confused when one considers, as we do in chapter four, that Lebanese domestic law was interpreted by the appeals chamber of Antonio Cassese to apply to an extant core international crime of *transnational terrorism* in 2011 (Ambos 2011, Gillett, M., & Schuster, M. 2011, Saul 2011, Ventura 2011). As social science, it is beyond the purview of the present study to comment on the legality of this and similar moves. Moreover, objections on the basis of legality seem futile given that international law is designed by, and for, the powerful. Instead, the

purpose of the present study is to note the effects of power and how they are hegemonically legitimated. The explanation proffered here is that the late Antonio Cassese wished to enact his dream of a core crime of transnational terrorism and this aligned with the global agenda of the war on terrorism and, more specifically, the breakdown of the U.S.-Syria historic bloc. Another is that, by deeming the Lebanese crime to be a core one, the appeals chamber pre-empted any future potential arguments that the UNSC misused its chapter VII powers in the creation of an international court for a domestic crime, the combination of which is unique to the STL. Whatever the case, the fingerprints of political power are all over the jurisdiction of the STL. This is further reflected in the STL's RPE discussed in chapter four, which apparently facilitated the 2011 decision as pre-emptive and bespoke for certain decisions and, by extension, Hizballah (Gillett, M., & Schuster, M. 2011, p. 994). Cassese made explicit ICL's traditional view of the relation between politics and law, namely, that the latter is unable to comment on the former, particularly when it comes to UNSC decisions or vetoes (Cassese 2012, p. 501). This perspective found its ultimate expression in the 2012 *Decision on defence motions* discussed in the next chapter, which shielded the UNSC from judicial review of its actions which were also facilitated by RPE that precluded challenges to legality and legitimacy (See Alvarez 2013, Burgis-Kasthala 2014, Matthews 2014, Nikolova, Ventura 2013). As described in the next chapter, this decision relied on legal positivist rather than interpretive approaches in contra-distinction to the 2011 decision. The common denominator appears to be protection and legitimation of the UNSC's actions and prerogatives. This pattern is arguably furthered in the 2015 trial chamber decision not to allow WikiLeaks cables as evidence, as is discussed in chapter six (Re, Nosworthy et al. 2015). Apropos of our analysis in chapter five, we will also see that the hybridity of the STL has allowed its management committee to remain somewhat opaque regarding the source and proportion of funds which the STL has, and will, receive.

As early as 2005, the first UNIIC report under Detlev Mehlis indicated official Lebanese and Syrian involvement in the Hariri assassination (Nashabe 2012, p. 255). It was under these conditions that four Lebanese generals were arrested by Lebanese authorities on behalf of the UNIIC for nearly four years. Subsequently, no indictments were levelled against them or Syrian officials. In interview with Michael Young, Mehlis has intimated that the non-prosecution of Syrian officials was due to the Syrian-Saudi rapprochement culminating in the 2010 Saad Hariri visit to Damascus and his subsequent recantation of his accusation towards Bashar, a policy backed by the UN (Knudsen 2012, p. 228). Whatever the case on the Syrian side of the equation, Leaked U.S. diplomatic cables from 2007 indicate that Mehlis' successor, Serge Brammertz, was warning both the Lebanese and U.S. governments that the evidence against the Lebanese generals was unreliable in 2007. In the words of the cable itself "The four were arrested because of the testimony of witnesses who later recanted,

their testimony now thoroughly discredited.” (N/A [Wikileaks] 2007). The rationale for keeping the four detained after this period appears to emanate from both the U.S. and Lebanese governments (ibid). For Lebanon, it was their (alleged) position that it could not release the generals as this would be interpreted to mean that they had been detained or released *politically* (Ibid). Perversely, therefore, the Lebanese required that the STL take them and release them so domestic politics would be satisfied it was an objective decision according to the cable (ibid). This perception would be in line with the ideological and hegemonic notion that world order is apolitical. U.S. ambassador Feltman (presumably Jeffrey D. Feltman), according to the cable, allegedly took the position that, despite Brammertz’s opinion on the evidence, “Syria’s Lebanese allies would score an enormous victory, should the four generals be released now.” (ibid). These positions appear to account for the generals’ incarceration for two additional years. Whatever their sins as members of the Lebanese-Syrian apparatus, their continued incarceration appears to have been political and arbitrary. Moreover, it gives lie to the alleged juxtaposition of an apolitical, legal world order imposing itself on a dysfunctional domestic political scene in Lebanon, a trope discussed in more detail in the following chapter. Instead, due to the internationalised dynamics of clientelism, it was politicised from top to bottom, with only a distinction of appearance rather than substance between domestic and international politicisation. Brammertz is alleged to have been pressured into acting against what was lawful and just by the U.S. and Lebanese governments, indicating that the proximity of the UNIIIC to the UNSC compromised its objectivity and resulted in arbitrary detention (N/A [Wikileaks] 2007). Moreover, if Mehlis is correct, the prosecutors were pressured for political reasons in the opposite direction on behalf of Syria after he left. Whether it was Mehlis who was pressured to pursue Syria or Brammertz who was pressured to drop the Syria enquiry, or both, the proximity of the investigation to the UNSC appears to be a compromising factor in its independence. Arguments that the UNIIIC upheld the “highest legal standards” (Wetzel, Mitri 2008, p. 97) need to be considered critically in this light.

The STL exists in a context of world order in which the UNSC is central and international tribunals are created, like the STL itself, on an ad hoc basis with major input from the UNSC. The major exception to this rule is the ICC. The ICC is a permanent international court established by the Rome statute of 17th July 1998 with jurisdiction over established *core international crimes of war, crimes against humanity and genocide*. These *jus in bello* considerations were supplemented by the *jus ad bellum* core crime of *aggression* at the first Review Conference of the Rome Statute in Kampala 2010, which is due to come into force on 17th July 2018 (International Criminal Court 2018). The ICC operates primarily by the sovereign principle of *pacta sunt servanda*, namely that states are only obliged to abide by treaties their governments have signed. This is a key legal element of sovereignty. In this

case, state parties to the statute give jurisdiction to the ICC over their territories and their nationals beyond their borders, but only in the event that national jurisdictions are unable or unwilling to prosecute them (Ibid). Of the five permanent members of the UNSC, only Britain and France have signed *and* ratified the Rome statute (United Nations Treaty Collection 2018).

The U.S., for its part, has varied in its support for the ICC from the Clinton administration to the present. William A. Schabas (2004, p. 712) notes

In 1994, when the International Law Commission presented its report on an international criminal court to the General Assembly, the United States was well-disposed to the proposal. In a general sense, the International Law Commission draft provided for an international criminal court that fit neatly within the Charter of the United Nations and that was, accordingly, subordinate to the Security Council.

This subordination, as originally conceived, would have provided for a UNSC veto on prosecutions, a prosecutor which was entirely dependent on UNSC referral of crimes, a situation in which the definition of aggression was left to the UNSC and referrals to the ICC which required the consent of the state party of nationality *and* territory (Ibid, p. 715-718). This last element means, in effect, that upon committing alleged crimes in the territory of a country, this country's referral would have to be seconded by the country whose nationality the perpetrator belonged to in order to be actioned. In other words, this was a judicial mechanism entirely dependent on the UNSC executive. However, in the process of drafting the statute, a group of middle powers and developing states managed to secure changes to these provisions which diluted the domination of the ICC by the UNSC. Thus, the UNSC cannot veto prosecutions, only defer them based on a resolution which has to be repeated every twelve months. Moreover, the prosecutor was given discretion to pursue crimes *independent* of UNSC referral with judicial, rather than political, oversight of its activities. Aggression no longer depends on identification and referral of the UNSC, but can also be pursued at the prosecutors' discretion, referral by a state party or even by a non-state party who is willing to subject its own conduct to the jurisdiction of the court. The states which secured these progressive alterations stated that the original 1994 draft provision was a "serious encroachment upon judicial independence." (Ibid, p. 715).

Thus, these dilutions of UNSC power were pursued with the express liberal principle of judicial independence from the executive, which means it differs from all the ad hoc (ICTY, ICTR) and hybrid (ECCC, STSL) tribunals which preceded it, and stands in marked distinction from the STL whose UNIIIC investigators and prosecutor, along with its personal, temporal, local and subject-matter jurisdiction, are all dependent on the UNSC. Moreover, the ICC is funded on a means tested basis from signatories to the statute, which goes some way towards ensuring states such as Saudi Arabia cannot fund

international tribunals whilst refusing to submit themselves to their jurisdiction, in line with basic principles of equality before the law (International Criminal Court 2018). However, the ICC is not perfect in this regard. Its general character as a treaty-based organisation is overridden by the ability of the UNSC to refer cases to it. Therefore, permanent members of the UNSC who have *not* ratified the ICC or paid towards its maintenance *can* nevertheless refer others to the court. Moreover, owing to the primacy of chapter VII prerogatives, states which are not party to the statute themselves, but who are also not permanent members of the UNSC, can find themselves before the court. This happened with Sudan and Libya (International Criminal Court 2018). It also means that, as with the STL, Israel is effectively shielded by its non-ratification of the Rome statute on the one hand, and the near impossibility of its referral from the UNSC given the U.S.'s demonstrable historical pattern of veto protection on behalf of Israel, on the other hand (Dag Hammarskjöld Library 2017). One need not be pro-Gaddafi or Bashir to recognise that there is impunity at the heart of the ICL system, and that it is structural and instrumental. Indeed, what appears to be a tiered sovereignty can be discerned between those who are UNSC permanent members and others. Permanent members enjoy *de jure* non-intervention in their sovereign affairs (assuming that they refrain from referring themselves to international jurisdictions) and need only be expected to abide by treaties they have deigned to sign, whilst other states can find themselves referred to international jurisdictions they never signed up to.

This is one manifestation of Anthony Anghie's (2005, p. 2) insight that third world sovereignty has particular structural weaknesses. It is also important to note that the systematic use of veto by permanent members to shield non-permanent members effectively renders them immune, as has been the case with the U.S.-Israel or is now happening with Russia-Syria (See Dag Hammarskjöld Library 2017). Thus, a middle tier of most favoured clients appears in the contemporary structure of legal world order, with *de facto* structural protection from UNSC patrons.

The administration of George W. Bush was particularly hostile to the ICC. It sponsored UNSC resolutions 1422 in 2002 and 1487 in 2003, ostensibly to protect peacekeepers on signatories' territory with the threat of withdrawal of peacekeeping forces if the resolutions were not passed (Schabas 2004, p. 701). This was backed up by bilateral efforts to shield U.S. forces and the (in)famous *American Service Members Protection Act* which allowed for the U.S. to use force to free American personnel indicted by the ICC and which has never been repealed (Ibid, p. 701, 710). John Cerone notes that the SCSL was supported by the U.S. as an ad hoc and hybrid alternative to the ICC and that "In general, as hostility toward international institutions increased, the U.S. began to show increasing support for hybrid institutions" (Cerone 2012, p. 51). Hybrid institutions can therefore be viewed as the product of cynical attempts to maintain impunity for oneself and ones' most favoured clients and undermining the advance of voluntary universal jurisdiction, as much as they are about promoting

local attempts to bring wrongdoers to justice. Given the Bush administrations' controversial invasion of Iraq, the abuses of *Abu Ghraib*, the use of extraordinary rendition and other reprehensible behaviour, it does not appear that the objection to a permanent, independent, court was either philosophical or benign. In the case of the STL, it was not simply impunity procurement, but the active desire to weaponize a jurisdiction against its enemy in an ongoing conflict. Whilst the Obama administration moved back to "principled engagement" (Ibid, p. 52) with the ICC, its rather questionable aim at the Kampala meeting was to

narrow the definition of the crime of aggression, and to limit its personal scope of application ... while it was unable to secure agreement on giving the Security Council the exclusive power to trigger aggression prosecutions, the U.S. did succeed in obtaining an exemption for nationals of non-States Parties, even when their conduct occurs on the Territory of States Parties. (Ibid, p. 52)

It seems that the U.S. is very keen on the principle of *pacta sunt servanda* for itself but also on the centrality of the UNSC and its chapter VII prerogatives in ICL. The reasons are obvious and nefarious; structural advantage.

Similarly, in 2017, Britain, a signatory of the Rome statute, led efforts to check the advance of the crime of *aggression* being activated at the ICC arguing for "greater clarity" (Bowcott 2017). Owen Bowcott states that the crime of aggression was not to be applied retrospectively by the ICC, presumably in line with the *nullum crimen sine lege* prohibition on *ex-post facto* prosecutions, and thus Tony Blair and other New Labour initiators of the Iraq invasion would not be prosecuted. Nevertheless, he notes the UK government was keen to establish that the new provision would not automatically apply to those already signed up to the Rome Statute and that ratification of this separate crime should remain separate (Ibid). In a preface to this, an attempt to prosecute Tony Blair for the crime of aggression through the UK courts by an ex-Iraqi general was advanced arguing that

the crime had been accepted by Sir Hartley Shawcross QC, the UK's attorney general in the 1940s, at the time of the Nuremberg trials of Nazi war crimes. There is already, therefore, an international crime of aggression involving any invasion or military occupation by one country using force illegally against another (Ibid)

The British judges, relying on *positive* law, dismissed this claim because there is no explicit crime of aggression legislated under English law. The same argument, needless to say, did not work for the Nazis. This situation is in marked contrast to the STL in several distinct ways. The first is that whilst *aggression* at the ICC cannot be read back in time to criminalise past behaviour, the crime of

transnational terrorism at the STL is seemingly retrospectively applied to past behaviour as is described in detail in the following chapter. The second is that, despite the long-established characterisation and acceptance of aggression as a core international crime, the UK judges relied on the principle of sovereignty of English law to argue there was no liability in the UK. In contradistinction, the STL ruled that the Lebanese courts, and others, routinely read their laws in line with international provisions (See chapter four). Thus, they justify the importation of the *transnational terrorism* definition into Lebanese law. This is yet another way in which the sovereignty of the developing world is structurally weaker compared to UNSC permanent members, allies and former colonial powers for whom there is the natural assumption of legal and national sovereignty overriding ICL. Indeed, a major justification for the STL, as discussed in detail in the following chapter, was that Lebanese sovereignty was somehow incomplete (Burgis-Kasthala 2014, p. 251- 252). This justified ICL overriding the consociational system. The STL which is set up to further the sovereignty of Lebanese law, as we shall see, actually undermines it by opining that domestic provisions are always read to conform with (or are superseded by) the international.

The acquiescence of many legal practitioners to this state of affairs and the amount of their energy expended in the ideological *rationalisation* and *legitimation* of tiered sovereignty and systematic impunity is demonstrated by John Cerone (2012) in his discussion of the legitimacy of the STL. After dispatching the legal objections to the court centring on sovereignty by noting the accepted override powers of Chapter VII, Cerone deals with legitimacy issues. An important one which is raised is the charge that the temporal jurisdiction of the STL was limited to exclude the 2006 war on Israel's behalf (ibid, p. 57). Cerone points out that the ad hoc tribunal was created for assassinations and thus this justifies the limitation (ibid, p. 57). This tautology does not explain why the UNSC decided that one crime was a threat to peace and not the other and thus why a tribunal was created for one and not another. Cerone attempts to deal with this problem by discussing selectivity. He states "On one level, all justice is selective, both in the international legal system and in domestic legal systems. In no legal system is every crime prosecuted ... Prosecutorial discretion is a common feature of legal systems around the world." (ibid, p. 59). The tautological *rationalisation* given by Cerone is one we will see in the ICL literature on the STL, namely, that these exclusions are *incidental* when they are, in fact, *instrumental* and *systematic*. There is, after all, a large difference between not pursuing a case because of lack of evidence and not pursuing a case because you or your clients might be implicated. This tactic seems to be central to the *mystification* of power structures and, therefore, their *hegemonic legitimation*. These tautologies and *rationalisations* can also be detected in Cerone's (2012, p. 60) characterisation of the ICL system as suffering a "lack of central authority and absence of a universal justice system; its relatively fragile and immature institutions ..." to explain selectivity, particularly as

it pertains to the creation of ad hoc courts. Here, selectivity is simply “a consequence of the political nature of the decision to create a court in a system where courts are not a given” (Cerone 2012, p. 60). Interestingly, this characterisation of the international system mirrors the political Realist IR representation of the international as *anarchic* on the basis of a lack of central authority, rather than ordered and structured. Cerone’s own account of U.S. policy undermining permanent international courts it cannot control and promotion of hybrid courts through its structural power at the UNSC, in addition to U.S.-Russian collusion to protect most favoured clients, facilitated by their position as UNSC permanent members, completely contradicts this characterisation and shows it to be a *reification*. In this tautology, structurally empowered actors use said structural power to undermine universal principles which Cerone then justifies based on the reality these actions create. However, Cerone assures us, the U.S. considers these ad hoc courts as courts and not simply tools. Indeed,

It is because of this recognition of the independence of courts, and the understanding that courts as independent organs will take on a life of their own, that *the U.S. has been careful to front-load jurisdictional limitations that will restrict the scope of who can be prosecuted.* (Ibid, p. 62 *emphasis added*)

This Orwellian newspeak could be produced by any tyrant interested in justifying self-preservation and would have us equate judicial independence with executive power determining jurisdiction on a self-proclaimed, instrumental, ad hoc, basis. Indeed, Cerone encourages one to consider the U.S. loading the dice of justice in the pursuit of impunity, as a sign that it respects judicial independence.

In summary, we have established that the current world order of law is dominated by the UNSC, its Chapter VII powers and the power of veto accorded to permanent members. Sovereignty, and the *pacta sunt servanda* vision of law, is undermined by this system, for good or ill, creating a multi-tiered sovereignty in which sovereign non-intervention is the preserve of the UNSC permanent five and their most favoured clients who gain structural advantage through threat or act of veto. Impunity in the form of sovereignty is thus central to this world order and those that benefit from that system often employ ad hoc and hybrid tribunals to pursue cases in which *a*, there is not a “national interest” or *b*, interests are pursued by weaponised tribunals against enemies, as in the case of the STL. The main movement away from this manifestly unjust system is found at the ICC which operates based on treaty with an independent prosecutor. Whatever its faults, this contains an emancipatory potential and is, as we shall see, a historically unique development. Nevertheless, potential for co-optation remains in its backdoor to UNSC referral in which non-signatories to the ICC, immunised by UNSC veto power, can refer other non-signatories before it without even contributing financially to

its maintenance. Intimidation is also present, particularly through the non-repealed *American service members protection act*.

The Historical Structure of World Order: The European Commission for Syria 1860

The following outline is not meant to be exhaustive, rather it is meant to highlight important features to facilitate comparison between the STL and the European intervention in Syria of 1860. Through such a comparative analysis it is hoped that features of continuity and difference between these institutions, and the world orders from which they emerge, will be identified and aid in a fuller understanding of their origin, trajectory, and prospects for peace. First, a sketch of the overall position of the Ottoman Empire (of which Mount Lebanon and the Syrian interior were part) *vis a vis* the European Great powers up to, and during, the nineteenth century is presented. This is then supplemented by discussion of how the European Great Powers, particularly through the prism of law, viewed themselves and the Ottomans. A summary of how these developments impacted politics in Mount Lebanon is then provided, and an account of how these developments led to the 1860 civil war in mount Lebanon and the subsequent Ottoman response and European intervention. This frames the analyses in chapters five and six and facilitates comparative analysis at the end of chapter six and the conclusion. All of this is pursued with Cox's aim of tracing the "coherence of minds and institutions characteristic of different ages." (Cox 1981, p. 133) and, potentially, across ages.

From the sixteenth century, European powers attained special agreements with the Ottoman Empire known as *capitulations* (Fawaz 1994, p. 23, Rodogno 2012, p. 29). These agreements were originally legal and commercial privileges for European trade and diplomatic communities operating in the Ottoman Empire. The first state to obtain these concessions was France, followed thereafter by other European powers. As Davide Rodogno (2012, p. 20) notes, the original capitulations allowed European communities to "organize themselves according to their own laws, except where disputes arose with Ottomans, and as long as their behaviour was not offensive to Muslims." Alongside these privileges, there evolved a *de facto* system of European patronage for local, usually Christian, minorities. For the French, their protectorates were the various Catholic communities, including the Maronites of Mount Lebanon. Russia promoted itself as the defender of the Orthodox communities and Britain, presumably lacking from large indigenous populations of Protestant proteges, cultivated followings among that meagre community along with Jews, Orthodox Christians, Sunnis and the Druze (Fawaz 1994, p. 23). As European powers became relatively more powerful than the Ottomans during the eighteenth and nineteenth centuries and, as they renewed the capitulations, the privileges

reserved for European communities were extended to their local, largely Christian, proteges, making this protection *de jure* (Rodogno 2012, p. 29). In the late eighteenth century, the Ottoman Empire suffered military defeats at the hands of European powers culminating in Napoleons' invasion of Egypt in 1798 (Ibid, p. 23). These defeats had the effect of highlighting the near impotence of the Ottomans in the face of modern European armies. The Ottomans were forced to turn to another European power, Britain, to eject Napoleon and thus the general strategy for the Ottomans became playing one great power against another for survival. The Europeans considered the weakness of the Ottomans a potential flashpoint for their own internal conflicts over its potential spoils, giving rise to the so-called *Eastern Question*. This question was how to manage Ottoman decline without giving rise to a general European war.

Meanwhile, the power vacuum left by the French after their defeat of the Egyptian rulers (Mameluks) led to the rise of Mohammad Ali as ruler of Egypt (Rafeq 2005, p. 242). Ali engaged in modernisation reforms, agricultural, industrial and military, along the lines of the European powers, leading some Europeans to consider him an "enlightened despot" (Ibid, p. 242). This led to his increasing power, relative to his nominal Sultan in Constantinople. Eventually, Ali sent his modern Egyptian army, under the command of his son Ibrahim, to conquer greater Syria in 1831, with his conquest of Anatolia only blunted by Russian and Austrian intervention (Rodogno 2012 p. 23). In response to these pressures and crises, the Ottomans instituted a set of reforms from 1839 to 1876 known collectively as the *Tanzimat* (Fawaz 1994, p. 22, Makdisi 2000, p. 10, Rodogno 2012, p. 25). These reforms sought centralisation and rationalisation of administration, as well as the granting of equality between Muslim and Christian subjects which had previously been subject to the *millet system* which constituted a two-tier society based on the division of Muslims and non-Muslim "people of the book", namely, Jews and Christians (Traboulsi 2007, p. 3-4). These non-Muslims were subject to a specific tax (*jizya*) and barred from certain governmental professions and military roles, in exchange for religious freedom (Ibid, p. 4). Leila Tarazi Fawaz (1994, p. 22) notes that "The Tanzimat provided the legal basis for their [non-Muslims] growing influence by making all Ottoman subjects, regardless of religion, equal before the law". Ussama Makdisi (2000, p. 9-11) argues that the impetus for these reforms arose from both the Ottomans *and* the Europeans, but for slightly differing purposes namely, the strengthening of loyalty, modernisation, and staving off intervention in the former case, and the creation and empowerment of Christian clients in the latter. However, the nominal equality promulgated by these laws did not counterbalance the material advantages and advances of the largely Christian minorities over their Muslim neighbours by virtue of their positions as European proteges, particularly when Great Britain, in typical colonial style, imposed free trade on the Ottomans and devastated local Muslim business (Traboulsi 2007, p. 15). In a relatively short time, Muslims,

Sunnis in particular, had gone from hierarchically dominant within a theocratic order, to nominally equal and materially disadvantaged.

The European self-image during the nineteenth century was characterised by related, near synonymous, self-referential terms. Europe was taken to be largely synonymous with “secularised” Christendom. Europeans tended to view Christianity as a superior religion and/or moral system which underpinned their superior civilisation. Rodogno (2012, p. 49) relates that this common belonging of Christian civilisation gave rise to the concept of a *family of nations*, that is, the realm in which international law and mutual recognition prevailed between states by this common membership. The doctrine central to international law and politics to govern this family of nations was that of sovereignty. Sovereignty was defined by the principle of non-intervention by one state in the internal affairs (economic, political, legal, religious or otherwise) of another (Ibid, p. 21). Anghie (2005, p. 33) notes that the central theoretical problem of positivist international law during the nineteenth century was how legal order could be established between independent, sovereign states. However, he observes that this sovereignty was a uniquely European attribute and that non-Europeans generally possessed no legal standing in front of a sovereign European state. Thus, questions of imperialism and colonialism were a matter of policy rather than legality (Ibid, p. 34). Thus, “When facing the external world, Europe was a historical, political, and cultural unity. However, this external unity fractured into separate, secular states when it came to internal matters.” (Rodogno 2012, p. 49). After the Napoleonic wars, the institution of sovereign non-intervention was, for a time, strengthened through the *Concert of Europe*, the leading institution of the family of nations. Rodogno (Ibid, p. 19) relates that the concert was defined by five rules

- (1) only the five great powers, the pentarchy, should decide great European questions ...;
- (2) no power should wage war in Europe for territorial gain or promote revolution or unrest within another great power’s territory or sphere of vital interest ...;
- (3) no international question of vital interest to a great power could be raised without its consent ;
- (4) if a major problem did arise, no powers could refuse an international conference or exclude any other great power from it; and
- (5) direct challenges and confrontations between great powers had to be avoided at all costs – mainly by referring the quarrel to the concert. Since decisions had to be voluntary, unanimity rather than majority rule prevailed in European meetings ...

Thus, at the apex of world order, the European family of nations was presided by its five great powers and ruled by European laws regarding sovereign non-intervention. The remainder of humanity was deemed to be semi-civilised or barbarous, and on that basis, legitimate targets for intervention, military invasion, or colonisation (Ibid, p. 48). The Ottoman Empire occupied a liminal and

contradictory space in this hierarchy. This was a function of Eastern Question power balancing on one hand *and* its Islamic, and therefore allegedly inferior status by European standards, on the other. At different times it was, therefore, both in and out of the Family of Nations. It was admitted following the Crimean War in 1856, on condition that it improve the lot of Christian subjects, but was never accorded the right of sovereign non-intervention as evidenced by two European interventions during this time. One of these was the 1860 intervention in mount Lebanon and Syria (Ibid, p. 46). By 1878, the Ottoman Empire was expelled from the family of nations and reduced to a European *tutelage* or “*la Turquie est en tutelle*” (Ibid, p. 47).

Rodogno argues that the specific practice of *humanitarian intervention* by European powers in the Ottoman Empire arose because of this political context of the Eastern Question, the ideological and legal hierarchy of civilisation which rendered the Ottomans as outside European civilisation and therefore non-sovereign, and the presence of large Christian populations under “barbarous” rule. This last point is crucial, the *humanitarian* of nineteenth century *intervention* was a classic *false universal*, as the only humans worthy of European intervention were Christians under Muslim rule. The genocide of indigenous, non-Christian populations in European colonial empires was given the agentless passive term *extinction* and was not considered problematic. Neither was the killing of Christians or Muslims by European governments or the killing of Muslims by Christians in the Ottoman Empire (Ibid, p. 33-34). Though the Christians who became the objects of European “humanitarian intervention” were often those self-same Christians who had been made proteges under protection of the capitulations, European observers failed to countenance the idea that their preferential treatment might constitute a reason for the increasing incidence of sectarian hostility and violence.

As we outlined in chapter two, Mount Lebanon before 1841 was characterised by the *Muqata’ji* system defined by a largely feudal hierarchy with peasants at the bottom presided by *Muqata’jis*, *Sheihks* and *Amirs* collectively referred to as *Manasib* or named persons (Traboulsi 2007, p. 4). From the seventeenth century this system was somewhat disrupted by the emergence of a merchant class with commercial ties to European powers, particularly among Christians, and an increasingly assertive Maronite clergy. The nuances and details of this history are impossible to relate here and what follows is necessarily a simplified version of what can be found in greater detail and precision elsewhere (Salibi 1988, Fawaz 1994, Makdisi 2000, Khalaf 2002, Traboulsi 2007, Harris 2012). As we noted in chapter two, this system, by and large, had as its nominal head the Ottoman Sultan, regardless of the intrigues of warring families and scheming Ottoman governors. Fawaz Traboulsi (2007, p. 4) notes that during the *Muqata’ji* era, Mount Lebanon’s Christian and Druze communities occupied different social locations reflective of wider *millet* restrictions. The Maronites were overly represented among peasants, financiers and artisans, and the Druze were largely a feudal warrior

culture. The former were numerically superior and, whilst in the north of Mount Lebanon Christian commoners were ruled over by Christian *Manasib*, the southern districts were somewhat mixed with large Christian commoner populations ruled over by Druze *Manasib*. Whilst the primary social bond remained patrimonial clientelism, this was less problematic, when ideologies of equality and religious nationalism became prevalent, this was a recipe for sectarian violence. Samir Khalaf (2002, p. 73) relates that one vector through which these ideas were transmitted was through the Maronite Church, which had begun to establish an autonomous position for itself and open its doors to clergy from the common classes. Thus, locally, the Maronites developed an ideology of equality and confessional solidarity or nationalism, derived from European thought (Ibid, p. 73) whilst simultaneously colonial power began to conceive of the Ottoman Empire “not so much as a multiethnic and multireligious territory but as a Muslim state with large “minorities” of Christians scattered in various cities and provinces.” (Makdisi 2000, p.10). Indeed, this demonstrates how nationalism is at root a theory of ethnic homogeneity and, thus, its logical outcome is ethnic cleansing in heterogeneous areas. Nevertheless, the commoners revolt of 1820 was largely a multireligious, multiclass, revolt against the Maronite *Amir*, Bashir Shihab II (Ruled 1788-1840) and his repressive tax policies (Traboulsi 2007, p. 10-11).

As noted in chapter two, a fundamental break came in 1831 when Ibrahim, the son of Muhammad Ali of Egypt, invaded Syria and requested *Amir* Bashir Shihab II assist him in his conquests. This, the Emir did. This had several important effects. The first was to alienate the Druze *Manasib* who, by turns, were either in exile or rebelled against Bashir and Ibrahim. Secondly, it was a truly internationalised conflict with the Maronite *Amir* supporting the Egyptians who were, in turn, supported by France. This alliance was facing off against intermittent resistance from the Druze *Manasib*, the Ottomans the British and the Austrians. Thus, as we previously noted, the clientelist structure, which had always had at its head the Ottoman Sultan, now had two options backed by foreign European powers. Moreover, it was during this time that Bashir, at the behest of Ibrahim, armed four thousand Christian mountaineers and used them to fight the first Druze *Manasib*-led rebellion in 1838. As Traboulsi (Traboulsi 2007, p. 12) notes “It was the first time that the inhabitants of the Lebanese territories had confronted each other on a sectarian basis.” When Ibrahim’s policies of conscription, corvée labour, repressive taxation, and disarmament became too much for the Christians, they rebelled along with the Druze in 1840, finally ousting Ibrahim with the help of the British, Austrians and Ottomans. Bashir was exiled. Dependent on Europeans, the Ottomans promulgated the *Gulhane* Decree in 1839, which instituted religious equality between Ottoman subjects as well as respect for tradition (Makdisi 2000, p. 57). This gave rise to what Makdisi refers to as “restoration politics” in which, both modernity and tradition were invoked by local actors seeking

advantage (Ibid, p. 57). The Maronite church sought the restoration of a Maronite Shihab *Amir*, Maronite commoners sought equality, and Druze lords sought their traditional lands, peasants and privileges, (Ibid, p. 58- 61). Thus it was that Bashir Shihab III was inaugurated and the Druze *Manasib* returned to their lands to peasants who resisted them and a ruler who was similarly hostile. In 1841, the Druze *Manasib* deposed Bashir III and the emirate ended in violence which became increasingly sectarian. The Austrians, British and Ottomans devised a system known as the *Qa'im maqamiya* in 1843 which divided Lebanese by territory and by sect. It divided the north, under a Christian leader, from the south under a Druze leader. The proverbial fly in this ointment was that the south contained large numbers of Christian peasants whom the Maronite church argued should be under the authority of the north, while the Druze *Manasib* contended that they should control the entire mountain by virtue of their class status under patrimonial clientelist logic (Traboulsi 2007, p. 24- 25). Notwithstanding the further intervention of the Ottomans under Shakib Effendi in 1845, violence and discord followed culminating in the 1858 Kisrawan commoners rebellion in which Christians in part of the northern *Qa'im maqamiya* ejected their Christian *Manasib* and established a short-lived peasant republic. Thus, in the north, Christian peasants were ruling themselves and in the south many Christian peasants railed against the reimposition of Druze feudal lords. Increasingly, the designation of Druze **Sheikhs** or **Druze** Sheikhs became conflated. Traboulsi (Traboulsi 2007, p. 30) observes that the Christian rebels “amalgamate[d] the sectarian with the social”. The dynamics between the Europeans and their proteges in the development of this amalgam is highlighted by an account related by Ussama Makdisi (2000, p. 86- 87) of an incident in Kisrawan in 1845 related by Turkish soldiers. On their mission to disarm the commoners they came upon a Christian on horseback who was allegedly rude, disobeyed the curfew and incited the commoners before escaping. Upon his arrest he told the guards that his brother was a protégé of the French consul. The French consul duly ordered a frigate to move to threaten the Ottomans until he was freed. It is important to note that the Ottoman soldiers were attempting to impose *millet* system class strictures upon the Christians who were nominally meant to be equal citizens under the *Tanzimat* (Ibid, p. 87). Thus, an unjust class system from the Ottoman authorities and an unjust sectarian protégé system from the Europeans made for this heady cocktail.

The violence of 1860 dwarfed what had come before and was a product of this convergence of factors. There are different accounts of who started the war, Christians (Fawaz 1994) or Druze (Traboulsi 2007). What appears certain is that it began with random assassinations, moved through to a phase of pitched battles, looting, and ethnic cleansing, and ended with the rout of Christian forces and the massacre of Christian civilians creating a profound humanitarian crisis. Makdisi (2000, p. 118) notes

At least two hundred villages were destroyed in the resulting sectarian conflict. Thousands of villagers were maimed and killed in what amounted to a savage campaign by both Christians and Druzes to purify the land and to militarily resolve the contradictions of reform.

Just as this war in Mount Lebanon was winding down, the Muslims of Damascus revolted and, with some Ottoman irregular soldiers, carried out a terrible massacre upon the Christians of that city despite the efforts of other Ottoman soldiers to maintain the peace (Fawaz 1994, p. 79-100). Some Ottoman garrisons had disarmed and herded Christians into safe zones in Mount Lebanon, only to be left to the mercy of the victorious Druze, and massacred (Ibid, p. 72), a chilling historical echo of which is found in Jumblatt's testimony related in chapter six in which Syrian troops stood idle in the face of Druze massacres of Christians in 1977, after the assassination of Kamal Jumblatt. Fawaz (1994, p. 101) reports, however, that the news of these crises were not welcomed in Constantinople where the breakdown of order and the threat of European, especially French, intervention motivated a swift response. Fawaz (1994, p. 101-108) relates that the Porte took the following action: instructed city governors that massacre was to be avoided at all costs, wrote to European ambassadors promising to restore peace, punish the guilty and render justice, appointed Fuad Pasha as Envoy Extraordinary to Syria invested with all the executive powers of the Sultan, 15,000 troops and the meagre resources of the Ottoman treasury, and dispatched them to Lebanon before the massacre of Damascus occurred.

As the Ottomans anticipated, it was France that made the first moves towards intervention (Ibid, p. 108). Napoleon III was aligned with French public opinion in Christian solidarity and the interests of defending his proteges. It was his foreign minister, Antoine Thouvenel, who first suggested a European intervention consisting of a multilateral commission reflecting the concert and a mixed naval force to monitor the coast (Ibid, p. 109). Thouvenel presented this intervention as a continuation of 1842 and, thus, not a hostile move. The British, for their part, were in the tricky position of having a colonial policy of supporting the Druze whilst public opinion was firmly on the side of fellow Christians (Ibid, p. 111-112). They initially resisted French moves for intervention, but reconsidered after the Damascus massacres out of fear of a French-Russia alliance. Thus, whilst the French settled on the necessity of European troops to bring order, in addition to the commission and the concert fleet, the British pushed for coordination with the Ottoman authorities and the limitation of the intervention. The consequent compromise limited the number of European troops to 12,000, only half of which would be French. The remaining 6,000 would be made up of concert forces and provided only if needed (Ibid, p. 113). Intervention commander Charles De Beaufort d'Hautpoul was to coordinate with the Ottoman extraordinary commissioner in Syria, Fuad Pasha. The duration of the intervention would be limited to six months. Beaufort had been the chief-of-staff of Ibrahim Pasha during the Egyptian occupation of Syria and was thus intervening in a conflict he himself had helped

prepare the ground for, through his previous military activities (Ibid, p. 114). His opinions very much matched the interests of the French leadership, just as he had supported the Egyptians years earlier, he now supported the Maronites and favoured severe punishment for the Druze.

The intervention thus reflected the interests of the various parties, the Ottomans who wished to exercise their sovereignty and minimise European involvement who were supported to some extent by the British who wished for the Ottomans to maintain territorial integrity and resist French designs through support of the Druze. Similarly, France wished to promote the interests of its clients, the Maronites. The European Commission itself consisted of representatives of the concert pentarchy. As one might expect, the dual thrust of European intervention and Ottoman reaction resulted in some cooperation and some obstruction. In broad terms, Fuad Pasha managed to monopolise the intervention into Damascus which he prioritised so as not to allow the Europeans access to the interior (ibid, p. 139). Here, he relied on Ottoman military commissions presided by himself and using lists provided by Christians as a basis for prosecutions. Whilst he could often keep European consuls and visiting members of the European Commission out of the trials of high ranking Muslims in Damascus, his military tribunals in Beirut were open to European observation and interference (Ibid, p. 148). The European Commission, in conjunction with Fuad, was involved in determining reparations. In tribunals of special import, the sentences of the condemned were massively influenced by the personal and national interests represented by Fuad and the other European commissioners (Ibid, p. 151). Fuad is known to have intentionally frustrated Beaufort's initiatives, through deception and misinformation. He was particularly keen that Beaufort not attack the Druze. Beaufort's troops were contained in Mount Lebanon for the most part, Fuad had Ottoman camps raised next to French in order to impose authority, and the French were restricted to reconstructing houses and sterilising villages. Beaufort, frustrated by Fuad, often acted as an ad hoc sixth commissioner, but the British commissioner Lord Dufferin had been given explicit instructions that Beaufort was not to be allowed to communicate with individual commissioners but only the commission as a whole (Ibid, p.126).

The reestablishment of administration began quite ad hoc as the French and Ottomans established local committees to oversee the reconstruction of villages (Ibid, p. 173). The trials of Druze *Manasib* occurred at Ottoman military tribunals but the sentences were passed on for review to the European commission, in a hybrid arrangement. Predictably, the British and Ottomans pushed for leniency, arguing that both parties to the conflict had been aggressors, somewhat sidelining the greivous massacres of Christian civilians at Deir al-Qamar and other places towards the end of the war when they posed no military threat. Equally predictably, the French, supported by the Prussians and Russians viewed the Christians largely as the victims, despite the many provocations of Christian leaders towards Druze populations. Overall, the Druze *Manasib* had many of their sentences

commuted. Dufferin actually threatened Fuad with repercussions if the Druze were treated too harshly, and he did this explicitly for reasons of state (Ibid, p. 195). A common theme of the tribunals were lenient sentences for higher status individuals, this occurred in the closed sessions of the Muslim notables of Damascus (Ibid, p. 142) and for the Druze *Manasib* of Mount Lebanon (Ibid, p. 187). The patrimonial logic of impunity is expressed by Fawaz (1994, p. 142) “the humiliation of arrest was itself sufficient punishment”. Whilst the old problem of availability and reliability of evidence and questions of command responsibility both accounted somewhat for this difference, it is beyond doubt that leniency was often experienced by the higher social classes. Similarly, when the Ottomans had first brokered a peace between Druze and Maronites before the arrival of the Europeans, they had originally spoken of “oblivion of the past” in line with the tradition of amnesty and amnesia (Ibid, p. 193). The presence of the European tribunal had ensured that this did not happen entirely. The reorganisation of the mountain reflected the now entrenched sectarian logic and the internationalised patron-client dynamics in its set up. The *Mutasarrifiyya* of Mount Lebanon established a non-Lebanese Christian must be governor, appointed by the *Porte*. An administrative council consisting of Lebanese religious sects was to assist the governor, four Maronites, three Druze, two Greek Orthodox, one Greek Catholic, one Shia and one Sunni (Ibid, p. 217).

Chapter Four: The Special Tribunal for Lebanon in the Context of International Criminal Law

Introduction

This chapter first reviews some general literature on international tribunals and transitional justice to contextualise the STL and this thesis. It then reviews the more specific ICL literature pertaining to the STL, analysing the literature chronologically so one can trace both the key events in the development of the tribunal and the changing approaches and concerns of scholarship. A selection of key law literature regarding establishment and key decisions from 2007 to 2012 are reviewed. Given the volume and diversity of legal scholarship on a multitude of issues surrounding the STL, this literature review focuses on three key events: the establishment of the STL statute in 2007, the 2011 Appeals Chamber decision on applicable law, and the trial and appeals chamber decisions on *competence de la competence* in 2012 which includes, *inter alia*, whether the STL has power of judicial review of UNSC decisions. Attention is also paid to the sub-disciplinary approaches of this scholarship, namely, whether it fits within an ICJ, TJ or CLS tradition, and what this means for the type of scholarship produced. The chapter then concludes with a synthesis and critical analysis of both the scholarship and the key decisions and how this structures the STL. This will inform the context of the CDA carried out in chapters five and six. Legal scholarship can educate the uninitiated in things which are rudimentary for practitioners and inform on the key debates within the field on the STL. Review of its literature can also tell one how *au fait* legal scholars are with the historical and political context they operate within, and what implications this has for their practice.

International Criminal Tribunals

Donna Arzt (2006) writes that, from the Nuremburg and Tokyo tribunals established by the Allied victors of World War Two to try Axis war criminals, it took 48 years for more international criminal tribunals to be established. This watershed moment arrived in 1993 with the establishment of the ICTY and was enabled by the end of the Cold War (Ibid, p. 226). The key argument of the paper is that two key objectives of ICL are the “consolidation of democracy” and the “triumph of the rule of law” in post conflict states and that the “perception” of tribunal’s legitimacy among a populace is key to these objectives (Ibid, p. 226). The article takes two examples, the ICTY and STSL, as case studies to explore legitimacy along the three categories of “... perceptions of overall legitimacy, perceptions of tribunal impartiality, and the effect of public perceptions of the tribunals on the reconciliation process.” (Ibid,

p. 226). The paucity of available data is highlighted and lamented by Arzt, who conducts secondary research using surveys and interviews conducted by local scholars. Her conclusions are that more data should be collected on this topic and that the perception of justice is important for the successful operation of ICL tribunals (Ibid, p. 235). This work is distinct from this thesis in several ways. Firstly, the case study is different and, although there is space for limited comparative generalisation given that these tribunals all inhere within the same ICL system, this thesis also provides fine grained information and analysis on the Lebanese context and the esoteric nature of the STL as a latter, and particularly politicised, example of a tribunal. Moreover, Arzt's conception of *legitimacy as perception* follows that of mainstream ICL (as will be demonstrated throughout this chapter and the thesis generally) in contradistinction to the Habermasian definition of *legitimacy as practice* employed here. The latter definition is what gives this thesis the analytical purchase to critique ideology and explore hegemonic exercises of power in ICL. Historical and structural analyses generally, and the employing of CDA specifically also distinguish this thesis from Arzt's work. As will be presently demonstrated, slogans such as "triumph of the rule of law" sound impressive, but the critical questions concern which laws triumph in what context, with what consequences for sovereignty, and do these laws apply equally?

Adel Maged's (2008) article concerns Arab and Islamic Sharia perspectives on the ICL system. The central argument of Maged's article is that ICL has failed to address atrocities in the Arab world and that, to address this, "... it is imperative that "voices of reason" accurately convey to the West the attitudes of the Arab people towards this system." (Ibid, p. 477). The article does this firstly, by illustrating the compatibility of Sharia and ICL, and secondly, by elaborating the scepticism of Arab peoples and governments (Ibid, p. 477). Maged finds that Islamic legal scholars consider ICL as politically compromised and that the answer is an "... independent and impartial international criminal justice system free from political interference." (Ibid, p. 506). Maged argues, in particular, that the ICC could form the locus of a non-politicised, independent ICL (Ibid, p. 506). He also makes a striking recommendation to Arab states which is worth quoting at length

The Arab States should work on drafting national legislation defining international crimes, and determining their punishment. This should take place whether they ratify the ICC Statute or not *because it safeguards a state's sovereignty over international crimes committed on their territories in all cases.* (Ibid, p. 507 *emphasis added*)

The significance of this quote is that Maged is recommending that national Arab legal codes be aligned with ICL in order to maintain sovereignty, presumably to avoid intervention in the form of Chapter VII invocations from the UNSC. This speaks to the discussion of tiered sovereignty in this thesis in general,

the interventionist nature of ICL, and illustrations of how international legal definitions supplant Lebanese definitions at the STL in this chapter. As was discussed in the last chapter, when confronted with international definitions of aggression, English judges feel quite secure in rejecting them on the basis of the sovereignty of English law. Arguments such as this from Maged indicate a hegemonic colonisation of the mind in which intervention is always a possibility, and ICL disciplines societies which exist in the lower tier of sovereign differentiation. The historical and structural aspects of this system are highlighted in this thesis, in contradistinction to Maged's article. Maged's insight that ICL is selective and politicised is a finding shared by this thesis and explored throughout, as is his acknowledgement of the uniqueness of a permanent ICL court in the ICC. However, this thesis is more pessimistic regarding the ICC's prospects for attaining independence. As illustrated in the previous chapter (and throughout this thesis), the causal mechanism for selectivity, jurisdictional jerrymandering and politicisation is ICL's link to the UNSC and its chapter seven powers of tribunal creation and referral and its veto inoculation of permanent five members and most favoured clients. The ICC is still subject to these mechanisms. Any attempt to overcome these obstacles must, therefore, focus on displacing the UNSC as the guarantor of ICL. This thesis is also sceptical of the argument that reasoned elaboration of Arab grievances to the West regarding the unfairness of ICL would be enough to change such a system. As is illustrated throughout this thesis, UNSC Pentarchy powers are quite aware of their strategic use (and undermining) of ICL. Indeed, as the historical discussion in the last chapter demonstrates, the system of tiered sovereignty was designed explicitly for that reason.

Yuval Shany's (2013, p. 5) article discusses several international tribunal's, the ICTY, ICTR, ECCC, SCSL and the ICC, use of domestic criminal law to buttress the "perceived legitimacy" of those tribunals among host communities. The theory utilised here draws on what Shany considers core IR theories of realism, liberalism and constructivism, which have integrated accounts of perceived legitimacy as leading to acquiescence of states to international norms due to a "compliance-pull" (ibid, p. 6). The (perception) legitimacy focus of the article is justified by the author by the assumption that "It is hard to explain states' willingness to cooperate with the [ICC] Court in such extensive and expensive ways, without invoking the concept of legitimacy" (Ibid, p. 7). This article is similar to the majority of ICL articles discussed in its utilisation of perception legitimacy which has been noted elsewhere, is distinct from this thesis approach to legitimacy, and shall not be laboured further. Moreover, Shany's utilisation of IR is limited to the mainstream approaches, which share certain characteristics (system maintenance bias, underdeveloped understanding of structural power, lack of a theory of ideology). The present thesis, in contradistinction, applies a Critical Theory approach which overcome these lacks. Shany cites state cooperation with the ICC as justification for an investigation,

but this may not translate in the Middle East and the STL context, given the lack of ratification among Arab states (as detailed above by Maged), Israel, and the most powerful UNSC permanent members. Notwithstanding the objection that cooperation with the ICC is overstated, the notion that (perception) legitimacy is the only way to explain compliance also seems assumed, rather than demonstrated. Other explanations, for example that less powerful states have a material interest in international relations governed by the rule of law, are excluded. There is apparently an idealist convergence between mainstream ICL and IR liberal and constructivist accounts. In both, legitimacy is an idea which, if it is perceived, is held to exist and the question of ideological hegemony is “thrust them beyond the very bounds of the thinkable.” (Eagleton 2007 p. 27). Needless to say, this thesis takes the opposite view and applies a CDA method to interrogate power *in*, and *behind*, discourse.

Shany (2013, p. 25) finds that in these tribunals (which notably omit the STL) domestic criminal law is usually utilised with the explicit intention of overcoming the lack of a specific criminal liability under international law (as a gap filler) *or* that the tribunal’s purpose is to provide a forum for the realisation of local law, rather than an imposition of the international. It is also noteworthy that Shany (2013, p. 25) finds that application of existing domestic definitions avoids potential legitimacy crises about “... developing new international criminal standards through judge-made law”. These observations become salient in the context of this chapter on the development of the STL, its statute, key judicial decisions and controversies over applicable law. In summary, these relate to the statutory stipulation that the STL was to apply the Lebanese definition of terrorism, the judicial decision surrounding the circumvention of this domestic definition through the creation of an international core crime, and the judicial ruling that domestic Lebanese laws are always read in conformity with international laws. The remainder of this chapter, thus, establishes the STL as an outlier to Shany’s findings and, in addition, reflects critically on the exercises of power through methodology which allowed this to happen.

Johann Soufi and Sophie Maurice’s (2015) article deals with the mechanism for international tribunals, a mechanism which deals with the legacy issues of particular *ad hoc* ICL tribunals. They focus on the ICTY and ICTR mechanisms to “consider their achievements in light of their mandates.” (Ibid, p. 545). The article does this by laying out the history of tribunal completion, their issues and how this led to the mechanism’s creation by the UNSC. This is followed by an analysis of the “structure and main function” of the mechanism (ibid, p. 545). The article finds that the issues which arose for the ICTY and ICTR at their conclusion and the subsequent development of their mechanisms, will be common to other *ad hoc* tribunals and to trials at the ICC (Ibid, p. 564). It is in this context, the article makes its contribution. As is discussed in more detail later in this chapter, this article relies on the core narrative and purpose of ICL, of ending impunity. Namely, it asserts that the ICTY and ICTR were

significant contributions to this purpose (ibid, p. 545). Whilst this may be true within the strictly delimited and *ad hoc* jurisdictions of those tribunals, this thesis utilises historical and structural analyses along with immanent critique to interrogate whether the ICL system itself has structural impunity at its heart. In this chapter, we will discover one rhetorical and ideological device employed in ICL, namely, the “some justice is better than none” discourse, which serves the function of *mystifying* structural power through the implication, explicit or implicit, that case selectivity is incidental, rather than systematic.

Transitional Justice

TJ can heuristically be conceived as a theoretically “holistic” approach to justice conceived as “restorative” in societies transitioning out of authoritarianism and/or violence (See Williams, M. S., & Nagy, R. 2012). In practice this can mean that ICL prosecutions might only form part of an overall package of measures (for example, truth-telling, reparations or memorials) designed to restore peace. Moreover, because of the normative goal of restoring peace rather than simply pursuing punishment, TJ analyses focus more on the wider socio-political environments which justice mechanisms function within. It is important to note that TJ can be identified as a distinct approach to ICJ scholarship, but can also relate to the practices, institutions and regimes concretely established to achieve peaceful transition. The STL does not include mechanisms for truth-telling, reconciliation or other such TJ approaches. Similarly, as we shall see in the review of literature which follows in this chapter, scholarship writing about the STL from a TJ perspective are few. A full engagement with all the issues associated with TJ processes, an assessment of whether this would be desirable in the Lebanese context and methods for successful realisation is somewhat beyond the purview of this thesis. Given these realities, one might question why discussion of TJ, however brief, is warranted. However, the question of TJ cannot be entirely avoided. As we discussed in chapter two, the issue of memory cultures in Lebanon is prominent, as is the deeply engrained historical process of amnesia, amnesty and, as we shall see during chapters five and six, the spontaneous reactivation of memory with violent consequences. This suggests on a very superficial level, that elements of TJ approach, particularly universal truth-telling, *might* represent, under the right circumstances, a route to a more lasting stability under a more unified memory culture. This thesis deals much more with the structural and historical reasons why this possibility cannot be countenanced in this instance, the history of Pentarchy (historical or contemporary) imposed partial and politicised justice in Lebanon, and the ways in which memory is engaged with concretely in the discourse of the STL. Nevertheless, it would be remiss not to acknowledge the importance of TJ, and its notable absence at the STL. Therefore, a brief review of TJ literature will help frame these tangential discussions.

Pablo De Grieff (2012, p. 31) argues that the TJ field has been undertheorized and offers his own normative and theoretical framework. He identifies the core elements of TJ processes and argues for a holistic approach. By this, he means not that the context is holistically taken into account, but rather that the approach must include *all* the elements associated with TJ. He is, in effect, arguing against selective and for comprehensive application (Ibid, p. 33). An interesting aspect of this conception is that, not only are reconciliation and justice explicit aims of TJ, but so is democracy (Ibid, p. 65). It is very easy to be sympathetic to the idea that TJ cannot be classified as such if it is selectively applied. Selectivity is critiqued extensively within this thesis, particularly as it pertains to structures of world order and partisan internationalised interventions. Similarly, as we discussed in chapter two, Lebanon has engaged in some actions associated with TJ, particularly memorial building, but has also employed a policy of amnesty and amnesia, arguably leaving the ground open to hagiographic sectarian memory cultures which remain a threat to peace. Nevertheless, there appears to be something somewhat utopian and inflexible about developing a framework and ascribing to universal validity in all circumstances. It is arguably more profitable to investigate specifics of a country's situation and then make an argument about the requirement for particular aspects of TJ like truth-telling to overcome particular issues, rather than discounting partial applications. This type of selectivity stands in contra-distinction to the jurisdictional jerrymandering critiqued in this thesis. Moreover, the case study of Lebanon bucks the general liberal ideological underpinnings of De Grieff's normative approach, given that Lebanon is a consociational *democracy*, and is no less prone to civil conflict for it.

These kinds of critiques are present in the work of Catherine Turner (2013, p. 193) who employs a Derridean deconstruction of the antinomies and binaries in the discourse of TJ. This aligns well with the critique made above regarding simplistic distinctions between authoritarianism and democracy and equally applies to other categories. Turner concurs with De Grieff that TJ has been undertheorized, but her deconstructive analysis renders De Grieff's normative framework contingent. Among the binaries Turner problematises is "... the distinction between victim and perpetrator that shapes the boundaries of political inclusion and exclusion in transitional contexts." (Ibid, p. 194). This is an important deconstruction given that in the messy reality of civil and internationalised conflict, the identity of victim and perpetrator can easily inhere in a single individual or community. This becomes salient in the testimony of Walid Jumblatt in this thesis, which contributes empirical evidence of this reality. Turner critiques the distinction between law and politics, aligning with the central critique of CLS more widely (Ibid, p. 208). As she does so she highlights that TJ is no more immune to this way of thinking than mainstream ICL, but she argues these distinctions "can no longer withstand scrutiny" (Ibid, p. 208). Whilst Turners Derridean approach to the deconstruction of epistemic

categories is useful, its post structuralist approach does not approach issues of structural, historical and ideological power. The current thesis presents such an approach to contribute to the literature.

TJ literature also includes more empirical accounts of these processes. For example, Cyrus Samii (2013, p. 219) conducted a primary research survey to understand public support, or lack thereof, for the Burundian TJ process. Samii finds that there is, overall, a lack of support for the TJ process and asks, “Why would large numbers of those entitled to accountability and truth express a preference to ‘forgive and forget’?” (ibid, p. 219). The principle reasons explored are fear of renewed violence and calculations associated with the post-war political settlement and balance of power. Of these, Samii finds that the latter of these considerations is foremost in the minds of Burundians (Ibid, p. 230). Distinctions abound between this thesis and Samii’s research; the country case, the types of tribunal and internationalisation in each case, the methods used, to name a few. However, there is some complementarity in identifying generalisable inclinations towards amnesia among post-conflict societies. However, one key distinction worth highlighting is that the present research, through its application of CDA, is equipped to consider amnesia and forgetfulness, not simply as instrumental considerations and concerns as Samii does, but as ideological and discursive elite strategies with deep historical roots in the Lebanese context.

United Nations Security Council Resolution 1757

UNSC Resolution 1757 of 30th May 2007 which established the statute of the STL, and thus formally created it, precipitated a flurry of academic articles from scholars of ICJ and TJ. These articles differed in particulars, but were generally concerned with questions of *legality*, *legitimacy* and *jurisdiction*. A technical legal question was addressed by Bardo Fassbender, a Professor at the University of St Gallen and former advisor to “the Legal Counsel and Under-Secretary-General of the United Nations on the subject of “Targeted sanctions of the UN Security Council and Due Process of Law”.” (University of St Gallen 2015). His paper examines the circumstances and legality of UNSC Resolution 1757 which established the STL statute. He proceeds by analysing secondary data of primary sources to address the question of whether the UNSC intended to enforce a treaty-based tribunal using its powers under Chapter VII of the UN Charter. Chapter VII of the UN Charter deals with breaches of international peace and security and the powers which the UNSC has at its disposal to reinstate them in times of crisis. The hypothesis of the paper is that Chapter VII powers do not include the ability to impose a treaty which “... is an agreement based on the concurrent consent of two or more parties to be bound by the terms of the treaty” (Fassbender 2007, p. 1094).

The process of establishing the court began with a written request from the then Prime Minister of Lebanon, Fuad Siniora, to the UN Secretary General on the 12th December 2005 requesting a “tribunal of an international character” (Siniora 2005). This prompted negotiations between representatives of the UN and elements of the Lebanese government between 31st May and 7th July 2006 (Fassbender 2007, p. 1093). However, ratification of a treaty constitutionally requires agreement between the three major branches of the Lebanese government, namely the President, the council of ministers led by the Prime Minister, and the Parliament, pursuant to article 52 (Republic of Lebanon 1926 [2004]). Indeed, responsibility for negotiating treaties falls, in the first instance, to the President (Mugraby 2008, p. 189). Though Siniora had the backing of the majority in Parliament, the Speaker of the House Nabih Berri refused to convene parliament for the vote. In addition, the cabinet itself was depleted by the walkout of all six Shia Ministers. Finally, the President of the Republic, Emile Lahoud, refused to ratify it (Fassbender 2007, p. 1091). In this context of deadlock, the UNSC invoked its Chapter VII powers to establish the STL through resolution 1757. To be clear, Fassbender does not argue that the UNSC does not have the power to create a tribunal, indeed he states plainly that the UN Charter grants the UNSC this right. However, he takes specific issue with the fact that the UNSC offered an ultimatum to the Lebanese Government to sign the treaty or face the *fait accompli* of a UNSC resolution. Fassbender argues that this amounts to political pressure which is not within the UNSC’s powers. In the system of *pacta sunt servanda* states should not be compelled to sign treaties (ibid, p. 1094).

Fassbender observes that this overzealous approach was framed as an “effort to present its measures as ultimately based on the will of the Lebanese people, [however] the Council, in fact sided politically with the Lebanese Government” (ibid, p. 1092). This observation is theoretically interesting as it highlights just how much the UNSC favoured the appearance of a consensual treaty over a coercive resolution, to the extent indeed that they were willing to threaten coercion in order to procure consent. Moreover, it seemingly highlights an instance of *false universalism* (See Chapter one) through the political siding of the UNSC with “the Lebanese Government” (ibid, p. 1092). Fassbender concludes his review of these practices by arguing that resolution 1757 is legal because the draft treaty was used as a blueprint for the resolution not a treaty imposed through chapter VII, which would be illegal. However, he states it “should remain a one-off phenomenon” because of the “threat” of unilateral imposition (ibid, p. 1105). The significance of one-off phenomena or *exceptions* has been highlighted in recent critical scholarship (See Matthews 2014) as, *inter alia*, indicating the location of sovereignty through the famous dictum “Sovereign is he who decides on the exception” (Schmitt, C. [Schwab, G. Trans]. 2005, p. 5). In this case, therefore, the UNSC is sovereign as it decides the exception under which, the law of treaties and a nominally sovereign countries’ constitution, can be

overridden. Moreover, the distinction between using the agreement and the statute as a blueprint for resolution 1759 or of using 1759 to push through the agreement is arguably *semantic* and largely meaningless. Indeed, a fellow ICJ scholar and STL supporter later wrote quite unabashedly that “On May 30, 2007, the Security Council acted under Chapter VII of the U.N. Charter *to adopt the agreement between Lebanon and the United Nations and to execute the agreement's annex, the statute of the new tribunal.*” (Gardener 2011, p. 95). Despite its largely semantic and meaningless nature, the effect of Fassbender’s conclusion, that 1757 was ultimately legal due to the fact it did not enforce a treaty, is substantively a legitimating move in favour of UNSC action. Fassbender’s article is notable for its highlighting of the partiality of the Lebanese delegation led by ex-Prime Minister Siniora. This is not an insight which is reproduced in other ICJ scholarship, but only re-emerges in the CLS scholarship on the STL.

A Lebanese perspective on questions of Legality is provided by Choucri Sader, a judge who was part of the Lebanese delegation to the UN negotiations on the statute (Sader 2007, p. 1083). He engages with a different debate surrounding constitutionality. He identifies article 20 (Republic of Lebanon 1926 [2004]) as the locus for scholars challenging the constitutionality of the STL (not article 52 as in Fassbender’s account), as it “stipulates that judicial power shall be exercised by the courts formed in compliance with the law.” (Sader 2007, p. 1084). These critiques argue that by establishing a foreign tribunal, the sovereignty of the Lebanese is violated, breaching this article. Sader gives this argument short shrift and notes that the article only provides that the tribunals should be established by law, not that they should be Lebanese (*ibid*, p. 1084). He shows that there are precedents under the French Mandate for “mixed tribunals”, (mixed French and Lebanese judges) which were in operation between 1923 and 1946 (pre-independence). Moreover, he points to a civil war era “mixed tribunal” (Syrian and Lebanese judges) in operation between 1978 and 1983 established to prosecute crimes by and toward the (largely Syrian) Arab Deterrent Force. These examples are interesting for many reasons, not least because Sader is attempting to assuage the fears that Lebanon will lose its sovereignty by pointing to examples of mixed courts which were associated with some form of foreign domination and intervention. Moreover, it is theoretically pertinent to consider how the development of the Lebanese state, constitution and jurisprudence under the French mandate and *Pax-Syriana* might leave a historical residue enabling the easy formation of mixed courts and to what extent the presence of such courts are an indication of domination. However, as a question of positive law, Sader makes his point, there appears to be nothing in article 20 which says a tribunal can only be composed of Lebanese judges.

Lebanese lawyer and scholar Nidal Nabil Jurdi's (2007) article on the STL drew attention to a more theoretical question. This question arose from the observation that "... the STL is unique in being an international tribunal exercising jurisdiction solely on the basis of crimes drawn from a domestic source – the provisions of the Lebanese Penal Code (LPC)" (Ibid, p. 1126). Particularly, he focuses on article 314 LPC, which defines the offence of terrorism. Until relatively recently, international jurisprudence had failed to define and apply an international crime of terrorism and so the notion of an international tribunal such as the STL applying a domestic crime of terrorism opened up interesting possibilities. For Jurdi, the question was whether the STL could theoretically provide precedent for the development of an international crime of terrorism based on Art 314 LPC (ibid, p. 1125). The secondary, normative, question was whether this would be desirable and what the strengths and weaknesses of the Lebanese conception of terrorism were. He examined in detail the material and mental elements of the crime under Art 314 LPC, he also highlights the international political pressure which resulted in early proposals for the inclusion of the core international crime of *crimes against humanity*, being dropped (ibid, p.1126). Indeed, he argues that the "widespread" and "systematic" nature of the bombings and murders, including that of Hariri, indicated such a crime could be detected (ibid, p. 1126). This is a view shared by Sader who was present at the negotiations and was in favour of including crimes against humanity alongside domestic crimes of terrorism (Sader, 2007, p. 1086). When, comparing the Lebanese conception of terrorism to the nebulous international one, Jurdi draws upon the theory of the late Antonio Cassese; former President at the ICTY and President of the STL from 2009 until his death in late 2011. In drawing the comparison, Jurdi notes that in Cassese's international concept of terrorism a *transnational element* is required, whereas, in the Lebanese version, there is no such requirement (Jurdi, 2007, p. 1131). This discussion is interesting in light of the controversial *interlocutory decision on applicable law 2011* made by the STL Appeals Chamber under Cassese which claimed to identify just such a transnational element in the Hariri assassination. This decision is discussed later in this chapter.

In the final analysis, Jurdi proposes that the Lebanese definition suffers from two major problems, firstly, that the establishment of an ideological motive for violence is not required, rendering the law excessively broad. Secondly, though the list of means included in Art 314 of creating a public hazard which would be considered terrorist is not exhaustive, it does exclude some specific means, such as guns (ibid, p. 1130). In concluding, Jurdi states that given the invocation of Chapter VII for its establishment, the STL's powers may exceed those of treaty based tribunals such as the SCSL. As an international court he thought it likely that the practice of the court, in particular the use of Art 314, could have an effect on the coalescence of an international crime of terrorism. The level of influence he believed would be dependent on the particular approach of judges in regard to RPE and

their general approach (ibid, p. 1131). It is worth noting, that this speculation was based on the understanding that “The STL will rely solely on domestic provisions to prosecute the crimes under its jurisdiction ...” (Ibid, p. 1131). Thus, while the development of the crime might relate to the practices of the Chapter VII empowered judges, Jurdi still did not countenance that they would apply anything other than the Lebanese definition of Terrorism.

Jan Erik Wetzel and Yvonne Mitri’s (2008) substantial and oft cited article, canvassing the STL’s legality, legitimacy and prospects, made the argument that “the legal framework of the Special Tribunal distills the “best practices” of prior tribunals.” (ibid, p.81). As well as spelling out these practices, the article also deals with many of the arguments opposing the STL. One of the institutional innovations the authors highlight is the succession of the office of the prosecutor from the UNIIIC, essentially unifying the roles of investigator and prosecutor. They highlight a concern that the origin of the UNIIIC in UNSC Resolution 1595 means that it is essentially a creature of the UNSC and, as such, does not offer enough independence for the office of the prosecutor. More specifically, these criticisms address the issue of the rights of detained persons. This is especially pertinent to the detention of four Lebanese Generals allied to *Pax Syriana* who were incarcerated without charge by the Lebanese authorities under instruction from the United Nations International Independent Investigation Commission (UNIIIC) under suspicion of involvement in the assassination of Hariri for approximately four years. The generals were held based on what turned out to be false testimony and eventually released after the establishment of the STL in 2009, without charge (Nashabe 2012, p. 261). Thus, the lack of human rights safeguards and redress for people potentially detained indefinitely without prospects for a trial was not merely an academic concern (ibid, p.97).

The authors address this, stating that “the [UN]IIIC has continuously stressed its adherence to the highest legal standards available in order to ensure the admissibility found before a future tribunal.” (ibid, p.97). The rationale, it seems, is that the UNIIIC says its legal standards are the highest, therefore, this must be the case. This assessment seems uncritical to the point of *naïvete* or willful ignorance. It also appears to rest upon a conception of international law as hermetically sealed from the vicissitudes of the political environment. Indeed, given that the generals had by this time been jailed for two to three years, and would ultimately be released without charge after four years of detention due to lack of evidence, one could surmise that, had the authors not prejudged them guilty, they would not have been as sanguine about such a long detention without charge.

In discussing jurisdiction, the authors note that the subject-matter covers the Hariri assassination and crimes similar in nature, gravity and connection between 1st October 2004 and 12th December 2005. They present what remains an important and convincing description of crimes and

inferred motive. They note that the attacks against March 14th Parliamentarians was steadily depleting the parliamentary majority enjoyed by that faction (ibid, p. 99). Indeed, they observe that victims included, among others

a former prime minister, a sitting cabinet minister, other high profile politicians, including Members of Parliament, as well as influential journalists, most of them known for their explicit opposition to Syrian influence in Lebanon, as well as many members of the general public. (ibid, p.99-100)

This led to a situation, they argue, where potential cases for the UNIIIC encompassed some 60 killings. It does not *automatically* follow from this that Syria was directly involved in these attacks as was assumed from the domestic to international level at the time and was reflected in the initial UNIIIC report (often referred to as the Mehlis report). However, it suggests, at a *bare minimum*, that the killers' undertakings were on behalf of Syria and the "resistance". Moreover, the sophistication of the killings, particularly Hariri's, indicates military and logistical capabilities in excess of common criminals and assassins. The countervailing story of Israeli involvement, relies on the belief that, for a false flag operation, Israel was willing to murder numerous pro-Western, anti-Syrian figures, and weaken their parliamentary bloc and morale, simply to incriminate Syria, even *after* the presumed goal of such a strategy (the removal of Syria from Lebanon) had been achieved.

Mention of Israel by Wetzel and Mitri is minimal, but quite telling. The first mention states only that the 2006 Israel-Hizballah war which, *inter alia*, led to the deaths of approximately 1,200 people, will not be prosecuted at the tribunal (Wetzel, Mitri 2008, p. 82). No explanation is given to explain this fact. The second mention comes near the conclusion in which the authors deal with the various criticisms of the STL. The more "moderate" of these, express concerns about the fact that a tribunal was established for the Hariri assassination, but not for larger sets of potential crimes, such as the 2006 war or the Lebanese Civil War (ibid, p. 111). The authors reject this argument stating

the fact that the latter two proposals seem entirely unrealistic at present should not detract from the assessment that a Tribunal aimed at the most recent problems could at least be *one step towards* reconciliation. For this time, the circle of violence may be broken by a *neutral* allocation of accountability. (ibid, p.111 *emphasis added*)

This passage reflects implicit understandings, some common in the ICJ literature, which this thesis takes as points of departure in order to address its research questions. Firstly, the fact that the proposals are "unrealistic" is largely accepted as a fact and no normative reflection on the relationship of *is* and *ought* is offered. Related to this, is the fact that the authors do not feel the need to explain

or analyse the reasons why these proposals are “unrealistic”, the reasons are deemed so self-evident that they require no further analysis, or even mention. Presumably, the reasons are political. At the level of domestic politics, as we know from chapter two, the fact that both Lebanese elite political factions benefit from the 1991 amnesty law and include ex-milita leaders means that they would be unlikely to countenance *core international crime* investigations under any circumstances. With regards to the 2006 war, one has to assume that the only obstacle (apart from an unwilling Hizballah, which appears not to be an impediment to the STL itself) is political cover for Israel from the U.S. veto at the UNSC, which has been consistently used in this way and which renders hopeless any attempt to investigate Israeli crimes through UNSC mechanisms (See Dag Hammarskjöld Library 2017).

Indeed, other scholarship has relayed the manner in which the U.S. leveraged its position as a permanent UNSC member in order to limit the jurisdiction of the STL exclude the 2006 war for the benefit of Israel (Cerone 2012, p. 55). In this light, the term “unrealistic” appears somewhat euphemistic. The second assumption is that the STL, whilst ignoring the vast majority of victims, can be “one step towards reconciliation.” (Wetzel, Mitri 2008, p. 111). This seems a curious belief and, indeed, it has no basis in an analysis of the Lebanese state-society, but seems to arise as a *common sense* understanding that some “justice” is better than none. The present thesis is unwilling to uncritically accept this assumption and will assess it on the basis of scholarship regarding the Lebanese state-society and the structure of world order historically. Finally, *neutrality* refers to neutrality *within* the already established structures and procedures of a given tribunal and not to the mechanisms which make establishing those structures and procedures (im)possible. Even if we assume that value neutrality and objective application of law is possible within the STL, this conception of neutrality externalises the deeply political, non-neutral, hierarchical, and exclusionary mechanisms which allow the STL to exist in its specific form. CLS has long acknowledged that the ICJ penchant for insisting on a strong disciplinary division between politics and law has obfuscated the power relations inherent in these concrete relationships (Matthews 2014, p. 151). In contrast, this thesis is concerned with the analysis of the power relationships which enable ICL to apply to some and not other cases on a systematic basis.

Marieke Wierda, Habib Nasser and Lynn Maalouf’s (2007) article from this period presents a more critical analysis of STL establishment grounded more fully in the context of the Lebanese State-Society. This is arguably because this article is written from a TJ perspective. This is evident immediately in a comparison of the bibliography of this article with those of the previous articles from the dominant ICL sub-discipline, ICJ. This TJ article contains *multidisciplinary* and human rights INGO scholarship on the manifold crimes and conflicts Lebanon has endured, whereas, ICJ accounts are

disciplinarily *self-referential*, largely citing *statutes*, precedential court *decisions*, or *functionaries* of the UN system or *UNSC representatives* or other law texts. Thus, ICJ is largely decontextualised from its site of operation. The TJ approach provides an alternative to the tendency in ICJ towards conceiving of a realm of law untainted by politics. Indeed, the article appears to live up to such expectations by offering the most comprehensive account of the Lebanese context of the articles discussed so far. Emphasis is placed on the scale and quality of violence, from the massacres of Damour and Karantina in the early civil war, to the impact of the dual Syrian/Israeli occupations after 1990. In particular, discussion of the Israeli occupation of the south, which involved repeated IDF attacks on civilians (notably at Qana) and the operation of a proxy torture prison at Khiam (Wierda, Nassar et al. 2007, p. 1069) stand out as an alternative narrative almost unanimously occluded in ICJ accounts. They additionally draw focus on the amnesty law of 1991 which led to “selective impunity”, punishing assassinations of political figures rather than large scale war crimes and crimes against humanity. They argue this had the perverse effect, *inter alia*, of rendering the fate of approximately 17,000 missing persons, indefinitely unknown (ibid, p. 1070). They argue that this law was not simply politically expedient, in that it allowed the historic bloc of *Pax-Syriana* to neutralise Samir Geagea by selectively prosecuting and arresting him, but actually created “two categories of victims: the political and religious elite whose assassination is considered ‘unpardonable’, and a second rate category that comprises the ‘ordinary’ people” (ibid, p. 1071). Interpreting this with reference to the literature discussed in chapter two, one can see that the privilege of *Zu’ama* elites over other citizens is still in evidence here.

However, this article retains a strong system maintenance bias. This is evidenced in its hypotheses, research questions, and ultimately conclusions. The hypothesis derives from the understanding that selective justice and selective impunity, with regards to the legacy outlined above, presents particular challenges to the “local perception” of the STL (Ibid, p. 1066). The research questions proceed to ask “What can the STL do to respond to these challenges to its legitimacy? What is it realistic to expect in terms of the longer-term impact ... in Lebanon? What message should it communicate to the Lebanese public in performing its work?” (ibid, p. 1067). Notice that the research questions do not ask whether the local perceptions and fears about the STL are justified in any way; for example the fear that it may be *politicised* within Lebanon and *instrumentalised* by foreign powers. The authors omit this question entirely in favour of system maintenance questions about how best to secure legitimacy and change perceptions. The use of the word perception, in itself, is interesting. It implies an understanding of legitimacy which is dependent on perception, as in the Weberian model, rather than a substantive set of inclusive and deliberative processes as in the Habermasian model (See chapter one). This distinction leaves no room for the consideration of what concrete practices of

legitimacy look like, and fall back on a relativist conception of legitimacy being in the eye of the beholder. This approach ensures that questions of ideological falsity and deception are literally unthinkable. The purpose outlined in this article, to change the inter-subjective understanding in Lebanon, can be understood as a hegemonic project if one were to determine that its aim is to naturalise processes of domination. Part of the reason for this system maintenance bias might be a common sense understanding which this article shares with that of Wetzel and Mitri (2008), namely that some selective “justice” is better than none.

The selective nature of the STL’s justice does not in itself detract from the need for an accountability mechanism in the case of the murder of Rafiq Hariri and indeed others killed through political assassinations. The problem in Lebanon’s past has been too little justice. On this ground alone it may be irresponsible to oppose this first justice measure. (Wierda, Nassar, & Maalouf 2007, p. 1073)

As stated earlier, this thesis wishes to critique this assumption through analysis of the architecture of power present in the sphere of the Lebanese State-Society and that of world order. It is the underdevelopment of this latter element which also accounts for some of the system-maintenance bias present in this article. Indeed, though the authors deal descriptively with inconsistency in prosecuting the Hariri case compared to the “international communities” lack of interest in the 2006 war, it fails to question the mechanisms of power in world order which systematically distinguish between worthy and unworthy victims on a political basis, a phenomena highlighted in mass media by Edward S. Herman and Noam Chomsky (Herman, Chomsky 1988 [2008], p. 75- 114). Similarly, the article mentions the Iraqi High Tribunal (IHT), but only as one of many other tribunals which have faced “legitimacy problems” and been accused of having been foreign plots by host societies. They state that the perception in the region, that the IHT was a U.S. entity, was unfair because American staff were only involved in the investigation, not the prosecution (ibid, p.1075). This must betray an ideological blindness to the fact that the constitutional order, political and military conditions which made the IHT possible were of American occupation, itself arising from unilateral invasion (potentially amounting to the international crime of *aggression*) in 2003 (See Davies 2005). Indeed, it seems telling that none of these early articles mention the controversial Iraq invasion or its link to the deteriorating relationships between pro-Western and “resistance” alliance which heralded the murder of Hariri. Nor do they question the fact that the two principle states that initiated the invasion are permanent UNSC members. Nor do they reflect on how the structure of that organ might lead to systematic injustices and impunity for permanent members and their allies. Moreover, they do not reflect on the bitter irony that these actors, which had previously made arguments disregarding international law, were

now using it to pursue their enemies. It is these inconsistencies, particularly how certain actors are enabled through structures of world order to weaponise and target enemy actors with ICL, rendering some victims and perpetrators invisible, and the ideological complicity of liberal ICJ and TJ scholars and practitioners, which this thesis seeks to highlight and critique. It is for these reasons that it will go beyond the common sense understanding that some “justice” is better than none, to one which analyses the structural factors which, whilst ensuring justice for some victims, systematically denies it to others.

Appeals chamber interlocutory decision on applicable law 2011

On 17th January 2011 the prosecutor submitted indictments to the Pre-Trial judge for confirmation. This prompted the Pre-Trial Judge to submit a request to the Appeals Chamber for a ruling on 15 questions of law (Gillett & Schuster 2011, p. 990). The Appeals Chamber published its interlocutory decision on 16th February 2011 (ibid, p. 990). This decision led to two symposiums in two prominent journals of international law, *The Leiden Journal of International Law* and *the Journal of International Criminal Justice*. The former constituted contributions from Professor Kai Ambos of Gottingen University (District Court Judge) with Barrister and Legal Scholar Professor Ben Saul. The latter comprised contributions from Matthew Gillett and Mathias Schuster, legal officers in the office of the Prosecutor at ICTY, with Manuel J. Ventura, Law Clerk to the Chief Justice of the Constitutional Court of South Africa and previously intern to President Antonio Cassese at the STL. The primary reasons for the controversial nature of the decision is that it opined that there is, in existence, a *customary international peacetime crime of terrorism* and, moreover, that this can be used to interpret (or overrule) the Lebanese definition of terrorism in Article 314 of LPC, which the STL statute identified as the applicable definition of terrorism at the STL. This raises both a potential contradiction between the statute of the STL and the Appeals Chamber on the one hand, and between international and Lebanese law on the other. Therefore this decision was one which the majority of the scholars discussed found troubling.

The *interlocutory decision on applicable law 2011* accepted that, as Jurdi had understood it in 2007, the statute was to apply the national Lebanese definition of terrorism. However, having confirmed this, it then proclaimed that the Lebanese definition could be freely interpreted with reference to the customary international law definition of terrorism, utilising an interpretive method which applies interpretation to all texts, not simply specific statutory lacunae or unclear language, as is the case with legal positivism (Ambos 2011, p. 658). As Saul notes “... whereas the Lebanese law, on

its face, recognizes only certain stipulated methods of perpetrating terrorism (such as bombs), additional unspecified methods (such as guns or knives and so forth) are now recognized by importing the international customary crime (which is said not to be limited to enumerated means or methods).” (Saul 2011, p. 679-680). In addition, Ambos notes that the Decision interprets the means liable to create a public hazard, stipulated in Article 314 LPC, as including indirect, as well as direct, consequences such as the violent reactions of the supporters of assassinated leaders, not just the direct consequences of using bombs in a public space (Ambos 2011, p. 661). He argues that this is problematic as it potentially “leads to a limitless expansion of the offence.” (ibid, p. 661). Ambos (2011), Saul (2011) and Gillett and Schuster (2011) all problematise liability expansion with recourse to the *nullum crimen sine lege* principle rule of law, which provides protection from retroactive (*post-facto*) punishment. Saul (2011, p. 680) is the most strident in his criticism as he argues “The effect of the Decision is really to criminalize new conduct and thereby to import a new offence into Lebanese law.” However, Ventura (2011) argues that the Appeals Chamber was quite within its rights to do this because Article 314 does not provide an exhaustive list of means. Accordingly, it was only Lebanese judicial *interpretation* which had limited the means defined as terrorism in Lebanese courts, not the LPC itself. This speaks to the identity of the STL itself which, as a hybrid ad-hoc entity, contains both international and Lebanese judges. Thus, he argues that the Decision does not expand the codified definition, but instead takes issue with the way it has been interpreted (ibid, p.1038). However, concerns regarding this aspect of the Decision have not gone away. Eric Stier (2014, p. 123) has argued that, whilst the means enumerated in Article 314 are not exhaustive, “... the act must be committed by a particular class of means—those inherently liable to create a public danger.” or as Ambos (2011, p. 661) puts it “... the means listed share a common characteristic ... once they are employed ... they cannot be controlled.” Given the discussion of the link between assassination and massacre explored in chapter two, the Decision rationale for interpreting uncontrollable means of creating public danger to include targeted assassinations, in the Lebanese context, is understandable. However, from a legal and human rights perspective, these indirect/intangible threats are ill-defined and do not equate to the uncontrollable means specified in the LPC Article 314. After all, there is nothing indirect about being the superfluous victim of an explosion. The upshot is that the decisions’ methodology imported new criminal liabilities from international law in to Lebanese and potentially applied this definition retroactively (against human rights principles).

The *interlocutory decision on applicable law 2011* was also notable for the finding that there exists a customary international peacetime crime of terrorism. Ambos (2011) and Saul (2011) both argue, to differing extents, that the Decision is incorrect and that terrorism is not yet a customary crime. However, both Gillett and Schuster (2011) and Ventura (2011) argue that Ambos and Saul’s

approaches are too formalistic and thus restrictive of jurisprudential development of the law. Ambos' (2011, p. 655-656) central arguments are that firstly, the Appeals Chamber's discussion of terrorism is superfluous given that Article 314 LCC definition is unambiguous. Moreover, he states that the Decision is incorrect and that terrorism constitutes only a serious treaty-based offence but is not yet part of customary international law. The difference being that the former relates to *suppression treaties* which encourage/enable coordination of domestic jurisdictions whilst the latter affirm the conduct as liable for prosecution by truly international jurisdictions.

Whilst other scholars focus on multiple outcomes of the Decision, Saul's article focuses solely on the Decision's finding that terrorism is a customary international crime. He is also the most critical of the Decision of all the scholars discussed. Indeed he argues that, in addition to ignoring sources of law which might contradict the Decision's finding, "... all the sources of custom relied upon by the Appeals Chamber – national legislation, judicial decisions, regional and international treaties, and UN resolutions – were misinterpreted, exaggerated, or erroneously applied." (Saul 2011, p. 677). It should be noted that Saul states that he submitted an *Amicus Curiae brief* to the STL prior to the 2011 Decision, but it was rejected as it was one day over the deadline. He describes the STL's call for brief's as "little publicised" (ibid, p. 677). In addition, it is clear from the references that both he, and the President of the STL Antonio Cassese, released textbooks on terrorism in ICL in the 2000's which came to opposite conclusions regarding the crime's status. Saul clearly feels that his is the majority view, as he points out that neither the STL prosecution or defence, nor "... the majority of states and scholars ... recognise a customary crime of terrorism, with the prominent exception of one eminent jurist, Antonio Cassese, who happened to be President of the Appeals Chamber..."(ibid, p. 678). Ambos (2011) supports this view. Thus, Saul examines the Decision's use of sources in order to demonstrate the charges he levels at the decision. He criticises the method by which the Decision affirms the statutory restriction of applicable law to the LPC article 314 but then subverts this by finding that all states interpret their own legislation in line with the relevant international provisions (Saul 2011 p.680). To summarise what is a lengthy critique, Saul analyses the sources the Decision relies upon; national legislation, UNSC resolutions, national judicial decisions, international treaties, regional treaties and UNGA resolutions. Simplifying further, Saul's critique of the Decision's use of 37 national laws revolves around the argument that there are fundamental conceptual differences between the laws cited, some of which are broad and some specific. The Appeals Chamber, following Cassese, held the opinion that the customary crime of terrorism contains a transnational element. Saul points to the fact that few national sources cited provide for a transnational element, including Lebanon's, undermining the Decision's own rationale. He argues that the concepts are even more heterogenous if one considers the approximately 160 states not included. However, one of his most negative

observations is that the Decision drew upon national terrorism laws which transgress human rights law; Egypt, Saudi Arabia and Uzbekistan (ibid, p. 683). He states “It is problematic to say the least for the Appeals Chamber to seek to evidence custom by relying on national laws that violate existing international human-rights law. Such national laws are simply unlawful under international law” (ibid, p.684). The transnational element is interesting as the literature indicates its presence can be detected in two ways. Firstly, by empirical evidence of transnational activities or actors involved in the crime (Ambos 2011, p. 667). Another, seemingly exclusive indication, is the presence of international (UNSC, UNGA) condemnation (See Ventura 2011). This gives rise to a legal tautology which proceeds that this terrorist act is transnational and therefore the UNSC/UNGA labelled it as such. We know that the terrorist act was transnational because the UNSC identified it as such. In this formulation the evidence for the claim is the action itself and it includes no external criteria by which to review it as a truth claim. It is actually not a truth claim but a *speech act*. This highlights the centrality of the UNSC in ICL reasoning, namely, that the UNSC speech act of declaring something has the same, if not greater, status than that of a material condition. Whilst one might protest that the UNGA has this power too, it is ultimately subject to UNSC veto. Thus, in actuality, only those speech acts of the UNGA not vetoed by the UNSC become the basis for initiating tribunals. This explains why the repeated UNGA condemnations of Israeli actions, for example, are never institutionalised in this way. A good example of this phenomena for comparison with the STL case is that of UNGA resolution 123 of its 37th session in 1982. Here, it described the Israeli invasion of Lebanon at that time as including two of the most serious core crimes in international law, *aggression* and *genocide* (See Dag Hammarskjöld Library 2018). Needless to say, despite their long establishment as core international crimes from Nuremberg onwards, these UNGA speech acts were never institutionalised in the manner of the STL.

Saul critiques each of the sources relied on in the 2011 decision through similar modes. For example, he criticises the Appeals Chambers’ use of UNSC resolutions 1373 and 1566, the so called terrorism suppression treaties, to define and identify an extant core international crime of terrorism. In his discussion of UNSC resolution 1373, he points out that this was not a criminal definition or liability for terrorism in the international sphere, but a post-9/11 inducement to states to criminalise and suppress terrorism *nationally* (Saul 2011, p. 685). In the ensuing rounds of criminalisation at the national level, heterogenous definitions proliferated which were cynically employed by many state authorities to compromise human and political rights (ibid, p. 685). With regard to 1373s’ successor, UNSC resolution 1566, he argued that, though it encompassed a human rights compatible definition of terrorism, it was non-binding and states generally did not revisit their laws after the UNSC resolution 1373 round of legislation. Moreover, he argues that the definition contained in 1566, which reclassifies as terrorist, criminal acts which have the intent to intimidate populations or compel institutions, is

conceptually at odds with the crime identified in the 2011 STL Decision which has an open-ended means criteria (ibid, p. 686).

The cumulative effect of the Decision's methods of interpretation and findings, Saul argues, is that "... it is an example of a judiciary transforming itself into a global legislature, creating entirely new law and exceeding the accepted bounds of the judicial function." (ibid, p. 678). This is a concern highlighted also in Gillett and Schuster (2011, p. 999) and Stier (2014, p. 127). Saul concludes that the 2011 Decision is problematic for four reasons. He states that bad judicial decisions, not only undermine public confidence, but also "... take on a life of their own: the incantatory power of an international tribunal is such that what it *says* is the law, *is* the law..." (Saul 2011, p. 699 *emphasis in original*). Moreover, Saul is concerned about the human rights of defendants under what he sees as an *ex-post facto* application of a customary law (which he argues does not exist) to a crime in 2005 "even if the conduct of such persons is morally abhorrent" (ibid, p.699). He argues that one of the weakest aspects of the Decision is that it determined that a customary crime of terrorism had coalesced, but that the decision could not pin-point when this had happened. He notes that it must have coalesced before 2005 to avoid the claim it was *ex-post facto*, but he is sceptical that this was the case. Lastly, he highlights broader issues arising from the tribunal's use of case precedent for repressive national anti-terror laws, legitimising them and offering encouragement to repressive regimes to label dissent as terrorism (ibid, p. 699). Saul's article offers insight into the ways in which Decisions, in becoming case precedent, do not simply describe facts but constitute facts and enable speech acts. Moreover, it demonstrates the ways in which authoritarianism and security states can be strengthened, not only in the host state, but also in states globally, through the sources of legislation and case precedent drawn on and dialectically recycled. Finally, it hints at the power of activist judiciaries to pursue their vision of what the law *should be* at international tribunals. Arguably, more than many other disciplines, in law we find evidence of what Anthony Giddens (1987, p. 19) terms the 'double hermeneutic' whereby 'The concepts and theories invented by social scientists ... circulate in and out of the social world they are coined to analyse.' In the case of the 2011 decision it is even more pronounced, a Legal Scholar and practitioner, Antonio Cassese, was enabled through his positioned practice at the STL, to ensure his version of terrorism law became 'true', rather than another.

Both Gillett and Schuster (2011) and Ventura (2011) disagree with Saul. The former scholars accept that there might be some merit to the notion that the decision was superfluous, as Ambos (2011) argues. They argue, however, that the use of sources by the tribunal to supplement, rather than override, the LPC was acceptable (Gillett & Schuster 2011, p. 1000). With regard to the Decision's use of interpretive method, the authors (2011, p. 1007) argue that the use of a "line-of-best-fit" was the

most appropriate to take in the circumstances. This method sought common elements of a crime of terror present in the sources used in the Decision, rather than relying on the formal method of insisting on totally identical concepts. As Ventura (2011, p. 1032) states "... it [the Appeals Chamber] looked behind the words of the definitions themselves; substance and not form was determinative." Thus, whilst Saul finds that, because national laws cited do not uniformly identify a "transnational element" in their concept of terrorism, the Decision is flawed, Ventura sees no such problem. Following the Decision methodology, Ventura (2011, p. 1035) finds it acceptable that the three elements of customary terror identified, can come from different sources. This he argues is a necessity, as terrorism in international law has been incrementally developed and has not had a historical watershed moment which other core crimes have had. It is morally unjustifiable for Ventura that this should allow terrorists to escape justice. Thus, whilst national laws might cite the need for an act intended to compel or intimidate an authority or population, it is only when read with international sources which expressly identify a "transnational element" that, the whole, forms the customary crime of transnational terrorism (ibid, p. 1030). Notice, that this assumes something approximating a rule by which national laws are applied with reference to international sources, normatively elevating international law above national law.

Gillett and Schuster (2011), whilst agreeing that the Decision was correct to follow a less formal route to establishing terrorism under customary international law, criticise the specific formulation. *Inter alia* they state that the use of the phrase "and so on" (a phrase also used in the LPC Article 314) with regard to enumerated means "leaves the ambit of this objective element vague and open to expansive interpretation." (ibid, p. 1010). In combination with other conceptual issues, the authors argue that "The Appeals Chamber's definition potentially provides a powerful legal tool to governments wishing to quash and punish opposition and dissent. It can only be hoped that it will not be misused in this respect." (ibid, p. 1011). Thus, they concur with Saul regarding the problematic nature of the decision for human rights. Prior to the conceptual problem, the authors also identify a potentially more fundamental problem arising from the development of the STL's Rule of Procedure and Evidence (RPE). They outline the way in which the time between the STL's opening in 2009 and the submission of indictments in 2011 was spent creating the RPE. They particularly draw attention to rule 68G RPE and its supplement rule 176 *bis*; the cumulative effect of which is to introduce a procedure which allows the pre-Trial Judge to submit preliminary questions to the Appeals Chamber and for the Appeals Chamber to make final pronouncements, even before a case has come before the STL (ibid, p. 992). This is the procedure which allowed the 2011 Decision to happen in the first place. The authors note that such an RPE rule is unique and potentially contradicts the statute which outlined the Appeals Chamber's role as one of (unsurprisingly) hearing appeals from defendants and ruling on them with

facts of the case before them (ibid, p. 993). Instead, the authors point out that the RPE allow the Appeals Chamber to pronounce on law in the abstract, which they oppose. It is this procedure which opens up the STL to being accused of transforming into a legislature. The authors identify two core problems arising from the RPE. Firstly, they note the disenfranchisement of the Trial Chamber which is not consulted in this process and which is reduced to applying the law which the Appeals Chamber decided upon, rather than developing it during trial with the facts of the case in front of them (ibid, p. 993). Secondly,

the rule amendments were passed just in time for the submission of the STL's first indictment to the Pre-Trial Judge. This leaves the court open to criticism that the Judges acted in their quasi-legislative capacity with one specific case in mind and that it was already a virtual certainty that the Pre-Trial Judge would make use of the discretionary procedure to enable the Appeals Chamber to pronounce on the law. (ibid, p. 993- 994)

These analyses and insights are useful for a critical project as they address the structure and formation of the court which has enabled certain actions and do not simply see structure as given. In addition, it suggests a power relationship within the STL, where a subservient pre-Trial Judge and activist Appeals Chamber have extended their power over the Trial Chamber. Finally, it does raise the question of whether the STL had particular adversaries in mind when it was pronouncing on the law in the abstract. The view that the RPE was designed to target is further supported by the fact that prominent Lebanese Judge, Ralph Riachi, wrote of his support for *in absentia* trials that were enabled by the RPE which he himself was involved in writing. As Muhamad Mugarby (2008, p. 189) notes

Judge Riashi had been a key Lebanese negotiator on behalf of the Lebanese Ministry of Justice and had conducted discussions with the office of the secretary general over the drafts for the proposed Hariri court instruments. Riashi's conduct of negotiations on behalf of the minister of justice was obviously in blatant violation of the constitutional rule of separation of powers and of the constitution that plainly gives the president of the republic exclusive power over the negotiation of international agreements.

Thus, these rules too, regardless of merit, might well have been tailored for a particular adversary in the context of a domestic political conflict in which Judge Riachy was a partisan actor. It is notable that, Muhamad Mugarby is a Lebanese human rights lawyer but his oft-cited 2008 article *The Syndrome of One-Time Exceptions and the Drive to Establish the Proposed Hariri Court*, in contradistinction to the majority of ICJ literature, appear in the journal *Mediterranean Politics*, which is generally associated with area studies, political science and IR. This should not be a surprise to the

extent that Mugarby has been an activist against the politicisation of the Lebanese judiciary for many years and has suffered harassment by Lebanese authorities which has even prompted Amnesty International to release a public statement condemning his treatment (See Amnesty International 2008). Thus, when Mugarby makes the argument that the STL contributes towards an already existing system of selective justice in Lebanon, he is someone who has credibility and yet who is strangely marginal from the institution itself and to the ICJ discourse conducted in its primary journals.

Decision on the Defence Challenges to the Jurisdiction and Legality of the Tribunal 2012

In May 2012 the defence teams in the central cases at the STL (*Ayyash et al.*) in a preliminary motion challenged both the legality and jurisdiction of the tribunal. This related to the law constituting (UNSC) and constituted (STL) actors, respectively (See Matthews 2014). In response, the Trial Chamber released a Decision, followed three months later by an Appeals Chamber Decision (*ibid*, p. 138). Both chambers rejected the motion, but in different ways. This precipitated further scholarly interest, with articles in *the Journal of International Criminal Justice* by Professor Jose Alvarez (2013) with Mariya Nikolova and Manuel Ventura (2013). It also featured in an edited collection *Critical Approaches to International Law* by Christine Schwobel in chapters by Michelle Burgis-Kasthala (2014) and more directly by Heidi Matthews (2014).

The challenges mounted by the defence amounted to claims that Lebanese sovereignty was violated, either through improper imposition of a treaty (See Fassbender 2007) or the unconstitutionality of UNSC resolution 1757. Similarly, the defence challenged the UNSC interpretation of the Hurriri assassination as a threat to international peace and security and therefore argued that the UNSC had abused its power by establishing the STL in response. They further submitted that the potential extradition of the defendants to such a selective tribunal would compromise their human right to be tried in a tribunal legally constituted (Alvarez 2013, p. 12; Burgis-Kasthala 2014, p. 257). Alvarez (2013, p. 4) argues that the RPE rule 90(E) did not provide for this kind of fundamental challenge, but only for jurisdictional challenges which contest the *content* of indictments. This is striking given that these challenges had been presaged, either in whole or in part, from before the STL's establishment by both critics and non-critics (See Fassbender 2007, Mugarby 2008, Nashabe 2012, Abboud, Muller 2012, Abboud, Muller 2013). Why fundamental challenges to legality were not written into the STL RPE seems somewhat questionable, given their completely predictable nature. Alvarez (2013, p. 4) explains that the relevant RPE was constructed to reproduce

rule 72(D) from the ICTY and ICTR. 72(D) was a response to a legality and jurisdictional challenge and Decision made in the case of Dusko Tadic at ICTY, to prevent the repetition of the same challenge by multiple defendants after it had been dealt with in the *Tadic* Decision in 1998. However, he critiques this on the basis that the *Ayyash et al.* challenges were “not simply a rehash of those asked and answered by the Tadic Tribunal” (ibid, p. 9). In considering whether to answer the defence motions, the Trial Chamber argued that the motions were improperly conceived as they related to legality questions and not jurisdictional questions. This line of reasoning was based on the conception of a separation of these concepts (Nikolova & Ventura 2013, p. 616). Moreover, the Trial Chamber argued that the inherent *competence de la competence* of the STL to review its legality did not extend to reviews of, *inter alia*, UNSC actions (ibid, p. 616). However, it agreed to review aspects of the challenges in so far as guaranteeing the defendants their right to a trial in a tribunal constituted lawfully. In the Trial Chamber’s Decision, it held that the STL was lawfully created precisely because Chapter VII gives the right of creation to the UNSC (ibid, p. 617). However, the Trial Chamber refused to engage in reviewing the UNSC in its determination of a threat to international peace and security or the creation of the STL as a correct response (ibid, p. 617).

The Appeals Chamber, in considering the Trial Chamber’s decision, agreed with it on the point that the UNSC had not imposed a treaty with resolution 1757, but had acted with Chapter VII powers which were its prerogative and that the STL had no remit to review the UNSC (ibid, p. 617). This was based on the positivist argument that neither the Statute, nor the UN Charter, explicitly provide the STL with powers to review the UNSC (Alvarez 2013, p. 6-7). It held that the Trial Chamber had tangentially reviewed the UNSC by reviewing the human rights aspects of the defence motions and that it should not have addressed even this truncated element (ibid, p. 7). STL President David Baragwanath (who replaced Antonio Cassese after his Death in 2011) offered a partially dissenting opinion to his colleagues in the Appeals Chamber on the basis that “Since the (STL) Statute entitled the accused to a fair and expeditious trial, the rules could not be interpreted so as to have the opposite effect.” (Nikolova & Ventura 2013 , p. 618). Both Alvarez (2013) and Nikolova and Ventura (2013) criticise the Appeals Chamber Decision. Alvarez (2013) argues that the refusal to even hear the defence motion is problematic for the legitimacy of the STL and hopes that the Trial Chamber’s Decision is the one followed. This moves him to argue that it “seems motivated less by the law than by timidity and fear.” (Alvarez 2013, p. 10). The result, he argues, is that the Appeals Chamber has elevated the UNSC beyond any questions regarding the lawfulness of its actions and that we are already seeing the result of such a conception in cases referred by the UNSC to the ICC. He argues that the cases of Sudan and Libya show that selective jurisdiction only over certain people, in a certain time period, with the costs imposed on ICC parties rather than the UN, is now becoming the norm and the Appeals Decision

shields this kind of action (ibid, p. 11). Nikolova and Ventura (2013, p. 626) argue that the Appeals Decision undermines legitimacy and empowers those who consider the STL politicised. Both articles are unhappy that the Decision contradicts the Appeals Decision in *Tadic*, which did incidentally review and affirm UNSC use of Chapter VII powers. They consider the Appeals Decision to be a “retrograde decision” as a consequence (Alvarez 2013, p. 11).

This Decision is also interesting to the extent that it garnered attention from scholars of Critical Legal Studies (CLS) towards the STL for the first time. These works demonstrate critical theoretical concerns in their approach. For example, Michele Burgess-Kasthala (2014) engages in a reflexive meta-analysis of the epistemic community of ICL scholars and lawyers, which none of the other work in this chapter finds remotely necessary. She does so with recourse to a theory of identity which emphasises narratives (ibid, p. 247). The narrative of ICL she identifies revolves around a liberal vision of historical progress which extends itself globally. She also notes that the colonial roots of ICL are disavowed through emphasis of “rupture,” not continuity (ibid, p. 248). However, she argues that the binaries of civilized/barbarian typical of this era have been replaced in the post-colonial world by binary oppositions of ostensibly a-political, functional legal institutions, on the one hand, and politically dysfunctional (failed) states, on the other (ibid, p. 249). She identifies the core narrative goal for ICL as “ending impunity.” (ibid, p. 250). Theoretically, the chapter argues for an ideational *and* institutional focus, thus positioning the institution of the STL and the ideas it promotes more fully within the Lebanese context of its operation. Moreover, the system-maintenance bias and un-critical, unreflexive nature of ICL scholarship is problematised.

Utilising the central premise or suspicion of CLS that “law is nothing but politics all the way down.” (Matthews 2014, p. 151), Burgess-Kasthala outlines three narrative devices which have been applied to the STL; *internationalisation*, *depoliticisation* and *naturalisation* (ibid, p. 247). Whilst internationalisation is premised on inadequacy of national institutions, depoliticisation invokes the binary of apolitical international law and politicised locality (ibid, p. 247). From here certain relationships and modes of interaction become naturalised. Applying this to the 2012 Decision on defence motions, she notes that arguments about the violation of Lebanese sovereignty and constitutional processes were dealt with by STL President Baragwanath through the argument that UNSC statements on terrorism made the tribunal unexceptional, despite being the first to try this crime (ibid, p. 257). She states “The pre-eminence of UNSC action emerges not only from the UN Charter itself, but also the Lebanese Constitution ...” (ibid, p. 258). Once this process of internationalisation took place, she argues, it precluded any arguments based on sovereignty or constitutional processes. The imposition of the familiar law/politics binary was the method by which

the STL depoliticised its existence and selectivity, by refusing to review the political power of the UNSC. The appearance of neutrality with regard to Lebanese politics is also paramount according to Burgess-Kasthala. This critical approach is useful in understanding the processes of power relations expressed in STL Decisions and overlap to a large extent with the analyses contained in this thesis.

Questions pertaining to the alleged colonial/post-colonial “rupture” identified by Burgess-Kasthala are extended and addressed by a comparative historical analysis of the European Commission for Syria in this thesis (See chapter three). This thesis differs from Burgess-Kasthala’s work to the extent that it draws on Gramscian and Frankfurt School Critical theories concerning ideological hegemony, but in its overall critical concern with reflexive meta-analysis of the operation of epistemic communities, institutions and ideologies through violation of disciplinary boundaries, its analytical and normative purpose is very similar. This is reflected in the bibliography which includes both Legal scholarship *and* key multidisciplinary scholarship on Lebanon’s state, society and history. This makes it unlike ICJ approaches (which account for the vast majority of legal scholarship on the STL), which are largely disciplinarily self-referential and hermetically sealed from multidisciplinary scholarship.

The ICL narrative identified by Burgess-Kasthala (2014, p. 255) that the draft UN treaty which was not ratified in 2007 was a domestic failure necessitating a UNSC Chapter VII resolution becomes questionable when one looks at the literature pertaining to the Lebanese state-society complex. Indeed, it is arguable that the constitution did not fail, but performed exactly as planned. The consociational checks in the Lebanese political system have been developed to pre-empt confessional conflict and to counteract the international patron-seeking behaviour typical of the elite. This is not an abstract theory, but one borne out of the historical experience of the 1958 civil war, which was induced by President Chamoun’s attempt to violate the “national pact” by signing the U.S.-led Baghdad pact. From this time, the constitution was amended to ensure that only if the will of the main communities, embodied by the President, Prime Minister and Speaker, was behind a treaty, could it be signed. In the case of the STL, the President refused to ratify, as did the speaker of the house. This should not be read as an endorsement of consociationalism, indeed, from a Critical Realist (CR) perspective, consociationalism reproduces antagonistic communities in the long term. However, in the short term, it does function to regulate confessional relationships and conflict and, more importantly, this has been developed through domestic Lebanese experience and bloodshed. Therefore one might question the right, or the wisdom, of top-down UN institutions subverting these constitutional provisions when they do not agree with the outcome. Moreover, description of the functioning of consociational checks and balances as state or institutional failure is incorrect and reflects a lack of contextual knowledge on the Lebanese state-society. It is in the forced establishment

of the STL, as Burgess-Kasthala identifies (2014, p. 255), that one detects the *false universality* applied when characterising the consociational system as dysfunctional or the Lebanese as unified in their approval of the UNSC exercise of its chapter VII powers.

Conclusion

Scholarship on the formation of the STL in 2007 clearly understood the statute to mean that the applicable law was to be the Lebanese Penal Code (LPC). In none of the literature reviewed was there an assumption that ICL would trump the LPC. Nor was there an assumption that an core international crime of terrorism existed. The 2011 *Decision on applicable law* clearly subverted these expectations and, given that none of the academic literature on the 2007 Decision thought there was an international crime of terrorism, it is hard to see how anyone in Lebanon in 2005 could have known that this was an international crime. It seems not unreasonable to infer that the imposition (and retroactive creation) of an international criminal law of *transnational terrorism* was more to do with pursuing the global agenda of the war on terrorism and the long held dream of a much respected, ailing member of the ICL community, Antonio Cassese, than it did with ending impunity.

The 2012 *Decision on defence motions* completes the picture when considered with the earlier literature. Given that the Appeals Chamber in this decision was the same (with the exception of its president) as the one which issued the 2011 decision on applicable law, it is interesting to note the differences in its approach. In the earlier decision the Appeals Chamber employed an unorthodox interpretive method and was applauded in some quarters for avoiding methodological formalism (Gillett & Schuster 2011; Ventura 2011). This allowed it to interpret multiple sources freely to state that there was, in existence, a customary international crime of terrorism. Moreover, it allowed it to make an argument that Lebanese law should be read in compliance with international provisions whenever possible, despite no formal rule existing to back up this assertion. Thus, the STL imported international definitions into Lebanese law and bypassed the statute. With the 2012 decision, the Appeals Chamber *relied* on positivist arguments, leading Alvarez (2014, p. 300) to refer to them as “these positivist judges”, in order to opine that they had no right to subject the actions of the UNSC to judicial oversight, arguing they had not been formally given a mandate in their statute to do so. What explains this methodological about-face in just the space of a few months? It could be the change of president. However, if one considers the political effects of the decision outcomes with respect to host-state and world order, things become clearer. The 2011 decision, aided by unique RPE, allowed the Appeals Chamber to pronounce on the law, in effect legislating. At the same time, the use

of interpretation allowed it to assert the primacy of international law over national law which was now expected to interpret its domestic provisions in line with international definitions. Meanwhile, the 2012 decision, in the words of Heidi Matthew's (2014, p. 148) anointed the UNSC as "global sovereign", unfettered by legal oversight of its political powers. The outcome can be summarised thus; that the cumulative effect was to empower international law at the expense of national and to empower the UNSC at the expense of international law and national law.

Power thus flows upward, from the Lebanese state-society to international legal institutions and from there, to the UNSC. The retention and expansion of UNSC power over the mechanisms of law, domestic and international, and their subsequent impunity from justice, is the common denominator of these methodologically disparate decisions. Review of this literature also reveals a spectrum of ICL scholarship. At one end is ICJ which accounts for the majority of ICL scholarship on the STL and which utilise hermetically sealed and disciplinarily self-referential bibliographies to apply legal reasoning to positive law and modes of interpretation. Anything which can be classified as a critique in ICJ arises from this narrowly applied, self-referential disciplinary space. Political context of the host-state is generally underdeveloped. Moreover, reflexive meta-analysis of the discipline, its links *to* and exercises *of* power, and its assumptions, are totally excluded or naturalised. The TJ approach explored here has a more open bibliography and a more contextual analysis of the historical and political background of Lebanon. However, it appears to retain a system-maintenance bias and an approach to legitimacy which treats it as a perception rather than a practice. This may reflect its maintenance of the key narratives which Burgess-Kasthala (2014, p. 250) identifies within Liberal ICL narratives, that it is naturalised as unwaveringly progressing towards ending impunity. CLS apparently exists on the other end of the spectrum where political context, both of world order *and* regional are analysed. The bibliographies of CLS reflect, similarly, multidisciplinary engagement. CLS appears to also take as part of its mandate, a reflexive meta-analysis of the the activities of the epistemic community of ICL within world order in general, and in the STL case in particular. Both TJ and CLS are vastly outnumbered in ICL accounts of the STL by ICJ accounts.

Chapter Five: Walid Jumblatt's evidence 4-5th May 2015

Introduction

Chapters five and six analyse four days of evidence given by veteran Lebanese politician, Walid Jumblatt, in his capacity as a witness to the STL in May 2015. The transcripts are subjected to the CDA method elaborated in chapter one, with the purpose of highlighting any structures of ideology and power present. The importance and role of Jumblatt, in both the STL specifically and Lebanese politics generally, is an overtly stated theme in the testimony. To better understand and critique this discourse, however, a slightly wider introduction to the man is offered here to contrast the introduction given at the STL itself. His war record is only very tangentially touched on and thus we must understand what the potential alternative discursive renderings of Jumblatt might be, particularly MR which frames him as a warlord. This is not to single out Jumblatt or to imply that the alleged crimes he has been associated with are worse than other Lebanese *Zu'ama*. Indeed, in some cases they may be less serious and the fact that he put his head above the parapet at all by coming to the STL is, in some ways, commendable. Rather, it is to demonstrate that it is impossible to know much with certainty under the present conditions of amnesty/amnesia and it also serves to destabilise the representations of Jumblatt given at the STL. Jumblatt is the only member of this wartime *Zu'ama* class to have graced this tribunal and therefore, he has been selected for analysis due to his mere presence.

Kamal Jumblatt

The STL's introduction to Jumblatt starts with prosecutor Mr Cameron describing him as "a figure of considerable significance and force in Lebanese politics for many decades." (The Prosecutor versus Ayyash et al. 2015a, p.2) which utilises value neutral formal vocabulary. Indeed, what the *force* and *significance* constitute is left to the audience's divergent MR. The introduction emphasises the prescribed focus of the STL and the ways in which Jumblatt's evidence will contribute to this case. Repetition of hyponyms is used to draw attention to the social relationships which matter in the STL's context, "He was a *friend, confidant*, and most particularly *ally* of the late Prime Minister Hariri." (ibid, p. 2 *emphasis added*). Cameron then enumerates the topics Jumblatt is to elaborate for the STL; President Lahoud's extension, the adoption of UNSC resolution 1559, the anti-Syrian coalition, Rafik Hariri's role, and their mutual assessment of the chances of their own assassination (ibid, p.2-3). This all serves to focus attention towards the STL's purpose and delimits the possible questions which can

be asked and the possible representations of Jumblatt in the hearing. This is a function of the limits of the STL's *loci, temporis* and *personae* which were arrived at, not incidentally, but instrumentally as discussed in chapters three and four. Thus, the delimitation of the discourse type in this way is an example of *power behind discourse*. This is supplemented when Presiding Judge David Re states "I just need to get some personal details from you." (ibid, p. 4), these details are dispassionate and formulaic; name: Walid Jumblatt, date and place of birth: Beirut 1949, nationality: Lebanese, occupation: leader of the PSP and Lebanese MP (ibid, p. 5). This checklist evokes MR relating to form-filling for official purposes and implies formality and factuality. This innocuous checklist implies objectivity where, in fact, it belies the political choices which have been made regarding what to include and not.

The next part of the introduction forms part of the initial questioning by Cameron of Jumblatt. Cameron attempts to set the parameters of the interaction "I'm going to, in a very brief way, take you through some of your background before asking you some different kinds of questions." (ibid, p. 5). After noting Jumblatt's attendance of the AUB, his attainment of "a bachelor's degree in political science and public administration" (ibid, p. 5), his first job as a journalist at An-Nahar newspaper he begins questioning him about the PSP and Jumblatt makes his first considerable contribution, initiated through an *interruption*. Thus, Jumblatt challenges the structure of the interaction and imposes his own priorities on to the situation. One notes that after this initial interruption Jumblatt settles into the subservient script for questioning (until he is questioned by the defence team). One explanation is that Jumblatt takes a moment to acclimatise to the situation he is in, another is that this particular information and its framing is important to Jumblatt. "I was elected as the leader of that party after the death of my father in 1977. After the murder of my father in 1977, I was elected to head this party." (ibid, p. 6). This statement is riven with *repetition* which indicates that these concepts are important to Jumblatt. Three of the repetitions are literal; *elected, party* and *father*. The first also possesses positive value in a liberal ideological framework and triggers MR regarding democracy. The democratic credentials of the PSP are a point of contestation later during defence interrogation and it is interesting that he emphasises it this early on. *Party* and *father* are important to Jumblatt for obvious reasons which shall not be laboured.

The use of the synonyms *leader* and *head* are also self-evident but become legitimised as they are used in tandem with *elected*. This becomes an interesting juxtaposition to his description of the Syrian regime. Interestingly, the Syrian president was elected via a referendum for life (Blanford 2006, p. 6). Is this much different from the way Jumblatt has been elected to lead the PSP since 1977? Most importantly though, his use of the hyponyms *death* and *murder* serve as a sort of self-correction through which he emphasises the negative nature of his father's demise, for while *death* is looked on as undesirable in most ideological frames, *murder*, however defined, is usually seen as totally negative

and is, at base, a legal term. Here, a theme is appearing. The STL is sitting to solve an unsolved elite assassination and here is another one just like it. The theme of Rafik Hariri and Kamal Jumblatt as national martyrs is one which Jumblatt embellishes throughout his evidence and here is the kernel of that idea from the start. The murder of a father is also something which naturally elicits sympathy and may also indicate a psychological need of Jumblatt's to discuss, indeed testify, the murder of his father, after being unable to speak about it candidly or publicly during his alliance with Syria. Like most of Jumblatt's statements, the grammar is of the *declarative* sort amounting to *categorical* commitment to the truth of the propositions. There is very little qualification or equivocation in Jumblatt's discourse throughout these hearings and in this instance, at surface level, it leaves one with little doubt that he was elected leader of the PSP and that his father was murdered. This grammatical mode establishes him as an authoritative provider of information, particularly to those with patriarchal MR who value decisiveness over nuance.

Cameron attempts to establish the nature of the PSP as "a socialist party which opposes sectarianism in Lebanese politics and enjoys wide support from the members of the Druze community" (ibid, p. 6). Jumblatt reformulates this by emphasising "there is a big difference between the emergence and the creation of the party and what had happened now." (ibid, p. 7.); namely that the parties' original purpose had been to cut across vertical, sectarian distinctions and to reach out to other communities, which it did for a while, until the civil war circumscribed its reach. Once again, Jumblatt deflects questions about himself into discussions of his father. Specifically, the "ambition", "determination" and "dream" (ibid, p.6-7) of Kamal to create a non-sectarian regime. The first two words are, in usual parlance, considered positive attributes. The dream *metaphor* is interesting on two levels. The first is the way in which *dream* conjures a romantic and even mystic imagery regarding his father, which is a recurring theme in Jumblatt's discourse, particularly in relation to Kamal (and later Hariri's) martyrdom. The second way becomes clear in its second usage by Jumblatt "the environment, the general atmosphere, did not allow me to carry on the dream of Kamal Jumblatt." (ibid, p. 7). In this formulation, *dream* implies Kamal's idealism and is juxtaposed to the necessity of Walid's political realism. This is also a theme which resurfaces in the testimony and, in this instance, has the quality of a man pointing to the structural constraints upon his agency. This is significant in light of counternarratives concerning Walid Jumblatt, for example, Kamal Dib (2004, p.2) argues that he has "warlord status" by virtue of being "in control of thousands of militia men" and residing in a "historical palace" or in light of the "300,000 displaced civilians" created by his forces during the 1983-85 war of the mountain or the bombardment of east Beirut around the same time where Robert Fisk (2001, p. 486) relates "In the streets, Christians showed me a seven-year-old girl lying dead beside her doll, an old man beheaded by a rocket fin." In these circumstances, it is understandable why a discourse

emphasising structure and minimising agency begins emerging and how the somewhat common-sense idea of realism obfuscates some of the ethically questionable actions taken by *Zu'ama* forces during the war. It is interesting to note that Dib (2004, p. 250) also makes a similar distinction, stating "After the murder of [Kamal] Jumblatt, the leadership fell to his son, the less doctrinaire but more Machiavellian Walid." Note that the realism implied by Jumblatt himself implies a structural imperative, wear as Dibs' vocabulary, *Machiavellian*, carries a decidedly more negative value judgement.

When questioning commences and Cameron asks Jumblatt "can you describe for me your relationship during the 1990s with the Syrian regime as the leader of the Druze community?" (The Prosecutor versus Ayyash et al. 2015a, p. 9). Jumblatt again brings focus back to the topic of his father's assassination in 1977. His reply is characteristically declarative and categorical "It is the Syrian regime that assassinated Kamal Jumblatt" (ibid, p. 9), he leaves no room for doubt and he repeats and defends this assertion throughout his testimony. The answer continues with an *adversative conjunction* connecting the clauses

but based on my conviction, that I belong to the Arab nationalism, and based on the threats that were surrounding Lebanon back then, I had no choice but to go to Lebanon [as interpreted] and to seal a deal, a political settlement, with those who assassinated Kamal Jumblatt. (ibid, p.9)

Using the adversative *but* indicates Jumblatt believes his interlocutors would not expect him to ally with his fathers' killers, and indeed this seems counterintuitive. However, he does lay out his reasons: *Arab nationalism* (ideological system of ideas) and *threats* (perceived material conditions). *Arab nationalism* relies on *presuppositions* of the audience and participants, as it has not yet been defined in the testimony. It relies therefore on the divergent MR of observers. Nevertheless, he overtly identifies with this position several times in what amounts to a *speech act* of declaration. This is likely a genuine gesture and, also, has the effect of displaying the correct identity to Lebanese and non-Lebanese Arabs. Amongst a Western audience it is certainly a more acceptable modern identity than one based on religion given the dominating concern of Islamist extremism, and signals that he is a potential western ally. *Arab nationalism* can act as a sort of placeholder here in which relevant audiences can insert their own meanings. In terms of *threats*, these are identified as "a conspiracy" and "the Israelis" (ibid, p. 9). Jumblatt uses a *negation* "I had *no* choice" (ibid, p. 9 *emphasis added*). Presenting his statement in the negated form like this has the effect of neutralising anyone in the intertextual context who might say that he *did* have a choice. Its use also serves to reduce his agency and choices and to emphasise the structural constraints which lead to a mono-logical conclusion,

namely his alliance with his father's alleged murderers. *Arab nationalism* seems to invoke a script whereby Israelis and Zionism are so antithetical that they must be opposed always, and in solidarity with other Arabs, however those Arabs abuse you. Here we have the incipient creation of *Pax Syriana*, the hegemonic order which allowed the Syrian regime to establish its domination of Lebanon.

The historic bloc being forged by Hafez appears to be achieved through subtle coercion and anonymous assassination of rivals. There seems to be an understanding here that these coercive practices are best left implied given that legitimacy and consent matter in the construction of hegemony. The forging of this bloc also relies on the ideological undergirding of Arab Nationalism, Jumblatt's attested reason for joining *Pax Syriana*. We must also bear in mind that *Pax Syriana*, the local hegemony of Syria over Lebanon, was only achieved through its (eventual) successful integration into global American hegemony at the signing of the *Taif* accords. Syria was internationally recognised as bringing order to Lebanon and even cooperated with the U.S. in their 1990-1 war on Iraq in a *quid pro quo* (Kerr 2012, p. 32). Ironically, it was the 2003 Iraq war which undermined relations. *Pax Syriana* did not last long after the withdrawal of American support. The dynamic is one in which the major regional and global powers which constitute patrons come to an agreement by which dialectically related local and global hegemonies are forged and stability prevails, even if it is an exploitative stability. Arguably, the American-Syrian historic bloc was forged through *instrumental* considerations but never developed as mutually recognised *ethico-political* leadership, leading to its ultimate downfall.

Jumblatt is then questioned about the grounds upon which he believes the Syrian regime murdered his father during which he gives this account.

I still had some hair left on my head, he [Hafez Al-Assad] was surprised and he said, "You look a lot like your father." He was very surprised. And then we sat down and he started talking and talking ... I didn't feel anything. I was surprised. I was looking at him from time to time: This is the man who ordered the killing of a prominent intellectual from this eastern part of the world, Kamal Jumblatt. (ibid, p. 14)

Some of Jumblatt's vocabulary relates to emotional state, *surprise* and *feel*. Other cues include positively valued vocabulary *prominent* and *intellectual* and repetition *talking and talking* and *surprise*. Grammatically, the sentences consist of complete, declarative sentences which represent categorical statements. The only negation in the text is "I *didn't* feel anything." (ibid, p. 14, *emphasis added*). These features are evocative of trauma which expresses itself as *surprise* and through Hafez *talking and talking*. What Hafez actually says is a distant significance to Jumblatt who is lost in his own thoughts "This is the man ..." (ibid, p. 14). This is compounded by the negation, as it is unusual for a

person to literally experience nothing emotionally, unless one has been subjected to a trauma. In the situation Jumblatt describes, the schema is a meeting in Damascus with the frame of creating an alliance. There is a tacit frame here in which Jumblatt is surrendering. Hafez occupies the subject position of host, superior leader, and victor. Jumblatt occupies the subject position of guest, subordinate leader and loser in relation to Hafez. The location of the meeting is an interesting indicator of superiority, being a guest in someone else's house can be intimidating rather than welcoming. Hafez's alleged line "You look a lot like your father." (ibid, p. 14) takes on a chilling aspect considering Jumblatt's belief about the identity of Kamal's murderers. It appears as an indirect speech act, both a *threat* and a *warning* to Jumblatt to remain loyal to Syria. In relation to the STL, he occupies the position of victim to these events as well as witness. Jumblatt displays a desire to testify to his Father's death and accuse his murderers in this public space (despite this being beyond the jurisdiction of the court).

He also arguably displays trauma prompting sympathetic MR. This may not be a simple, factual testimony, but might constitute a cathartic, psychotherapeutic discourse type whereby Jumblatt can engage in a talking cure or simply obtain some recognition of his loss. Interestingly, recognition is a key aspect of TJ processes, indicating that, despite the punitive nature of the STL, some processes of memory and recognition are unavoidable. Jumblatt's insistence from the beginning of bringing his father's death to the centre of attention is at least partially explicable by this need. It makes one wonder whether Jumblatt has had any official psychotherapy to help him deal with what must be intense psychological strain and suffering. Indeed, this reality presents us with a very complex picture. Victims and perpetrators are commonly presented as a binary which implies mutual exclusivity. In complex situations like civil conflict, however, both subject positions can be found in the same individual.

Though the STL is allowing this testimony for its evidentiary purposes, the fact remains that Jumblatt is being allowed something here which non-*Zu'ama* Lebanese victims of the civil war have never been offered, the chance to testify about what the loss of their loved ones means to them, to accuse their killers, demand information or give their version of events. Jumblatt has access to this platform to do just that. He also offers a script in which Kamal is referred to positively as *prominent*, an *intellectual* and significantly *Kamal Jumblatt*, not by an alternative framework like *warmonger* or simply *my father*. Referring to him by his full name de-emphasises Kamal's relation to the witness and instead emphasises his script in relation to the audience as a historical figure. It implies that the loss was not Jumblatt's personally, but indeed was all of Lebanon and the world's and is bound up with the myth making of martyrs associated with the *Zu'ama* class. It is quite probable that many Lebanese without Jumblatt's genealogy, but who were traumatised and bereaved in the war by the Jumblatts

or their allies are watching this performance. There is no platform for them at the STL to obtain recognition.

We noted in chapter four that many scholars of ICL and TJ considered a wider investigation of historical crimes in Lebanon to be “unrealistic” and identified a logic of “some justice is better than none”. There, it was inferred that unwillingness to countenance such investigations was designed to shield powerful interests with powerful patrons at the UNSC who control the mechanisms of ICL, namely the Lebanese *Zu’ama* elite and Israel. This inference is further justified upon analysis of the opinions of the late president of the appeals chamber of the STL, Antonio Cassese

many ask publicly why an international tribunal has been established to look into a string of terrorist attacks in 2004-05, while no tribunal has been created to deal with the 2006 short war in south Lebanon ... *As a judge, I can only answer that these are choices made by politicians.* (Cassese 2012, p. 501 *emphasis added*)

This statement comes closer to highlighting the structural features of world order which systematically marginalise some victims. However, it is, ultimately, a telling moment of ideological *mystification*, *rationalisation*, *naturalisation* and *hegemonic legitimation*. It obviously comes closer to highlighting structural features by naming Israel and its alleged crimes in the same complex sentence as crimes allegedly committed by Hizballah. However, the second complex sentence *mystifies* by talking in vague terms of the *choices made by politicians*. The structural elements of the UNSC, permanent seats and veto are left obscured along with the politicians making these decisions and the basis for which the decisions were taken. The *rationalisation* and *naturalisation* occur in the preface of the second complex sentence *As a judge*. This amounts to a strategic demarcation between law and politics on epistemological grounds which serves to rationalise why Cassese is unable to ask (certain) political questions. It also serves to naturalise this, making the argument that lawyers are uninterested in political questions and are themselves a-political whilst simultaneously naturalising the Judge or Lawyers role in perpetuating impunity. In Eagleton’s (2007, p. 28) terms, this does not challenge the basis for these questions as much as “thrust them beyond the very bounds of the thinkable”, thus, *hegemonically legitimating* the current world order.

In CR terms, we are being asked to grant epistemological categorical distinctions between the disciplines of politics and law as though they are ontologically distinct in the real world. This is an ideological move *par excellence* and a discursive strategy designed to avoid uncomfortable questions regarding structural power and complicity. We also detect here the theory-practice contradiction of an agent of ICL, whose attested purpose is to end impunity, arguing that the structural and systematic impunity of some is unquestionable on some arbitrary, epistemic basis. We can also identify the “some

justice is better than none” discourse as ideological to the extent that it constitutes “systematically distorted communication” (Habermas 1970, p. 205) and “meaning (or signification) [which] serves to sustain relations of domination.” (Thompson 1984, p. 4). It implies that the delimitation of this particular case was incidental rather than instrumental, thus *mystifying* the structures of power which pre-determined these results for particular interests on a systematic basis. This discourse serves as a *rationalisation* for the ICL and TJ communities in their acquiescence to UNSC power and as a *hegemonic legitimisation* of the structurally determined and instrumental use of ICL to marginalise victims of serious crimes. The logical result of the “some justice is better than none” discourse is what we have here, a perverse situation at an institution of ICL where a potential war criminal can testify his trauma but none of his victims can. Moreover, the structural class features are prominent and explicable as a function of this ideological hegemony, it is not incidental that it is a *za’im* who is empowered to come and discuss his trauma, nor is it incidental that assassination/terrorism (rather than more generalised war crimes or crimes against humanity) is the focus of the STL in general, or of Jumblatt’s testimony, in particular. Rather, it is the *power behind discourse* at the STL where the *zu’ama* are empowered to have crimes which affect their class examined, and the wholesale crimes they committed ignored. The STL reproduces, rather than challenges this structure.

Pax Syriana

Jumblatt’s evidence turns towards his relationship with Syria. This evidence details the development of the relationship from the time of Hafez Al-Assad’s regime to that of his son Bashar from the year 2000 onwards. Jumblatt emphasises that he had friends within the Syrian regime of Hafez, namely Vice-President Abdel-Halim Khaddam and General Hikmat Chehabi (The Prosecutor versus Ayyash et al. 2015a, p. 15). Khaddam resigned in 2005 and has since been an opponent in exile to President Bashar Al-Assad. Chehabi resigned in 1998 on health grounds and died of natural causes in 2013. Jumblatt describes a situation in which the Lebanese military and intelligence institutions were annexed and controlled by Syria. The head of the Lebanese Army in the immediate post-*Taif* era was Emile Lahoud. Jumblatt states

Prime Minister Hariri was prime minister, Elias Hrawi was president of the Republic. They were unable – even in their capacity as prime minister and as president of the republic, they were unable to have any sort of influence on the Lebanon army. How can you imagine a republic or a country whose president and prime minister are incapable of giving an order to the Lebanese

army. The Lebanese army was fully under the control and command and supervision of the Syrians through Emile Lahoud and the security apparatuses. (ibid, p. 16)

Jumblatt utilises technical vocabulary regarding the architecture of secular states, *prime minister, president, republic*. Indeed, there appears to be a discursive convention that, when the Lebanese president is referred to, he is referred to as *president of the Republic*. This relies heavily on coherence, both intra and inter-textual to realise that *the Republic* which is referred to is Lebanon. This presupposition seemingly has a counter-hegemonic bent, it is used to emphasise that Lebanon is a state, independent from Syria or others. For Lebanese, this use of *Republic* draws upon MR, which relates to the national Martyrs of Lebanon's founding and the emergence of the Republic after decolonisation. It also draws on MR which views Lebanon as an oasis of democracy in a region beset by authoritarianism. It draws on a unifying nationalist discourse which is cross-sectarian. The exact relation of *Republic* to the consociational polity in Lebanese minds is likely as divergent as their own MR and it may be that the former obscures the latter. Jumblatt uses a rhetorical question to draw on the MR of participants, questioning whether through the frame of Liberal governance they would find it acceptable for the armed forces to be unresponsive to civilian government. This has the potential to activate MR relating to liberal conceptions of separation of powers, statehood and democracy in any observer who holds these perspectives, whether these are completely acknowledged, or not. Invoking liberal MR in this way is powerful rhetorically and has the strategic potential to appeal to immediate interlocutors at the STL, western states and audiences, and a spectrum of Lebanese democrats and nationalists. It also creates a binary opposition within this frame to Syria. He finishes using repetition of synonyms, *control, command* and *supervision* to emphasise the lack of freedom. This whole section prefaces the causal conjunction "Therefore" (ibid, p.16) through which he frames the beginning of his resistance to Syria. This leads him to an *oppositional rewording* of the Syrian presence in strong terms, "we called it at the time Syrian tutelage but that was wrong, it was simply a Syrian occupation." (ibid, p. 18). This cuts straight to the heart of the legitimacy of the Syrian presence, for while a tutor can arguably claim legitimate power, an occupation is more readily associated with domination.

In discussions regarding Syria, there emerge the themes of (personal) *friendship* and *margin of manoeuvre*. Friendship constitutes an important relational structure between Lebanese and Syrian personalities. For example, when Emile Lahoud is touted as a possible President in 1997, it is through Khaddam and Chehabi that Jumblatt, Hariri and president Elias Hrawi could delay his accession (ibid, p. 22). Lahoud's election as President the following year is also achieved because of his close relations with Hafez and Bashar Al-Assad (ibid, p. 19). It is the loss of these relationships, and the attendant *margin of manoeuvre*, which typifies the move from Hafez's reign characterised by cooperation to

Bashar's reign characterised by conflict. The marginalisation of Khaddam and the exile of Chehabi under Bashar, and their replacement by more hostile characters such as Brigadier General Rustom Ghazaleh, served to undermine the Syrian-Lebanese historic bloc, losing the consent of key actors and ensuring Bashar's increasing need to turn to coercion. Friendship on its own, of course, is not enough, but must interact with positioned practices within the relational structure. For example, Jumblatt describes how his closest friend in the regime, General Chehabi, was entrusted with managing his "file" (ibid, p. 49). Thus, Chehabi could relay preferable reports regarding Jumblatt to Hafez and shield him from negative ones. For these reasons, this friendship can properly be described as clientelistic. The question of the extent to which these friendships could be said to overlap with clientelistic relations is not straight forward, however. Certainly, the relationship between Lahoud and Bashar fits the patron-client model through Lahoud obtaining the presidency and term extension through Bashar's support (ibid, p.84). On the other hand, people of a similar rank, such as the *Zu'ama* Jumblatt and Hariri, appear to enjoy mutual respect of their domains and strategies (ibid, p. 57). This is not to say that these individuals do not possess their own clientele at different levels, only that friendship and clientelism are related, but non-synonymous, phenomena. It does present us with a potentially important insight however, that the president of the SAR constituted one of, if not *the*, most powerful *za'im* in Lebanon, and that hegemony over Lebanese clientelistic relationships was Bashar's likely goal (in the manner of a modern Ottoman Sultan).

When discussing the way in which Syria imposed Lahoud, Jumblatt makes an additional statement.

We have the sea, we have Israel, we have Syria as our borders; however, we did not want to be attached to Syria, in the shadow of Syria. And allow me to add, please, regarding the Ba'ath party, the Arab socialist Ba'ath party with its totalitarian ideology, we in Lebanon, Jordan, Palestine, et cetera, according to this party we are part of this Arab nation. So according to them we as an entity, as a Republic of Lebanon, we do not exist. They respect a certain management of Lebanon, administration of Lebanon, but they did not recognize Lebanon as a country. They organized the relations, but they used to look at Lebanon as one of the Syrian provinces or governorates. That's why we were not only facing a security regime; we were also facing and challenging a political ideology that did not recognize the others. (ibid, p. 24)

This section begins with strong uses of the pronoun *we*. It is clear from the context that the *we* refers, in the first three instances, to Lebanon. The fourth use of *we* does not explicitly diverge from this, giving the impression that Lebanon *as a whole* does not wish to be attached to Syria. This is a *false universalisation*, given that Jumblatt's testimony details that the country was divided on the issue of

Syria. The false universalisation of Lebanese opinion is common occurrence both domestically, as in this case, and through world order, such as in the invocation of chapter VII powers to establish the STL (UN Press Release 2007). This is the original sin of actors who then create doomed policy on this basis. Attempted hegemony through universalisation in Lebanon is unsuccessful and usually leads to domination followed by reaction. The use of the negation “*did not* want to be attached to Syria” (ibid, p. 24) speaks to this, as it rebuts these voices in the intertextual context. In conjunction with the metaphor of *shadow*, this presents a negative frame and script for Lebanese-Syrian relations. Indeed, at a physical level, shadow implies something bigger than yourself, a threat. Jumblatt then embarks on a tangent, recognising the authority of the STL through his use of polite vocabulary and request for permission “And allow me to add, please” (ibid, p. 24), which forestalls any potential objection on relevance.

The use of technical vocabulary is balanced both positively and negatively. Particularly, *totalitarian ideology* occurs in a cluster of concepts *Arab*, *Socialist* and *party*. The use of this phrase imbues the other vocabulary with negative connotation, it invokes MR related to the excessive control of soviet states rather than “democratic socialist parties in the Western culture.” (ibid, p. 8). This is a nuanced distinction which one would not expect to find in strongly right wing or cold war discourse. This is how Jumblatt defines the Ba’ath party. His continued use of the pronoun *we* here, which allows him to simultaneously identify with, and make an argument about, the definition of Arab nationalism to a wider Arab audience. Jumblatt has an ideological antagonism towards the Ba’athist notion of a singular Arab nation. This is evidenced in his negations, “we do *not* exist.” and “they *did not* recognise Lebanon as a country.” (ibid, p. 24). This is topped off with a strong Subject Verb Conjunction (SVC) sentence which gives his assessment of the situation in characteristically categorical terms with regard to the dual threat of the security regime and the political ideology of the Syrian Ba’ath party. The theme of singular centralising Ba’ath style Arab nationalism being contested by a pluralistic vision of Arab nationalism, is one which Jumblatt promotes and it seems to be a function of the perspective of a middle eastern minority group.

The turn of the Millennium

The year 2000 was a watershed. The death of Hafez and Bashar’s succession as president of the SAR, the Israeli withdrawal from south Lebanon, and a reconciliation between key Maronite and Druze politicians, and their emerging opposition to the Syrian presence in Lebanon. All of this signified change. The reconciliation appears to manifest through Jumblatt’s partial support for Patriarch Nasrallah Sfeir’s call for Syrian withdrawal and the visit of former president Amine Gemayel and Sfeir

to Jumblatts' home in Mokhtara in 2000 and 2001, respectively (Ibid, p. 34, 38 & 92). Sfeir was Patriarch of the Maronite church during the latter stages of the civil war and Amine Gemayel became president of the Republic during the war after the assassination of his brother Bashir. He was also the leader of the Phalange party and militia, Jumblatt's principle war time adversary. Together, they represented two institutional pillars of the Maronite community, the Patriarchate and the Presidency. Jumblatt makes a distinction between his own call for partial Syrian withdrawal, and Sfeir's call for a full one. Jumblatt uses the *Taif* agreement as a basis for his demands (ibid, p. 34). In Jumblatt's discourse, the *Taif* functions as a repository of norms and a resource for strategic legitimisation of one's arguments. Jumblatt uses *Taif* to distinguish his (and Hariri's) position from both pro-Syrians and UNSC resolution 1559.

The successful extension of Lahoud's presidential term, backed by Bashar and the adoption of 1559 marked a decline in relations between the pro- and anti-Syrian Lebanese factions. It was in the run up to this crunch vote in which Bashar's new head of intelligence in Lebanon, Rustom Ghazaleh, went to visit both Jumblatt and Hariri. Ghazaleh had taken over from former head of intelligence in Lebanon, Ghazi Kanaan, a member of Hafez Al-Assad's old guard. Kanaan died of a gunshot wound to his head in October 2005 in mysterious circumstances after being interviewed by UNIIIC head, Detlev Mehlis, as a potential witness and/or suspect in the assassination of Rafik Hariri. From Jumblatt's evidence, we learn that on the 25th August 2004, Ghazaleh visited him, the day before a scheduled meeting with Bashar (ibid, p. 64). Jumblatt relates that Ghazaleh was interested in whether Jumblatt was going to vote in favour of Lahoud's extension. Jumblatt replies "I will not approve it." (ibid, p. 64) to which Ghazaleh allegedly replied "Are you with us or against us?" (ibid, p. 65). Ghazaleh often employs grammatical questions, seemingly to impose authority. It has the function of positioning Ghazaleh as the requester of information which, as we see in the STL generally, distinguishes superior relational positions. It also has the function of controlling the topic of conversation and nominating the next speaker. In this instance, it also presents a binary choice to Jumblatt in which there is no nuance. There is an important intertextual connection to this statement. Only three years previously, the then President of the U.S., George W. Bush, made a similarly (in)famous statement after the September 11th attacks to Congress "Either you are with us, or you are with the terrorists." (BBC News 2001). This binary forms part of the discourse of the war on terror which, in 2003, led Syria's Ba'athist neighbour, Iraq, to be invaded by Bush's coalition of the willing, subjected to regime change and occupied. This was clearly a time of existential insecurity for many actors and this type of totalitarian discourse was seemingly in vogue.

Jumblatt's meeting only took 10 minutes. We are told, however, that Ghazaleh met Hariri the same day and an audio recording of this meeting is played in court. Ghazaleh opens with superfluous

formal language “Tomorrow *His Excellency the president* wishes to see you.” (ibid, p. 69 *emphasis added*) which has the effect of emphasising the relational hierarchy between Bashar and Hariri. This is reinforced by the *summons* speech act. Hariri responds “Tomorrow?”. Ghazaleh answers and then asks a question of his own “Yes, at 10.30. Why are you laughing?” (ibid, p. 69). This last question has the effect of making Ghazaleh the selector in the interaction and making the request of Hariri for information, asserting dominance. The question also serves as a speech act of *reprimand*, it chides Hariri for his lack of seriousness and in effect is an instance of direct control by Ghazaleh of Hariri’s expressions and signals a refusal to be light-hearted. If it is accurate that Hariri laughed (it is not recorded in the transcript) this could be a sign of nervousness, but it might also be interpreted as an act of defiance. Laughing in the face of self-important formality immediately emasculates it. It could be viewed as an act of rebellion and as a sign that Hariri does not wish to recognise Bashar’ authority. Even if it was not intended as such, it is more than possible Ghazaleh saw it this way.

Ghazaleh: Who told you that?

Hariri: The president of the republic.

Ghazaleh: The president doesn't know!

Hariri: Well, the president called, he called [unclear] and said if he was, I mean if. . . he is busy before noon so if we could hold the cabinet meeting in the afternoon. I said no.

Ghazaleh: The president does not know.

Hariri: Ok, ok. . . it does not matter. . . ten thirty? (ibid, p. 70)

Ghazaleh once again opens with a grammatical question controlling the topic, demanding information and selects Hariri. Hariri does little more than provide this information. Ghazaleh then selects himself to deliver a categorical, declarative SV sentence in its negative form *The president doesn't know!* which provides a direct contradiction to Hariri’s explanation and amounts to a speech act of *accusation* and *enforces explicitness* from Hariri. Hariri’s reply is grammatically disjointed and repetitive as well as indistinct through unclear speech. It appears this is a reaction to the pressure Ghazaleh is putting Hariri under, particularly the implication that Hariri has a source of information which he should not have and the attendant suspicion with which Ghazaleh views him. The accusation is seemingly confirmed in Ghazaleh’s next line where he repeats the statement in slow deliberate (non-contracted) vocabulary. Hariri’s last line here attempts to placate Ghazaleh, *Ok* repeated seems to have the function of acquiescing to the other participant’s view of reality. *It does not matter* is a challenge to Ghazaleh’s suspicion but also serves to exonerate himself of any wrongdoing whilst also remaining *ambiguous* about where he attained the information. The last part deflects attention

towards something technical, the place of the meeting, which had been a concern of Ghazaleh's and thus gives the appearance of compliance.

Hariri: ... How is the family?

Ghazaleh: Fine. . .

Hariri: Are you staying tomorrow?

Ghazaleh: I want to see what you will do tomorrow.

Hariri: And when is Nabih going?

Ghazaleh: Nabih is going at noon, afternoon.

Hariri: Aha, it means everyone.

Ghazaleh: And what is your answer?

Hariri: Well we will see. . .

Ghazaleh: Are you prepared. . .

Hariri: What does the president have, what does his Excellency president have. . .

Ghazaleh: What are you going to do?

Hariri: Let us see what the president has to say; doesn't he want to talk to us?

(ibid, p. 70-71)

Here, Hariri attempts to control the discussion by asking a grammatical question of something informal and personal. Perhaps it is an attempt to connect with Ghazaleh on a personal, informal level, but it appears that Ghazaleh will not be distracted from his mission. His reply is one word and leaves a gap (silence) in the participant selection in conversation. This can be interpreted as an awkward gap. Hariri selects himself and asks another question to avoid such an awkwardness. He asks Ghazaleh if he is staying, a brave stab at polite small talk. Ghazaleh immediately takes the opportunity to become forthright, informing Hariri he is there to observe him. All the time, control of the topic is being competed over. Hariri sidesteps this through yet another grammatical question, only tangentially connected to what Ghazaleh's overt interest is, namely which way Hariri plans to vote. Thus, Hariri is using *ambiguity*, the position of the weak, to contest Ghazaleh's *power in discourse*. Ghazaleh answers the question regarding Nabih Berri's [Lebanese Parliament Speaker and Syrian Ally] attendance and Hariri seems to understand the importance of this meeting, *aha, it means everyone*. Ghazaleh seizes on this moment to self-select to ask Hariri yet another forthright grammatical question about whether

he will vote for Lahoud's term extension. Hariri resists indirectly once again using ambiguity. This resistance is more direct and Ghazaleh counters by interrupting Hariri asking a question to control the topic. Hariri then interrupts Ghazaleh in turn, indicating that this discourse has truly become a conflictual contest. Hariri asks a grammatical question to control the topic and demand information of Ghazaleh for the first time, he also self-corrects, copying the *formality* of Bashar's title *his Excellency president*, presumably to make sure he remains respectful, even as the discursive contest with Ghazaleh takes place. Ghazaleh is not dissuaded and interrupts again to ask the question for which he is trying to extract an answer. The schema here is straightforwardly a meeting, however, the frames and scripts here are somewhat confused and conflictual. Ghazaleh is there with the authority of Bashar and with a mission to find out which way Hariri will vote. Hariri tries to engage Ghazaleh on a personal level which is rebuffed by the former. This leads to a conflictual script in which Hariri resists revealing his intentions. Though the *interactional conventions* are confused due to their conflictual nature, Hariri seems to be in the position of the less powerful participant as he relies more on *ambiguity*.

Jumblatt relates that mere months before this interaction, Hariri had been summoned to Damascus to have Bashar tell him "I am the one who rules here, no one rules other than me" (ibid, p. 59). Moreover, Jumblatt asserts that after this event, he and Hariri agreed that they would oppose the extension (ibid, p. 62). In these circumstances, it is difficult to see how Hariri thought that his ambiguity would be *a)* interpreted by Ghazaleh as anything other than a rejection of Lahoud and *b)* interpreted by Bashar as anything but a direct challenge to his interests. Either way, the meeting which followed between Bashar and Hariri became infamous. Jumblatt alleges the words of Bashar were "Lahoud is me and I am Lahoud. I want you to extend. And if Chirac wants to get me out of Lebanon, I will break Lebanon, I will destroy Lebanon" (ibid, p. 82). Grammatically, Lahoud and Bashar are attributes of each other in these SVC sentences. This makes what had hitherto been an implicit relation (and the reason Hariri and Jumblatt were resistant to Lahoud in the first place) explicit and openly dominating. However, it is uncertain why Hariri was unable to anticipate a hostile reaction. Nevertheless, analysis of the interactional conventions between Ghazaleh and Hariri does suggest that the two were antagonistic. It suggests that Ghazaleh occupies a more powerful position and moreover seeks to use that power to extract acquiescence and information from Hariri who is resisting from a subservient position. When Jumblatt asserts that Ghazaleh was hostile to Hariri and that this hostility was reflective of Bashar's own, this analysis tends to support both assertions in light of the topic of conversation and the conflictual interactional conventions between Hariri and Ghazali.

The Qornet Chehwan gathering

After the recording, questioning and evidence turns to the eventual passing of Lahoud's extension and the simultaneous passing of UNSC resolution 1559. Jumblatt mentions an opposition group led by the Maronite Patriarch Nasrallah Sfeir. Cameron asks, "May I ask, Mr. Jumblatt, prior to the extension of President Lahoud, what were your relations with the group that you referred to a moment ago as Qornet-Chehwan?" (ibid, p. 92). It is interesting that Cameron prefaces his grammatical question with a request using a modal auxiliary verb *May*. He does not usually do this, and it could indicate that he knows discussion of the Maronites is uncomfortable for Jumblatt. The polite, apologetic nature of this questioning merits a moments reflection. Here is an agent of ICL being mindful of the positive reputation of an alleged perpetrator of war crimes through *politeness* at an ICL tribunal. It is the *power behind discourse* which has placed Jumblatt and Cameron in positioned practices of prosecution witness and council respectively rather than some other arrangement. We can infer that this invokes a collaborative schema of extracting evidence relevant to the Hariri case, which is facilitated by frames that avoid discussion of crimes not directly relevant which the witness may have perpetrated. The interactional conventions between Cameron and Jumblatt show that Cameron is in the dominant position and Jumblatt acquiesces to this by limiting interruptions and answering questions directly. Nevertheless, Cameron feels the need here to make a request, even if only in form and not substance. Jumblatt states

They were excellent. They were excellent because these relations, the meeting -- the conversation started in 2001 when the Patriarch Sfeir came to the mountains, to Mokhtara, and we had this historic reconciliation to forget the -- and heal the wounds of the civil war which started in the 1970s and stayed up until 1991. The relations were excellent, they were excellent and they became even closer subsequently (ibid, p. 92)

This answer features four distinct instances of *overwording*, a high concentration. Firstly, the positive vocabulary *Excellent* is repeated four times when referring to his relations with this group in SVC structure which make truth claims as to their positive attributes. The purpose of this overwording seems to be for emphasis on the positive and factual view of these relations. The fact it is repeated four times seems quite suspect due to its excessiveness. Secondly, a relationship of hyponymy is set up *these relations, the meeting, the conversation*, indicating his preoccupation with these phenomena. The third overwording *mountains* and *Mokhtara* is also a relation of hyponymy where the latter is a location in the former. The fourth instance is most important for an analysis of Ideology. Here, a relationship of equivalence is set up between *forget* and *heal* (it is unclear whether these phenomena are set up as synonyms or hyponyms). This relationship of equivalence is curious. In literal terms,

forgetting and healing are distinct activities which do not comfortably or unproblematically occupy positions of synonymy or hyponymy in language. This relationship overlaps the ancient *Zu'ama* discourse and modern practice of amnesia described in chapter two. It is ideological to the extent that it is an idea in the service of power, particularly the power of those *Zu'ama* who have questionable war records such as Jumblatt who benefit from the amnesties imposed after serious violence. There is a pause between *forget* and *heal*, which indicates two discourse types and audiences coming in to contact. The first phrase is for the socialised Lebanese audience for which the idea of forgetfulness of crimes is common sense, not in the sense of universal acceptance, but simply hegemonic dominance of the idea. However, Jumblatt must realise he is in a place of ICL which has a stated purpose, the ending of impunity. Jumblatt pauses and is seemingly aware of the incompatibility, indeed, the theory-practice contradiction, which this constitutes. Thus, he uses the more acceptable vocabulary *heal* to cover his Freudian slip.

The lack of true equivalence is highlighted when one considers what is being forgotten or healed, namely “the wounds of the civil war” (ibid, p.92). Here, the lack of synonymy and hyponymy are obvious. To forget these wounds is not the same activity as to heal these wounds. Arguably, what has happened in Lebanon goes further than this and constitutes less a forgetting and more of an ignoring of wounds. Talk of forgetting is therefore ideologically *false*. No one has forgotten, what they mean is they ignore perpetrators and victims alike. The healing of wounds might take several forms depending on whether these were physical or psychological, they might be punitive, compensatory or truth-telling or some combination, but it is highly doubtful that official reconciliations by *Zu'ama* and continued amnesty and official amnesia has addressed any of these. This ideological *Zu'ama* framework which sets up a false equivalence between forgetting and healing employs the ideological aspects of *naturalisation* and *mystification*. In the first instance, these practices are well established and draw on common-sense aspects of Lebanese MR established since at least the Ottoman era. In the second instance, this discourse implies, falsely, that wounds are healed when *Zu'ama* and priests reconcile for instrumental purposes. The STL and its agents are in a perfect position to challenge these *mystifications* and *naturalisations* as they provide an extra-cultural perspective from which to view these practices as not *universal* or common sense but highly particular and ideological. However, it does not. Cameron ignores these falsities and, therefore, by default, the STL reproduces and universalises these discourses which encourage impunity leading to a distinct theory-practice contradiction for the STL as bearer of ICL, that is, the theory/purpose of ending impunity (UN Press Release 2007) is contradicted by an institution which allows an alleged perpetrator to expound a theory of forgetfulness of war crimes which amounts to an *institution of impunity* within its walls, without challenge. The public and open nature of the STL means that it is not only failing to challenge

this discourse, but is transmitting it to Lebanon, the region, and the world. The failure to challenge this institution of impunity and its transmission and reproduction amounts to an ethical failure and a reinforcement of the hegemony of this dangerous idea in Lebanon.

Constitutional ammendment and UNSC resolution 1559

After the constitutional amendment passed and UNSC resolution 1559 was adopted, there emerges a Lebanese front of resistance, a coalition around Jumblatt, Patriarch Sfeir, Amine Gemayel and Rafik Hariri (although Hariri's role is somewhat contradictory and ambiguous). This culminated in the so-called Bristol one, two and three meetings at the Bristol hotel in Beirut (The Prosecutor versus Ayyash et al. 2015b, p. 24). The transcript of the 5th May 2015 is largely concerned with the coalescing of this movement and Hariri's role within it. During these discussions, a distinct theme emerges with respect to the opposition's relationship to world order, particularly resolution 1559. Judge Braidy asks Jumblatt about the causal relationship between the constitutional amendment and resolution 1559 "would Resolution 1559 have been passed if the extension was not adopted?" (The Prosecutor versus Ayyash et al. 2015a, p. 90). Jumblatt responds

I think that if the extension of President Lahoud's term was not adopted, we would have never seen Resolution 1559 see the light or voted. This was an international resolution that was imposed on us and it had nothing to do with our own plan. (ibid, p. 90)

In the first half of this answer, negation is used both in reference to the extension *and* 1559. The complex sentence between *if* and *voted* is typified by subordination, that is, it utilises the subordinate conjunction *if* to lay emphasis on the main clause "we would have never seen Resolution 1559 see the light or voted." (ibid, p. 90). In conjunction, these textual features indicate that neither the extension nor 1559 were desirable and the latter is emphasised in order to address the Judge's question but potentially also to emphasise Jumblatt's distaste for 1559. Indeed, the second half of the answer seems to reinforce this impression through use of negatively valued vocabulary *imposed* and through negation "it had *nothing* to do with our own plan." (ibid, p. 90, *emphasis added*). In contradistinction to the first complex sentence, this complex sentence uses a coordinate conjunction *and* to demonstrate that both of these ideas are important, namely that it was internationally imposed and had nothing to do with them. Thus, the Schema of judicial question sets up the frames of the extension and 1559 and enquires about the nature of a script in which there is a linear causal relationship from the former to the latter. Jumblatt's reply uses these frames but, whilst he concurs regarding the script of linear causality, he is at pains to emphasise the non-democratic, non-inclusive, top-down manner

in which 1559 was *imposed*. In Habermasian terms, 1559 could hardly be legitimate given that part of its purpose was to disarm subaltern groups without consultation with the populations whose security this would potentially effect. Thus, we have seeming confirmation that even the Lebanese opposition, who should be closest to the UNSC in opposing Syria, were excluded from the decision-making process. Resolution 1559 appears, quite unproblematically, as a form of *domination*.

Continuing to discuss the implication of the resolution on May 5th 2015, Cameron utilises many U.N. press reviews in order to guide his questions. The following is a direct quote from a White house statement “It is not a victory for democracy. It does not reflect the will of the Lebanese people. It was forced on them by an occupation force,” (The Prosecutor versus Ayyash et al. 2015b, p. 3). This statement is totally made up of SVC grammatical sentences, making categorical claims as to the nature of the vote to extend Lahoud’s mandate. Used with negations, this is seemingly rebuffing positive vocabulary and claims by pro-Syrians in the intertextual context in their positive incarnation. The last sentence appears in the positive form and utilises negative vocabulary *forced* and *occupation*. We know that Jumblatt shares these understandings with the U.S. and yet when he is asked whether this is typical of the U.S. position he answers “I was not aware in advance of the intentions or the opinions of the U.S. regarding this issue. I was not aware.” (ibid, p. 3). Here, Jumblatt uses *ambiguity* through answering a slightly different question than was asked. He seems to do this in order to reformulate his answer for a specific purpose, to head off particular antagonistic discourses. The use of *negation* in SVC categorical sentences to state he was “not aware in advance” (ibid, p. 3) indicates he was heading off critics in the intertextual context who might say he was aware, or working with, the U.S..

We know that accusations of treachery and collaboration with Israel were discourses expounded about Jumblatt during these conflicts and it seems that he is still sensitive to these accusations (ibid, p. 23). The theory-practice contradiction of the U.S. highlighting the illegitimacy of democracy under conditions of occupation after having invaded and occupied Iraq two years previously and installing “democracy” is obvious. In destabilising and threatening the Middle East, President George W. Bush made his brand toxic to Arab Nationalists, even ones opposing Ba’athism. What is more, the equivalence of Lahoud’s extension and the forcible, non-consensual nature of 1559 is not recognised. What is more striking, is that UNSC resolution 1757 which established the STL was, as noted in chapter four, imposed through a Chapter VII invocation by the UNSC. Thus, it seems, that the pattern of the imposition of foreign interests, whether it is Syria or the “international community”, is something which persisted well beyond resolution 1559, and indeed constitutes one of the main structural experiences of Lebanon in world order. These particular interests are always in support of one or another political camp and are *universalised* in discourse in order to *legitimate*. The STL is the result of a partisan imposition as much as the extension of Lahoud or 1559. The question of whether

Jumblatt views resolution 1757 with as much disdain as 1559 is an interesting one and one which, unsurprisingly, is not addressed directly.

The common-sense assumption by the Bush II White house was that democracy is something which happens at national level and presumably has a certain formal process. By contrast, they did not embody democratic or legitimate practice in their international relations or at institutions of world order, particularly through UNSC resolutions effecting entire populations without any consent, or even, instrumental coordination with local forces aligned with their position. Democracy as a practice is presumed to occur inside states, while the great powers at the UNSC fail to act democratically by including all concerned parties in decision-making. This is arguably a theory-practice contradiction in which democracy is represented as a universal good but then ignored in favour of great power politics globally. Moreover, here we see the disintegration of a global historic bloc, which at one time had aligned the interests of the U.S. and Syria in the latter's hegemony over Lebanon. The Lebanese *Zu'ama*, by and large, had also been integrated into the *Pax Syriana* historic bloc. The constitutional amendment and 1559 marked the breakdown of this historic bloc and a move from a hegemonic relationship to a conflictual and coercive one. Lebanese with aspirations of independence are thus caught between these dominating forces.

Furthering this theme, Judge Nosworthy asks the question "Was there a feeling in the Lebanon that the Arab countries were being targeted and pressure was being placed on them from the international community?" (Ibid, p. 7). It is interesting that Nosworthy employs *the* definite article before mentioning Lebanon which invokes MR relating to old fashioned, even colonial, descriptions of Lebanon. Indeed, designation of *the Lebanon* as a region within a wider polity (such as the Ottoman Empire or greater Syria) is exactly what Lebanese nationalists like Jumblatt resist through their designation of *the Republic*. The latter is seemingly to remind interlocutors that Lebanon is a polity in its own right. Similarly, use of the phrase *international community* is arguably *euphemistic*, as it serves to obscure power structures which ensure only small segments of this overall community get to influence particular issues, especially when discussing the UNSC and its resolutions. Applying the Habermasian definition of legitimacy again, we see that only fifteen member states of the UN can vote in the UNSC and only five of those have the power of veto and a permanent seat (UN Press Release 2007). Whilst a community can technically be either authoritarian or democratic, this vocabulary invokes generally *positive values* through MR providing the *mystification* that an entire interested community is deciding an issue when, in fact, the opposite is the case. This expression *international community* inheres in media and political discourse and thus forms part of common sense which imparts a hegemonic, inter-subjective image in the minds of individuals with very little critical, accurate or descriptive purchase. For example, an accurate reformulation would be *was there a feeling*

in the Lebanon that the Arab countries were being targeted and pressure was being placed on them from the United States, western powers and their regional allies, both militarily and through their structural control of the UNSC? It is unclear whether these ideological phrases are used intentionally or through common sense assumption. Regardless, Jumblatt answers the question

When Resolution 1559 was adopted, and at least from our side, the side of Qornet-Chehwan, my own camp, and my friends and allies, we viewed this resolution as something threatened Arab security, but we always had a position of principle and that is to commit to the Taif Agreement, the Taif Agreement meaning a staggered withdrawal of the Syrian forces pursuant to Taif. (ibid, p. 8)

The answer contains technical vocabulary referring to *resolutions* but also the legal phrase *pursuant*. The latter phrase seems to double as a strategic use of legal vocabulary to buttress and legitimise one's own political preference. Thus, politics and law interact ontologically despite the hard lines drawn epistemologically by many practitioners. In Habermasian terms, the *Taif* accord offers greater legitimacy given that it was agreed upon explicitly by elected Lebanese politicians and tacitly by Syria and other states at the time. Moreover, the staggered withdrawal and time limitation stipulated with reference to Syrian forces in *Taif* is reproduced in the *Treaty of Brotherhood, Cooperation and Coordination Between the Syrian Arab Republic and the Lebanese Republic* which was signed and ratified by both governments (United Nations Treaty Collection 1992). Positive vocabulary is used to refer to *friends* and *allies* just after reference is made to Qornet-Chehwan, but the link is not explicit and is left to the divergent MR of observers to infer. An adversative *but* is used to join two equal clauses namely, the threat to Arab security from 1559 and their commitment to *Taif*. The adversative demonstrates a relation whereby 1559 is an impediment to *Taif* and that commitment to *Taif* happened *despite* 1559. This binary is reinforced using negative vocabulary *threatened* when referring to 1559 and the use of positive vocabulary when discussing *Taif*, namely, *principle*. The latter can refer to both a technical or ethical maxim, evidencing instrumental *and* normative rationality. Indeed, Jumblatt invokes this maxim repeatedly in the texts to distinguish 1559 from *Taif* and distance both himself and Hariri from the former. It is possible that this is deception, but in this forum, Jumblatt seems to perceive association with 1559 as toxic and it is hard to imagine him not viewing it as such at the time. Thus, 1559, aside from any moral considerations, was instrumentally and strategically flawed because it was a brazen instance of domination. Its attempt to attach international interests (the disarming of Hizballah and the Palestinians) on to the domestic interest (Lebanese independence) was so overt that it would never have been possible for it to become the basis of a new hegemonic common-sense or historic bloc, alienating important sections of the Lebanese opposition. This seems

to have been a function of a top down process through which the opposition were not consulted regarding its content.

Thus, the adoption of 1559 seemingly caused the opposition some problems. Cameron quotes a passage from a U.N. press review dated 11th October 2004 in which a pro-Syrian politician, Nasser Kandil, is quoted “there are two political divisions now in the country: ‘Those who support the nationalistic option endorsed by Syria and those who back Resolution 1559’” (ibid, p. 49). The first sentence offered by the reporter is a paraphrasing of Kandil’s words and presents an SVC sentence stating the attributes of Lebanon *two political divisions* and does so categorically. The direct quote provides the details of this division through use of a co-ordinating conjunction *and* giving equal weight to both clauses and reinforcing the idea that there is a binary split between nationalism and 1559. Thus, it appears that the pro-Syrian discursive strategy was to present a frame in which 1559 and the opposition were synonymous as were pro-Syrians and nationalism. Moreover, this was presented as a relation of mutual exclusivity. This move has the effect of undermining the opposition’s legitimacy which it could otherwise have garnered from *Taif*. If France and the U.S. were intending to support the opposition through this resolution, it in fact had the opposite effect.

Grudges, revenge and pettiness

Whilst discussing the increased pressure on the members of Jumblatt’s party by the Lebanese-Syrian security apparatus, Cameron quotes Sfeir again, in what the news article states is, “a gesture of clear solidarity with Jumblatt.” (ibid, p. 16). Sfeir is reported to have said “What is good for man everywhere is to rise above grudges, revenge, and pettiness, and to try to spread peace around himself, especially if he is in a position of power.” (ibid, p. 16). The first thing one notices about this statement is the extent to which it relies on the MR of the reader. How is one to connect the alleged gesture of solidarity with this somewhat vague statement about grudges? The answer can only be through interpretation and the background knowledge that the writers and speakers assumed their audience possess. Starting with the formal features, *grudges, revenge, pettiness*, constitute *negatively valued vocabulary* with which Sfeir has a preoccupation indicated through this *overwording* of concepts with relations of hyponymy. The counterpoint to this negative vocabulary is *peace*, which is evidently positively valued. Potentially, the negative vocabulary performs a *euphemistic* task, this is indicated by the generality of the statement and the lack of clear referents. Euphemisms are usually a “word substituted for a more conventional or familiar one as a way of avoiding negative values” (Fairclough

2015, p.135). What we have here are potentially negative vocabulary used to conceal even more negatively valued phenomena.

The grammatical structure of the statement is a complex sentence consisting of two SVC clauses connected in a relationship of *subordination*. The statements are categorical, it is a statement about the common-sense assertion that grudges and other negative behaviours should be eschewed, a statement which appears universally true as a function of its generality. The fact that the subordinate, backgrounded clause is the one regarding men in positions of power is interesting. This afterthought depends on the audience possessing MR which already presupposes this as a common sense truth. Presuppositions are an indication of hegemonic ideology (ibid, p. 164). Thus, the question becomes, does this presupposition function as an idea in the service of power? If the answer is yes, then one can identify this statement as ideological. At this point, however, the statement is so general and so disconnected from the journalist's account, namely that this is a clear statement of solidarity, that what is being presupposed is being obscured. To identify this, we must move back to the overwording at the beginning of the statement. What does Sfeir mean by *grudges*, *revenge* and *pettiness*? Coherence here seems to depend on the MR in the heads of the observers and the intertextual context of common experience. The only interpretation which makes this statement coherent is one whereby the *grudges*, *revenge* and *pettiness* referred to are those arising from the Lebanese civil war, in this instance between the Druze and Maronites, of which Jumblatt and Sfeir are leaders, respectively. If we infer this to be Sfeir's meaning, then *grudges*, *revenge* and *pettiness* become euphemisms for war crimes, crimes against humanity and ethnic cleansing. Similarly, their negative balance displaces positive formulations such as *truth* and *justice* and in this way the justice-seeking subject is conflated with those of vengeful sectarianism. With this coherence in place, the subordinate clause "especially if he is in a position of power." (The Prosecutor versus Ayyash et al. 2015b, p. 7) presupposes that the role of leaders (naturalised as *he*) is even more important in moving beyond *pettiness* to spread *peace*. In effect, this legitimises the system of *Zu'ama* amnesty and amnesia. It diminishes and demeans those who would demand justice and minimises these crimes to trivialities. Whilst of course it is obvious that the holding of grudges is a negative force in Lebanon, Sfeir rhetorically attaches this to the legitimate search for justice to shut the latter down. This potentially creates the conditions in which grudges are cultivated in silenced and marginalised hagiographic spaces.

The statement can also be viewed as one in which the Patriarch is heading off critics (potentially from his own Maronite community) of his alliance with Jumblatt. Like the earlier interaction in which Cameron was required to bring up Jumblatt's relationship with the Maronites, Cameron, and the STL by extension, fail to challenge or even be curious regarding *Zu'ama* accounts of

the war or their discourses of forgetfulness. It manifests in this example by Cameron avoiding asking for direct clarification of what Sfeir means by *grudges*, *revenge* and *pettiness* and allows the MR of the observer to fill this void. Once again, Cameron is somewhat bound by the structure of the STL and his positioned practices within it (although he chooses not to use his agency creatively). Once again, the *power behind discourse* which provides impunity for friendly *Zu'ama* is in play and once again this contradicts the very core of what ICL is allegedly about. Once again, rather than challenge the *Zu'ama* discourse of forgetfulness, the STL is happy to transmit it and further its ideological hegemony in Lebanon.

So far, we have seen a discourse around memory which emphasises forgetting as healing and remembering associated with *grudges*, *revenge* and *pettiness* and contrasted with spreading *peace*. On the surface, these two accounts of how to achieve peace appear contradictory. In the first, forgetfulness is emphasised which, in everyday parlance, is a passive occurrence, a failure to recall. The second account, by contrast, presents a force of will in which one must consciously “spread peace around himself” (ibid, p. 16). Below surface appearance however, both accounts encourage active forgetting (or ignoring) of past trauma. This active forgetting appears to be favoured of *Zu'ama* ideology, ostensibly it brings peace and cooperation between former foes. The following statement is Jumblatt discussing the attempted assassination of Marwan Hamade. Hamade is a prominent member of the PSP, Walid Jumblatt ally who had served in several cabinet positions over the years and was MP for the Chouf district. He notably voted against Lahoud’s extension in 2004. The attempt happened as tensions with Syria increased in late 2004 and the scene of angry supporters outside the hospital where he was being treated.

They were puzzled and surprised and angry. They wanted to know what had happened to Marwan. And here allow me to digress a little bit. The crowd remembered, they remembered at the time the assassination of Kamal Jumblatt at the same moment. The Lebanese people did not forget and will never forget. The Lebanese people have an ongoing and a strong memory. Even if politics imposed on me in 1977 to make a compromise with the Syrian regime, but our supporters knew that there were times of need when we needed to do things. But at that moment they remembered again Kamal Jumblatt. (ibid, p. 37)

This statement opens with overwording; *puzzled*, *surprised*, *angry*. It is very similar to the vocabulary Jumblatt uses to describe his emotional state upon meeting Hafez after the death of his father. These concepts appear to have a relation of synonymy *puzzled*, *surprised* but also include the emotional state this induced, *anger*. By contrast, Jumblatt’s statement about himself simply repeated *surprise* and explicitly denied an emotional response “I didn't feel anything.” (The Prosecutor versus Ayyash et

al. 2015a, p. 14). This dissociative response was highlighted earlier as something potentially related to trauma, given that a lack of emotional response to the assassination of one's father would otherwise seem anomalous.

However, considering Jumblatt's discussions regarding memory, the other possibility is that this is an instance of active forgetfulness. This gives rise to a problematic best addressed by social psychologists regarding the relationship between trauma and active forgetting, does the former provide the ideal conditions for the latter and how does this relation change with the passage of time once the initial shock has worn off? Does the forgetfulness persist? Jumblatt employs an agentless passive process VO sentence which simultaneously functions as an imperative request "And here allow me to digress a little bit." (ibid, p. 37). This allows Jumblatt to acknowledge the superior position of the court and signals when he is offering thoughts which do not relate directly to the question asked, thus forestalling challenges to relevance. What follows this segue is two overwordings. The first of these is the literal repetition of *remembered* in relation to the occurrence of Kamal's *assassination*. This message is reinforced through the second overwording, utilising negations to say something more profound and forceful "The Lebanese people did not forget and will never forget." (ibid, p. 37). Jumblatt proceeds to triple reinforce the message of memory constancy in the following SVO sentence where the Lebanese are said to categorically possess "an ongoing and a strong memory" (ibid, p. 37). The contradiction between this assessment of the constancy of memory in Lebanon and the earlier discourse regarding the necessity to forget could not be plainer. He goes on to note the structural imperatives in 1977 through negative vocabulary *imposed* and the positivity of his own agency *compromise*. It appears that, despite his followers understanding of these conditions in 1977, in 2004 "they remembered again Kamal Jumblatt." (ibid, p. 37) and were no less angry for it.

So, we have arrived at a position of cognitive dissonance in which Jumblatt is acknowledging that forgetting trauma is both impossible *and* essential. The first thing to note is that the crimes being remembered here are assassinations of politicians and *Zu'ama* and the crimes which are being forgotten are largely civilian deaths caused by war. Here then, we have a class-based explanation for this contradiction. The deaths which Lebanese cannot forget (according to Jumblatt) are those of *Zu'ama*, conversely, there is a necessity to forget civilian deaths. The other explanation for this is instrumental. Here, any deaths can be ignored for instrumental purposes, whether it is of *Zu'ama* or civilian alike. This is clearly drawn out in the way Jumblatt, and his supporters, coordinated with the Syrians after his father's death. However, what this statement demonstrates is that ignoring trauma for instrumental purposes does not equate to genuine forgetting by either Jumblatt or his followers. When the instrumental relationship is no longer expedient, this memory is fair game for *Zu'ama* to utilise instrumentally against the ally-turned-foe *or* is remembered spontaneously by the constituents,

potentially leading to the *revenge* so disparagingly referred to by Sfeir. This example also points to the key relationship between contemporary traumatic events and the reactivation of frames, scripts and schemata associated with previous traumas and their link to potentially violent emotional states.

There is a sense in which trauma is forgotten until such time as it is politically expedient to remember, but there is also a sense in which emotions that have been actively forgotten are unleashed with potentially violent and irrational results. As we pointed out in chapter two, there is no guarantee that the objects of this violence are those directly responsible and Jumblatt bears this out in his concern for Khaddam when he visits Hamade at the hospital (ibid, p. 40). The propensity for the acquiring of *surrogate victims* has been established and can be explained by the utilisation of frames, scripts and schemata associated with previous events in times of traumatic uncertainty. Finally, when Jumblatt attributes this strong memory to *the Lebanese* he does so in a way which implies a *universal* perspective which is fictitious. The rhetorical trick conflates his supporter's memory with that of *the Lebanese* in general. It is certainly true that many Lebanese would remember Kamal's death, it is nigh on impossible that they universally viewed it the same way. So here, Jumblatt is memory-making rather than simply reporting on the recollections of the crowd. This reinforces his political and family brand, particularly among younger Lebanese who experience the death of Kamal as post-memory. This is what is achieved through Jumblatt's constant association of Kamal with contemporary assassinations

I said that there are some people when their time comes, especially if they are believers - and Rafik Hariri was a strong believer in God's will - he sensed this danger ... He was afraid, like my father when he returned to Lebanon and knew that his time had come. (ibid, p. 93)

The way in which Jumblatt uses religious imagery whilst comparing Hariri and Kamal's assassinations invokes frames of sainthood and martyrdom in which they possess supernatural senses of foresight. This does even more for the construction of these figures as martyred saints and underlines that *Zu'ama* have a highly contradictory relationship with memory in which forgetfulness and remembrance are constructed for instrumental purposes. The STL makes itself a conduit through which these representations are reproduced rather than challenged.

The Second Bristol Hotel meeting

After the attempt on Marwan Hamade's life, Cameron directs questioning to the second Bristol Group meeting of the opposition. This meeting was distinguishable from the first due to the presence of Rafik Hariri's representative in addition to the leader of the Phalange, Amine Gemayel (ibid, p. 101).

Cameron attempts to establish whether Gemayel was an “opposing combatant” (ibid, p. 101) to Jumblatt during the war. Jumblatt responds

Unfortunately, we fought each other as various Lebanese communities for other people's interests, and as it was said by the famous article of Ghassan Tueini: It was other people's war on our own territory. Unfortunately, this is what happened.

The first clause possesses an SVO structure indicating a process “we fought each other as various Lebanese communities” (ibid, p. 101) but the adjunct “for other people’s interests” (ibid, p. 101) changes the meaning of the entire process. This clause is stated as categorical truth. Jumblatt doubles down on this interpretation by invoking the discourse of Ghassan Tueini through a positively valued *famous* text, appealing to the intertextual MR and common-sense presuppositions of his Lebanese audience. It is noteworthy that Jumblatt often refers to the Tueini family and their newspaper An-Nahar through positive vocabulary “Gebran Tueini is the son of Ghassan Tueini and he is also the *descendant* of a very *prestigious* and *democratic* institution in Lebanon, and that is An-Nahar Newspaper.” (ibid, p. 22, *emphasis added*). Thus, the audience is primed both textually and intertextually to consider this source as authoritative, either through genealogical *descendent*, general *prestigious* or liberal *democratic* scripts. This gives precedent to the last two clauses. These clauses appear in an SVC attribution structure, the first of which attributes the Lebanese civil war *it* using the linking verb *was* to being “other people’s war on our own territory.” (ibid, p. 101). This is a categorical attribute of the war in this representation which is reinforced by the second SVC clause which is definitive “this is what happened.” (ibid, p. 101). Here we see the theme of structural determinism in Jumblatt’s discourse obtain new heights in which responsibility for the Lebanese civil war and the interests being fought for had nothing to do with the Lebanese. The war of others discourse, thus rendered, proffers a script through which the Lebanese possess no agency vis-a-vis foreign powers. All one need do, to highlight the falsity of this claim, is to refer back to Jumblatt’s comments about his father from the first day of evidence.

In the 1970’s, Kamal Jumblatt headed the nationalist movement which comprised all the leftist political parties in Lebanon that also wanted to change the sectarian regime. In 1975 the war in Lebanon broke out and it was a civil war, as you know. (The Prosecutor versus Ayyash et al. 2015a, p. 6)

Here, he admits that his father “headed the nationalist movement” (ibid, p. 6), which was one of the two initial sides in the civil war. He notes that, far from having no purpose but the interests of foreign parties, they had a domestic agenda to “change the sectarian regime.” (ibid, p. 6) and that the civil war broke out while his father was in command. Moreover, he reminds us that it was a *civil* war in

1975. Jumblatt avoids implying direct causality in his statement (for example, by connecting the first sentence with the second through the causal conjunction *so*). Instead, it is left to audience MR to interpret this causality which is easy for anyone with a knowledge of the origins and original combatants in the Lebanese civil war. Regardless, this account is totally contradictory to the war of others discourse which Jumblatt later propounds and, in fact, constitutes a theory-theory contradiction, that is, a contradiction in the accounts given as to the causes of the war. Moreover, this theory-theory contradiction is ideological to the extent that the war of others discourse externalises the causes and conduct of the civil war entirely on to foreign parties, shielding *Zu'ama* from association. It therefore functions to *mystify* and *rationalise* the origins, motives and conduct of the war which involve the *Zu'ama* specifically and the Lebanese generally.

It was highlighted in chapter two that embarrassment functions to suppress honest discussion of the war and thus one could surmise that the war of others discourse finds fertile ground on which to establish itself. However, chapter two also established avoidance of this kind provides space for the propagation of hagiographic sectarian discourses which threaten prospects for peace. The STL appears passive once again, as a downright self-serving lie with the express purpose of furthering the ideology of forgetfulness and impunity is expounded within its walls and transmitted to Lebanon and the world. The sad irony is that Walid Jumblatt, through the invocation of this war of others discourse, effectively disavows the essentially noble and socialistic purposes of his father in opposing the fascism, exploitation and marginalisation of sectarian politics in 1975. This analysis is in no way meant to excuse the foreign interventions which transformed this largely binary conflict between right and left into a proxy sectarian affair after Kamal's death.

Interim Findings

This chapter has identified several interim findings from an analysis of the first half of Walid Jumblatt's testimony. Here they are summarised. This serves not only as a consolidation of what has been discovered but also as a guide and reference to the rest of Jumblatt's testimony in chapter six and overall conclusions. In CR terms, these themes are separated into categories for ease of discussion but by now it has hopefully become evident to the reader that these phenomena exist in relation to one another within a causal complex.

Remembrance and Active Forgetfulness

The theme of memory is present from the beginning of the testimony in which the STL introduces Jumblatt in the most non-offensive way it can. It utilises checklists of uncontroversial attributes as

though he is applying for a job. This is arguably determined by the positioned practice which Jumblatt occupies within the STL, namely prosecution witness not defendant or contributor to a truth and reconciliation process. The memory of Kamal Jumblatt is a prominent feature of Walid Jumblatt's discourse and manifests in particular ways for particular purposes. The first is the instrumental use of the STL as a place to testify the nature of Kamal's assassination and the certainty with which Walid believes this was carried out by Syria. The second is the attachment of Kamal's martyrdom to that of Hariri often using mystical or religious imagery. The former can be interpreted as both a convenient platform in which to put his father's case before the court of public opinion, but it can also be interpreted as Jumblatt surreptitiously obtaining a form of therapy through the cathartic discussion of his traumatic past.

Jumblatt is also able to advance the *Zu'ama* monopoly and definition of memory. This is achieved through a discourse which renders healing and forgetting as synonymous as per the frame of amnesia. What also emerges is a practice of instrumental *active forgetting* in conjunction with instrumental processes of *active remembrance* often of the same event over time and always at the behest of *Zu'ama* politics. There is a distinct class element here in which, often, the crimes forgotten are those relating to the general populous but the ones remembered are ones with *Zu'ama* victims, unless the forgetting of crimes against *Zu'ama* is instrumentally advantageous. What is most concerning regarding this is the potential for the general populous to *spontaneously remember* things which they had previously *actively forgotten* with the potential for violence against *surrogate victims* never too far away. Thus, the STL leaves in place this complex of memory or indeed adds to its lopsided nature by only addressing one case. Amongst the general testimony, Jumblatt is engaged in *memory-making*, particularly with regard to Hariri and Kamal Jumblatt's martyrdom and with regard to the civil war. The implications of Lebanese politics are that a) amnesia is never a complete process and memory can reassert itself in dangerous ways, intimating that the understandable impulse for forgetfulness might be counterproductive and b) the incompleteness of amnesia seems to favour the *Zu'ama* class who have disproportionate control of what gets remembered and when, to the detriment of normal victims and c) the STL perpetuates this monopolization of memory, reflective of its purposes under the gerrymandered system and thus it cannot function as a unifier of memory or reconciliation.

Structural Power and Access to Justice

Cameron and the Judges of the STL are bound by the internal relationship between prosecution and prosecution witness to not antagonise Jumblatt or to question him on topics which are not relevant to the STL on the basis of its limited jurisdiction. What must be borne in mind always is that these limitations are not incidental, but politically instrumental and emanate from the interaction of the UNSC, the *Zu'ama* class in Lebanon and Israel (the objections of Syria and Hizballah being immaterial). This has the effect of leaving memory of prescribed but related events, a private matter. It was noted that Walid Jumblatt embodies aspects of both victim and perpetrator. This implies that a process of TJ based on universal truth telling *might* be more appropriate for dealing with Lebanon's civil war past, though a thorough analysis of this question is beyond the scope of the present study which concerns the structural reasons this is unlikely to ever be achieved. The situation which exists is one which reproduces *Zu'ama* privilege with Jumblatt able to surreptitiously obtain recognition and access for himself, whilst normal Lebanese victims are systematically excluded from the proceedings (unless they happen to be the incidental victims of the Hariri bombing). The sinister side of this is that Jumblatt is covertly able to offer structural determinist arguments for behaviour, both personal and for the Lebanese in general, through the *war of others discourse*. This essentially grants a free pass to all actors, including himself. We are expected to accept his version of events, not probe too deeply, and most of all, not invite any non-elite victim's perspective *as an end in itself*.

Thus, we arrive at the central ideological contradiction which repeats throughout these proceedings that a man who almost certainly was involved in what would be considered core international crimes is able to speak about his trauma due to the amnesty he enjoys but his victims are not. This is the very definition of impunity which ICL in general (Burgis-Kasthala 2014, p. 250) and the STL particularly (UN Press Release 2007) claim is what they wish to end, whilst in practice facilitating its systematic continuation. The implications for Lebanese politics are that certain categories of victims are systematically excluded, victims of the Israel-Hizballah war for example, and therefore a reconciliatory narrative is unlikely. Justice in a wider sense is thus unachievable.

Domination

Lebanon has been subject to both hegemony *and* domination since the civil war. A process of coercion through assassination but then also consent through a margin of manoeuvre was the strategy by which Hafez seemingly established the Lebanese-Syrian historic bloc. A key, and often overlooked, aspect of this was this regional hegemony's dependence on global American hegemony. The gradual unravelling of this order occurred through the withdrawal of Israel from south Lebanon, increased

authoritarianism through the accession of Bashar Al-Assad, and the 2003 U.S. invasion of Iraq which led to a situation of more overt domination by Syria, but also by the UNSC. Fundamentally, the U.S.-Syria historic bloc had never transitioned from instrumental hegemony to ideological hegemony. The ideological leadership of Syria was, and is, limited to the March 8th portion of the Lebanese and is rejected here by Jumblatt through his reformulation of Arab nationalism away from Ba'athist homogeneity, towards a plural vision. Jumblatt's periodic acceptance of Syrian leadership through the years can be described as resting largely on instrumental calculations, apart from, perhaps, his recourse to Arab nationalism in resistance to Zionism after 1977. Here, in Jumblatt's testimony, there appears to be a core of ideological acceptance of Hafez on the basis that an abusive Arab leader is still preferable to Zionism within the frame of Arab nationalism and so long as Israel remained a threat. When the threat no longer applied, however, Jumblatt's ideological acceptance of those who he viewed as his father's murderers was withdrawn.

The eventual breakdown of the historic bloc resulted in the tug of war between the Syrian wish to extend President Lahoud's mandate and UNSC resolution 1559. With regard to Jumblatt's assertion that General Rustom Ghazaleh was hostile to Hariri as a reflection of Bashar's own hostility, this view is supported in the analysis of Hariri and Ghazaleh's conflictual discourse. Similarly, the UNSC attached international interests (disarming Hizballah and the Palestinians) to the limited goals of the domestic opposition (Syrian withdrawal). This was apparently done without consultation with the domestic opposition to Syria and, in fact, made their task much harder. The notion that the STL's origin in UNSC resolution 1757 itself could be viewed as a continuation of these dominating processes, given that it over-rode (for good or ill) the domestic provisions of veto designed to ensure that divisive foreign policy matters should not lead to domestic antagonism, raises its head in an interesting way in chapter six. The implications for Lebanese politics are that all international patrons are guilty of sacrificing Lebanese peace and stability for strategic ends. In this light, it seems more prudent to avoid existential challenges to one or other alliance though adherence to the principle that foreign treaties should be subject to veto. This is much more valuable as a mechanism of stability, than ICL processes established ostensibly to deal with (some) of the ramifications of these crises after the fact and which, in actuality, represent weaponised interventions in those ongoing internationalised conflicts.

Chapter Six: Walid Jumblatt's evidence 6-7th May 2015

Introduction

The transcript of the 6th May 2015 marks the culmination of Mr Cameron's questioning of Jumblatt for the prosecution. Cameron takes Jumblatt through some press articles and then introduces a substantial audio recording of a meeting between the Syrian deputy foreign minister Walid Moallem and Rafik Hariri which took place at the office of the Prime Minister on the 1st February 2005, the day before the final Bristol meeting and thirteen days before the assassination of Hariri. The questioning of Jumblatt for the prosecution subsequently concludes and the judge directs Jumblatt to answer questions, first from the representative of the victims, and then to various defence council who question Jumblatt until the end of the 7th of May 2015.

Hizballah

Mr Cameron quotes a newspaper article from Al Mustaqbal, which describes a meeting between Jumblatt's Qornet-Chehwan allies with Hizballah's leader, Sayyed Hassan Nasrallah (The Prosecutor versus Ayyash et al. 2015c, p. 11). Cameron asks Jumblatt "Did you know about this meeting between Secretary-General Nasrallah and these two members of Qornet-Chehwan at the time?" (Ibid, p. 13)

Jumblatt responds

No, but the agreement between us and Qornet-Chehwan was that we needed to have a dialogue. Nothing in Lebanon happens without dialogue, without dialogue with the others, regardless of their political opinions. The dialogue is a must. We cannot eliminate the others ... Hezbollah and the bigger alliance behind them were in the end a part of the country. Their loyalty to Syria is one thing, but we cannot deny the fact that they were part of Lebanon, Hezbollah and other parties. We cannot deny the fact that they're part of Lebanon and we cannot disregard any of them. (Ibid, p. 14)

The first sentence here is of an SVC sentence structure in which the positively valued vocabulary of *dialogue* is attributed to the aims of Jumblatt and Qornet-Chehwan. Indeed, *dialogue* is *overworded* four times in this passage and constitutes a preoccupation. The importance of dialogue is expressed in the second sentence categorically, through an action process SVO sentence, which is negated *nothing*. When Jumblatt says *nothing happens in Lebanon without dialogue*, he is not being literal. Rather, context and MR indicate this refers to the political process. The third SVC sentence drives

home the point by equating dialogue with necessity. The fourth sentence constitutes an SVO action process, which is negated and in which the verb *eliminate* also constitutes *negatively valued vocabulary*. Whether this is political or physical elimination is left unstated and he appears to leave this open to MR interpretations which likely incorporate both. In the next SVC sentence, Hizballah become an attribute of Lebanon. Jumblatt clarifies this position in the following coordinated complex sentence where the first clause asserting Hizballah's *loyalty* to Syria is ameliorated by the adversative *but* which functions to reaffirm that Hizballah are part of Lebanon nevertheless. The second part of this complex sentence includes the negation *we cannot deny* for emphasis. The last sentence in this statement is a coordinated complex one in which the first clause repeats the negation *we cannot deny* to reinforce the message that Hizballah are part of Lebanon. The final clause is an SVO action process in which the negative verb *disregard* is negated by *cannot*. In all, there are five negations in this passage. This indicates a systematic *oppositional rewording* and challenge to actors in the intertextual context.

The above speech invokes MR of *consociationalism* and addresses multiple actors in the intertextual context. The MR of consociationalism is drawn on heavily in the emphasis on *dialogue*, the recognition that one cannot *eliminate* or *disregard* political others and that political loyalty does not preclude inclusion. The frame of consociationalism is set up in which *dialogue* is the only realistic script. As we noted in chapter two, one of the principal purposes of consociational logic is to assure sub-state groups that they will not become politically marginalised or physically threatened and to dissuade patron-seeking behaviour. This is reflected in the negations of, *disregard* and *eliminate*. Therefore, within the superficial schema of giving evidence on a specific question, Jumblatt is seemingly also providing a schema of reassurance to Hizballah and their allies through the frames and scripts associated with consociational power-sharing. Moreover, it also functions to remind anti-Hizballah factions that they should consider dreams of *disregarding* or *eliminating* Hizballah as folly. Finally, in light of the discussions of 1559 and the explicit problems this caused for Jumblatt and his allies, part of his audience is likely to be international actors. MR indicates this to be the permanent five UNSC members, particularly the Western bloc of the U.S., U.K., and France along with regional powers and allies, such as Israel and Saudi Arabia.

Are Knudsen (2010, p. 18) argues that "The mafia-style killing of political opponents is not an aberration but better understood as a political discourse of violence." Viewed in this light as a historical process, one can see a pattern in the unfolding of events, particularly as it relates to the undermining of confidence in the consociational system's ability to assure its fractured political culture. In May of 2003 the U.S.'s coalition of the willing invaded Iraq and deposed Saddam Hussein and his Ba'athist regime. By October 2003 the U.S. congress passed the *Syria Accountability Act*, which

sought to curtail the Hizballah-Syria-Iran alliance through the threat of sanctions against Syria. These actions signal the disintegration of the instrumental historic bloc of the U.S. and Syria which had allowed for the regional Syrian hegemony over Lebanon. Nicolas Blanford (2006, p. 91) notes that open opposition to Syria's presence by Lebanese politicians was precipitated almost immediately by this, which implies a causal relationship between the domestic historic bloc of *Pax Syriana* and the global historic bloc of *Pax Americana*; indeed, an *internal relation* which ensured that the removal of U.S. support for *Pax Syriana* altered its constitutive rules to the extent that it no longer existed.

The dual enactment of President Assad's Lahoud extension and UNSC resolution 1559 on 2nd September 2004 (The Prosecutor versus Ayyash et al. 2015a, p. 87, Knudsen 2010, p.13) can be seen as a further step in this conflictual discourse, the former attempting to maintain an ever more overtly dominating stance toward Lebanon and the latter barely concealing its purpose as the strategic defeat of Hizballah by other means. It was a month later, on the 1st October, that the assassination campaign against anti-Syria politicians and personalities begins with the attempted assassination of Marwan Hamade (Blanford 2006, p. 110). The escalation to assassination takes place after UNSC resolution 1559 whose unique feature was to add the dismantling of Hizballah to the opposition demands for Syrian withdrawal. Notwithstanding Jumblatt, Hariri and Qornet-Chehwan attempts to reassure Hizballah that their disarmament was a domestic decision, it appears the assassins considered them complicit and/or a security threat through continued opposition to Syria. Whilst Syria withdrew in April 2005 and Hizballah entered parliament more fully to secure its interests, the assassination of March 14th ministers continued unabated. The 2006 Israel-Hizballah war constitutes a reversion to military methods by the west to achieve the aims of 1559 and the wider neo-conservative project for the remaking by force of the Middle East.

Prime Minister Fuad Siniora meanwhile drew on the only relative power he had in his patrons and solicited the creation of the STL through resolution 1757. The STL very much constitutes part of this discourse of conflict and was but the latest example of the overriding of the consociational system which was designed to deter and assure sub-state groups. This is reflected most obviously in the STL's *loci, temporis* and *personae* which effectively renders it weaponised. What else could explain the disinterest in the 2006 war or the original sin of the 2003 Iraq invasion, which precipitated this discourse of violence? This also raises the conceptual question of what it means to be politicised and this is a question which is addressed later in the testimony of Walid Jumblatt.

Thus, we could also interpret Jumblatt's assertion that *elimination* is not possible as directed at Hizballah who are, after all, indicted at the STL for eliminating a political rival. Indeed, Jumblatt is reported to have earlier opined that the systematic assassinations of anti-Syrian MP's after the Hariri

assassination were designed to undermine their parliamentary majority in favour of pro-Syrians (Blanford 2006, p. 186). If Hizballah are proved to have killed Hariri, it would be a reasonable inference that they were responsible for the other murders too. In that case, this schema takes on the light of reminding potential Hizballah assassins that they cannot silence all their opponents and they would be better off pursuing politics through the consociational system. It functions as speech acts of both (re)assurance *and* warning. Throughout Jumblatt's testimony he talks openly and stridently about the "killer and criminal regime" (The Prosecutor versus Ayyash et al. 2015b, p. 95) of Syria and repeats his assertions that he believes they killed both his father and Hariri. This is led by the prosecution questions, whilst mention of Hizballah is almost non-existent. Jumblatt never discusses Hizballah in this way and, despite their implication in the crime, Jumblatt tends to establish a binary between domestic and foreign actors, between the client (Hizballah) and the patron (Syria) in which the latter become the locus of negative values and the former are dissociated from negativity. On one hand, this is explicable by the *real politik* calculations of Jumblatt who must recognise that Hizballah hold the military balance of power and potentially are not above the expert assassination of rivals. However, this did not stop him opposing Syria when he deemed their interests as opposite to those of *the republic*. Thus, the explanation for this contradiction is likely the calculation that the integrity of *the republic* demands inclusion of the Shia Lebanese whose major representative is Hizballah.

It must also be noted that Jumblatt is unequivocal in his accusation that Syria murdered both Hariri and his father and, at face value, it might be that he truly believes it was Syrian assassins, not Hizballah, who are the ones to be feared. The fact remains, however, that Hizballah have used violence openly in Lebanon to protect their interests and now in Syria too. The closeness of the alliance indicates that Jumblatt's dissociation of one from the other reflects some political or psychological requirement of his, rather than being reflective of Syria and Hizballah's actual status as atomistic entities with an external relation. The more likely scenario is that they possess internal relations and are now constitutive of one another in important ways.

Representative for the victims

Jumblatt states that 13th February 2005 was the last time he saw the Prime Minister alive and the questioning by Mr Cameron and the prosecution concludes. Questioning is then commenced for the representative for the victims, Ms. Abdelsater-Abusamra who says she represents 72 participating victims and states her intention is to question Jumblatt about the connection he made between his father's death and Hariri's. Presiding Judge Re immediately interrupts and asks her to clarify the

relevance of this approach (Ibid, p. 114). She states that it is relevant to expose “the intended *purpose* and the intended *effect* on the victims and on Lebanon's society from these assassinations.” (Ibid, p. 114 *emphasis added*). The intended purpose and intended effect utilise *the definite article* and therefore indicate some inter or intra-textually defined concept. The context of the sentence indicates these concepts are to be defined in the answers elicited, therefore promising to establish them in later questioning. *The definite article* is also employed in conjunction with technical vocabulary *victims*. The pronoun *these* is used in conjunction with the negative technical vocabulary *assassinations*. The *victims* point intra-textually to the 72 mentioned by Ms. Abdelsater-Abusamra and inter-textually to other hearings or documents, past and future. It is obvious that *the victims* are defined solely by their victimhood in relation to the bomb which assassinated Hariri. This is *presupposed* and operates as hegemonic ideology to *naturalise, universalise* and *mystify* by implying definitiveness: *the victims*. In this presupposition, other victims are externalised and erased from the schema. It also naturalises and/or mystifies that recognition of their victimhood is entirely dependent on their proximity to an assassination targeting a high level, internationally connected, *Za'im*. *These assassinations* are an intra-textual link to the two assassinations she mentions but evokes MR of the assassinations of the war and post-war period. To be clear, this may not be Abdelsater-Abusamra's purpose, but rather the effects of the *power behind discourse* at the STL which systematically limits the *personae, temporis* and *loci* and thus the victims considered.

She goes on to elaborate “there is a pattern, in fact, that could be established, and Mr. Jumblatt is personally an immediate victim of a very similar political assassination, albeit 28 years older, but it's the same.” (Ibid, p. 114). Once again, we have use of the technical vocabulary *victim*, this time in direct relation to Jumblatt. Whilst Jumblatt is certainly a victim in this immediate case, he is also implicated in crimes which dwarf the one under investigation. Once again, the *power behind discourse* has determined that Jumblatt is treated as a victim and not as a perpetrator. It is worth stopping to consider how Jumblatt's own victims might feel upon viewing the representative for the victims at the STL refer to their persecutor as a victim, and only a victim. Given the STL's televised nature, it is almost inevitable that many will be watching, yet silenced. The class element is once again in evidence as the voiceless are non-*Zu'ama* and suffer crimes not related to the Lebanese elite (assassination) or of concern to the global agenda (terrorism) but to much wider populations (war crimes and crimes against humanity) which, by their nature, inflict many more victims. Nevertheless, this is how she develops her argument, discovering *purpose* and *effect* through establishment of *pattern* between the twentieth and twenty-first century crimes. There appears here to be the beginning of a combining of discourse types, one legal, one social science. In the former, a pattern might indicate the *modus operandi* of an individual or group, in the latter it might indicate the

historical structures and causal complexes of society. The combination of these discourse types might prove profitable but might also cause conceptual and logical confusion.

Judge Re allows her to ask the questions but with the observation that it is, in his view, of “marginal relevance” and that the answer should be “brief” (Ibid, p. 114). She therefore commences by asking Jumblatt about the rumours spread regarding his father’s assassination in 1977. Jumblatt responds by stating that upon the death of his father rumours spread among the Druze of the Chouf that the Maronites had killed Kamal (Ibid, p. 115). He states that many Druze enacted a “revenge operation ... on thousands of Christians in the villages around Mokhtara” (Ibid, p. 115) and that the Syrian troops stationed there did nothing to prevent this. Jumblatt states that his own role, along with some Druze Sheikhs, was to appeal for calm. When asked if the rumours were true or false, he re-states that a Lebanese Judge created a file of evidence implicating Syrian intelligence, not the Maronites (Ibid, p. 115). Ms. Abdelsater-Abusamra then asks whether he remembered who spread the rumours to which he replies he does not. Abdelsater-Abusamra states that in looking at the assassinations of Hariri and Jumblatt she wished to discuss “the effect ... on the victims and the society.” (Ibid, p. 117) and asks Jumblatt “Do you see a pattern in that -- in the effects of killing a political leader of the calibre of Rafik Hariri or Kamal Jumblatt, the effect on the victims and the people? What was the purpose of the murderers” (Ibid, p. 115). The first statement clearly reflects Ms. Abdelsater-Abusamra’s MR as containing a frame of assassination which includes some unspecified effects on Lebanese society (or particular groups). The second statement suggests these effects are instrumentalised by the assassins, rather than being incidental. Jumblatt somewhat misses these cues and answers by referring to the immediate effect and cause, namely, the assassination of an anti-Syrian figure, by Syria, for their obstruction of Syrian interests (Ibid, p. 117).

Ms. Abdelsater-Abusamra’s focus on the massacres carried out after Kamal’s assassination strongly suggests that it is this kind of violent effect which concern her as *effects on the wider society*. Therefore, one can surmise that she was suggesting that assassins may desire this type of effect. These relationships are discussed in this thesis in chapter two as the causal complex of clientelist and sectarian violence. This model postulated that *Zu’ama* assassination of rivals was differentiated from sectarian violence, where the first is calculated and the second can often be reflexive (among other distinctions). It was concluded that, whilst the former was distinct in the types of violence performed it, nevertheless, often formed a causal complex with the latter. In the posited causal complex, the assassination of rivals which is targeted and instrumental can often trigger sectarian violence among sectarian and politically differentiated groups which often manifests in generalised violence and often against *surrogate victims* (Khalaf 2002, p. 1-21). Obviously, much depends on context, the assassination of Kamal took place in a context of civil war where state authority had broken down

where the main antagonists were the Druze and Christians. Therefore, the assumption that Christians were the perpetrators and the violent reaction were more likely. If Abdelsater-Abusamra had this conceptual framework in place, she would not need to fixate on who spread the rumours but might appreciate that rumours, whether intentional or spontaneous, can be the result of the (re)activation of frames, scripts and schemata associated with past conflict which offer explanations in fluid, indeterminate and fearful situations. It is possible that in a social context rich with distrust, a third party could easily manipulate these processes to encourage the breakdown of social cohesion on a sectarian and political basis. The key point is that assassination, whatever the motivation, increases the likelihood of sectarian conflict and violence. Unfortunately, Abdelsater-Abusamra was not able to articulate what she was asking about in these terms, partly because of the time constraints enacted through Judge Re's *power in discourse* and partly because she seemed to be approaching the topic *ad hoc* without systematic theoretical forethought. These constraints are manifest in her somewhat confused line of questioning where, having indicated the connection between clientelist and sectarian violence, its consequences for Lebanese social cohesion, and the potential intent behind this for the assassins, she asks “Do you think, Mr. Jumblatt, that the murderers were betting or wanted to create a sense of hopelessness, abduction, silencing, taming, terrorizing the people, that they would feel hopeless that all their best leaders end up getting killed?” (Ibid, p. 117-118). Here she evokes a totally different set of emotions from the ones implied in her interest in Kamal’s death. This is not to say that these reactions could not be, paraphrasing Patomaki, one of the sufficient but unnecessary elements of this causal complex. Rather, the key mechanism or tendency she was on the cusp of identifying between elite assassination, its polarising effect on sectarian and political groups and its potential manifestation in sectarian violence, is not consolidated.

This results in a confused and abrupt ending to her questioning where Jumblatt uses this new opening for a rhetorical flourish which appears to be aimed more at his domestic constituents than to answering questions on a factual basis

If this is their intent, they have failed because after the death of Kamal Jumblatt we kept his journey, we took his journey, and we did not forget. Up to this day, we did not forget. And when Hariri was killed, most of the Lebanese were revolted, were opposed to that. They said: We will not forget. And they will not forget. (Ibid, p. 118)

Here, Jumblatt *overwords* in three instances. The first instance is *journey* which doubles as a *metaphor*. The metaphor of *journey* implies teleological ending or destination. A journey also activates mystical MR with the spiritual implications which fits the image of Kamal as a martyr who possessed foresight and knowingly died for a cause. The pronoun *we* is used in conjunction with SVO action processes to

show that his faithful have stayed true to this path and, presumably, the destination. The first sentence here is *very complex* and made of 6 clauses. Four of these form subordinate pairs and the last two are coordinated. In the first pair, the first clause is subordinated *if this is their intent*. This subordination appears not to have ideological purpose, but rather has the function of prefacing an argument that *they have failed*. These are connected by a causal connector *because* to another subordinated clause *after the death of Kamal Jumblatt*. This backgrounding is questionable due to its basis in the idea that *they kept his journey*. This is an interesting statement for a man who has provided, by this point, three days of testimony on how his father was unable to overthrow the sectarian order and that he, himself, was obliged to abandon this quest and ally with his father's murderers for the medium-term Arab nationalist cause. These are not value judgements, Jumblatt was clearly faced with a difficult set of circumstances in which he relied on *real politik* rather than utopianism to survive.

However, Jumblatt has related in detail that the aims of his father around the abolishment of sectarianism were impossible to carry out. We must therefore presume that this *journey*, has changed somewhat in destination. The last coordinated clause relates that *we took his journey and we did not forget*. This illustrates once again the theme of the constancy of memory. There is an implied cohesiveness between remembrance and the ability to keep the journey. It demonstrates again that, when the time was right, the memory of Kamal was activated and used against Hafez's heir. This is a recurrence of *memory making* by Jumblatt at the STL. Thus, the second instance of *overwording* is forget, which occurs in four instances and each one of them with a *negation*. Thus, this appears to be an *oppositional rewording* and rebuttal to those in the intertextual context who argue that they did forget and fail to keep the journey of Kamal. In the last three sentences, the constancy of memory for Kamal is attached rhetorically, once again, to that of Hariri. Thus, Jumblatt has managed to turn Abdelsater-Abusamra's questioning, into an opportunity to reinforce the martyrdom brands of Jumblatt and Hariri through memory making. The analytical purpose of Abdelsater-Abusamra's questions is apparently lost. This impression is reinforced in her seeming attempt to reformulate Jumblatt's answer into something approximating the information she wished to illicit "Thank you, Mr. Jumblatt. So you mean what happened after Mr. Hariri's assassination was predicted by the murderers? They predicted this reaction? Thank you." (Ibid, p. 118.). Nothing in Jumblatt's answer pointed towards an interpretation of the murderers predicting reactions and yet Abdelsater-Abusamra seizes on this. This is clearly a function of the time constraints but also a failure on her part to properly define the concepts around which she wished to ask the questions.

Abdelsater-Abusamra's last ditch seizure upon prediction as a prerequisite for trying to define *the intended purpose* and *the intended effects* on Lebanese society of assassination opens the discourse again to the theory of Israeli or western involvement for, logically, if the results of the

assassination were entirely predictable, then Pro-Syrians would not have acted because Syria was expelled. For reasons explained earlier, this scenario is very unlikely. An emphasis instead on the link between assassination and sectarian violence could yield a nuanced account in which the former *can* lead to the latter. Potentially, this could be skilfully exploited by a third party to divide and dominate Lebanese sects through manufactured infighting (the assassination of Kamal Jumblatt) but also could be ineptly attempted and backfire (the assassination of Rafik Hariri).

We noted in chapter five, Walid Jumblatt's use of Kamal and Rafik Hariri to advance the martyrdom brand for political reasons. Whilst this would be of questionable relevance as the judge states, using them as comparative cases to examine the underlying structure of clientelist and sectarian violence in Lebanon as Abdelsater-Abusamra attempts to, is not. The potentially devastating effects of this relationship of violence is of central concern to the question of peace and stability in Lebanon. The violent emotions elicited at moments of assassination, as evidenced in Jumblatt's testimony on his father and Marwan Hamade, are perhaps the main (or only) argument in favour of the STL's selectivity of the Hariri case. This does not seem to be recognised by the participants apart from Ms. Abdelsater-Abusamra. It is unfortunate that she is constrained from exploring this theme further. One explanation could be that this strays too close, and makes too much of a causal connection between elite assassination/terrorism which are part of the selective, instrumental jurisdiction of the STL on the one hand, and the widespread crimes against civilians which are systematically externalised and the *Zu'ama's* consequent *power behind discourse*, on the other. Another explanation might be that representative for the victims does not possess the relational power as a positioned practice compared with prosecution or defence when dealing with key witnesses, particularly in an ICJ punitive institution rather than a TJ holistic one. In future, collaboration between counsel and social scientists might be fruitful for the framing of more effective questions based on conceptual operationalisation which can avoid reinvention of the conceptual wheel. Social scientists can help to firm up concepts and posit causal relations so that council can avoid conceptual confusion.

Defence questioning, the money trail and the Saudi connection.

After Ms. Abdelsater-Abusamra concludes, questioning by defence council begins, starting with Mr. Aouini, council for Hassan Habib Merhi (ibid, p. 119). Whilst four men were indicted in 2011 for the assassination of Rafik Hariri, Mr Merhi was indicted slightly later in 2013 for allegedly being accomplice to the conspiracy (Special Tribunal for Lebanon 2018). His trial was merged with those of the other

defendants on 11th February 2014 (ibid). Mr. Aouini begins his questioning by presenting an excerpt of a speech made by Jumblatt on the 14th February 2006

the international tribunal will be financed by the Kingdom of Saudi Arabia. The punishment will be implemented and the blood of dozens of martyrs will be done justice and they will receive justice. The mothers and siblings and sons of the gang formed of the four officers, ... they will cry when the -- when this gang shall be punished and when they will be executed. (Ibid, p. 129)

This section contains *intertextual connections*, that is, *pronouns or definite articles* which indicate concepts not defined in the text, but which point to other texts and draw upon the observers MR. The first intertextual connection is *the Kingdom of Saudi Arabia*. The MR which we can apply to this Kingdom is that its *Wahabi* based judicial system is (in)famous for imposing corporal and capital punishment. Moreover, it is the primary Arab rival to the Iran-Syria-Hizballah alliance, patron of the Hariri family, and the anti-Syrian forces in Lebanon. The second is *the gang formed of the four officers*. This refers to four Lebanese generals allied to *Pax Syriana* who were incarcerated without charge by the Lebanese authorities under instruction from the UNIIIC under suspicion of involvement in the assassination of Hariri for approximately four years. The generals were held based on what turned out to be false testimony and eventually released after the establishment of the STL in 2009, without charge (Nashabe 2012, p. 261). Given these intertextual connections, it is no wonder this section of speech contains an *overwording* which implies a relation of hyponymy between *punishment, justice* and *execution*. The positive vocabulary of *justice*, in this context, imbues its hyponyms, *punishment* and *execution*, with positive value. This is possible only because the discourse type drawn upon is that of non-liberal capital punishment conceptions of justice which disregard principles of fundamental human rights.

Moreover, a discourse type of *Zu'ama* war rhetoric is at play in which the positively valued vocabulary *blood of martyrs* is invoked to justify the physical elimination of the enemy. The negative vocabulary *gang* serves to delegitimise the four officers through non-recognition of their former positions within the Lebanese state. The merging of non-Liberal justice discourse types with that of *Zu'ama* war rhetoric is interesting and indicates both, a connection between judicial and extrajudicial violence *and* how the UNIIIC was internally related to the discourse of conflict and violence in Lebanon in its *de-facto* partisan actions. Aouini asserts that this speech constitutes a speech act of threat towards both the generals and their families. Jumblatt replies "If you want to consider it a threat, you can consider it a threat." (Ibid, p. 131). This reinforces the illiberal and arbitrary nature of the discourse

of justice propounded in this speech in which families are guilty by association. This echoes the general tendency of violence in Lebanon towards *surrogate victims* in times of stress and uncertainty.

Information relating to the funding of the STL is either scant or seemingly restricted by the STL. However, an unorthodox source of information is available in the form of U.S. diplomatic cables released by WikiLeaks. The question of Wikileaks arises in the testimony and is used by the defence to frame questions, although they are not allowed by the court to present them as evidence due to their unorthodox source and questionable provenance (Re, Nosworthy et al. 2015, p. 10). This approach was supported by the trial chamber in a *decision* which occurred *after* Walid Jumblatt's testimony concluded on the 7th May 2015 (ibid). This decision acknowledges that the cables have been published in "The New York Times, The Guardian, Der Spiegel, El Pais and Le Monde." (Ibid, p. 10). Despite this, the decision held that they did not prove the authenticity of the cables presented or the accuracy of what was purported to have occurred in the cables. The decision cites the necessity of high evidential standards to provide a fair trial as a reason for their non-admittance. One would be remiss in failing to note that this decision shields those the WikiLeaks cables might embarrass. This includes its own prosecution office's predecessor. The UNIIIC is detailed to have held the four generals for a further two years *after* the evidence justifying their detention had been "thoroughly discredited" (N/A [Wikileaks] 2007). This was allegedly done with the encouragement of the U.S. government and the March 14th authorities based on political considerations and against the better legal judgement of the UNIIIC commissioner Serge Brammertz (Ibid). It is notable that, from chapter four's analysis of the ICL discourse, only that scholarship self-designated as CLS utilised Wikileaks sources (See Burgis-Kasthala 2014, Matthews 2014). Whatever the case, there seems to be no reason to hold to these Legal standards and this thesis applies only the journalistic ones. This approach is particularly justifiable given the paucity of records, particularly regarding funding of the STL.

Wierda, Nasser and Maalouf (2007, p. 1077) argued at the outset of the STL that its legitimacy would depend to a large extent on its ability to be *a)* transparent about its financial backers and *b)* obtain funding from diversified sources rather than countries which have a political stake, explicitly "the US, UK, France or other countries with significant involvement in the current situation such as Saudi Arabia." (Ibid, p. 1077). On the STL's website, information pertaining to finance is not forthcoming. A document named *STL Close-up* which can be located under the *About the STL* tab on the website, indicates simply that the STL receives 51% of its funding from voluntary contributions from states and 49% from Lebanon (The Public Information and Communications Section of the Special Tribunal for Lebanon 2017, p. 2). The Annual Report produced by the STL president for the U.N. Secretary-General is only slightly more forthcoming. In its latest iteration, it states

Since 2009, 28 states have contributed to the Tribunal. This includes Lebanon's contribution, and voluntary contributions or in-kind support from Australia, Austria, Belgium, Canada, Croatia, the Czech Republic, Denmark, the European Union, Finland, France, Germany, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, the Russian Federation, Sweden, the Former Yugoslav Republic of Macedonia, Turkey, the United Kingdom, the United States of America, Uruguay and other states. (Hrdličková 2017, p. 41-42)

Whilst this list provides some insight, it does not specify numbers. It also apparently includes two states which are not named (inferred by subtracting the 26 named states from the 28 total stated). However, this can be cross-referenced with U.S. diplomatic cables from just prior to the STL's first year of operation. According to these accounts, there were, at this juncture, only 17 states contributing (N/A [Wikileaks] 2008b). All of these states are ones which are named in the official STL annual report which means that the accounts do *not* contradict each other. Another overlap occurs in the presence of unnamed states called *regional states* in the cable or *other states* in the annual report. There is only one other state named in the cable which is not mentioned in the annual report: Kuwait. If we infer that this is accurate and, furthermore, was entered in the public report under the heading of *other states*, this accounts for a total of 27 of 28 countries. Interestingly, an earlier diplomatic cable allegedly noted

USUN Legal Adviser Willson and USUN/MR participated in an April 9 meeting of the Special Tribunal for Lebanon (STL) Management Committee [which noted] the view of some Committee members that recent requests by certain contributors to the Tribunal to remain anonymous raised concerns over issues of transparency and accountability of Tribunal operations. (N/A [Wikileaks] 2008a)

They continued

Committee Chair Adams noted that the contributions of several states were listed under the heading, "Regional States," since these countries did not want to be identified by name. USUN said the Committee should welcome the contributions from each and every Member State that was willing to provide funding for the STL. It remained the right and privilege of each contributing state to request that their donation be made anonymously. (Ibid)

Thus, it appears that, in the event, the interests of state anonymity were placed before public transparency.

One cable notes that the monies secured for the first year of operations amounted to 55 million USD, with an additional 4 million USD spent by the U.S. on a "task force and advance team

work.” (N/A [Wikileaks] 2008b). The itemized contributions total 59,957,882 USD. The itemisation demonstrates that Lebanon is the greatest contributor at 28.7% or 17,185,572 USD. The U.S. contributes 23.3% or 14,000,000 USD. The third largest contributor(s) are *regional states* (or state) at 16.7% or 9,999,975 USD. The Netherlands is fourth, at 8.9% or 5,362,766 USD (This is listed as *in kind* support and reflects its donation of a court building). Kuwait is the fifth largest contributor at 8.3% or 5,000,000 USD. France contributes the sixth largest amount at 3.7% or 2,209,862 USD. Canada, the U.K., Italy, Germany and Japan all contribute approximately 1,000,000 USD or 1.7%. The other contributions fall under 1million USD and are statistically inconsequential. Hungary, for example, donates \$10,000 or 0.02% (Rounding up). We can infer from our cross reference that the third largest contributor listed under *regional states* is actually one state. It is here that we can refer back to Jumblatt’s testimony, “the international tribunal will be financed by the Kingdom of Saudi Arabia” (The Prosecutor versus Ayyash et al. 2015c, p. 129). It seems a reasonable inference that this missing state is Saudi Arabia, based on Jumblatt’s testimony, the political alignment of this state, the funds at its disposal, and its desire to remain anonymous. In this estimation, the STL gets 27% of its start-up cost from the UNSC veto empowered sponsors of resolution 1559 and a further 25% by GCC regional rivals to the Iran-Syria-Hizballah alliance. That is a combined total of 52% in the first year. In this light, it is no wonder that the funding structure of the STL is opaque. This reinforces the view that it is part of the partisan conflictual discourse, not a disinterested arbiter of justice, mostly due to its determination to conceal these facts.

One could consider STL Judicial decisions as *emergent* from this funding structure, namely, not to allow leaked diplomatic cables as evidence, not to allow the Judicial review of UNSC decisions, the retroactive creation and application of a core crime of *transnational terrorism* and the application of *jurisdiction* which omits the 2006 Israel-Hizballah war or other local or regional crimes. Wierda, Nasser and Maalouf’s (2007) notion of financial transparency cannot be said to be satisfied. Their advocacy for diverse sources of funding is ostensibly met in the annual report’s enumeration of 28 different states, but is fatally undermined by the cable’s account of the large proportion of sums from partisan parties. The revelation of *sources* of funding in the annual report and simultaneous restriction of *itemised sums* is seemingly a cynical instance of systematically distorted communication with a view to procuring consent for ideological hegemony. This is achieved by emphasising the diversity of state sponsors for the appearance of inclusion whilst it intentionally obscures the STL’s emergence as the result of the financial backing of major international actors with a partisan agenda. The STL could not hope to exist without the structural and financial power of the U.S., France, Saudi Arabia and Kuwait, along with the significant support of the Netherlands as the historical centre of ICL. One need hardly point out the practice-practice contradiction of the funding of a tribunal based on principals of liberal,

human rights aligned, justice from a state with a human rights record as abysmal as Saudi Arabia's or as averse to international judgment and equality before the law as the U.S.. It should be noted that there is no way to discern whether the proportions of funding remained the same or altered from 2009 to the present as the cables do not go that far and the annual reports omit this data.

Politicisation

Mr Aouini notes that Jumblatt has previously questioned the impartiality of the STL. One of his last questions relates to this, "Did you think or do you still think that the Special Tribunal for Lebanon was or still is politicized because this can have more than a meaning?" (Ibid, p. 136). The section of this question which occurs after *because* invites Jumblatt to reflect on what being politicised might mean. He responds

The Special Tribunal for Lebanon to prosecute the perpetrators of the assassination against Prime Minister Hariri is not politicized. Back then we read and heard many media reports. I was replying to that. This is an independent tribunal looking for the truth, searching for the truth, away from political considerations. (Ibid, p. 136)

The first sentence in this statement starts with a large subject *The Special Tribunal for Lebanon to prosecute the perpetrators of the assassination against Prime Minister Hariri*. It reflects many introductory descriptions to the STL in media, academia and the STL's own publications. This gives it an air of formality and also describes in the title what its purpose is, and by omission, what its purpose is not. This first sentence is an SVC attribution in which the aforementioned subject has the negated, negative attribute *not politicised*. The statement is a categorical declaration which foregoes all nuance. This is not unusual for Jumblatt; indeed, this is his general mode of discourse. The next sentence is an SVO process followed by an SVC attribute which indicates both that he heard media reports and that, when he intimated politicisation at the STL, he was *replying to that*. The last sentence is also SVC and it imbues the STL with positive attributes *independent* and *truth*. Independence and truth invoke Liberal MR which value objectivity and the separation of powers; judiciary, executive, legislature. Thus, according to this account, Jumblatt's suspicion of politicisation rested entirely on these media reports. Thus, the frame of STL politicisation is limited by Jumblatt to a single suspicion based on some specific media reports which he has evidently discounted the credibility of. He has further framed the STL as independent and truth-seeking in categorical terms. The negation in his answer can be read as rebutting both others and himself in the *intertextual context* who said that the STL is politicised. The formulaic description, the self-rebuttal and disavowal of previous information, in combination with the public nature of this testimony, amounts to a speech act of *recantation*.

As was implied in Aouini's question, politicisation can have many meanings. The basic MR representations of politicised courts are *show trials* under non-democratic regimes which hand out politically pre-ordained sentences for political reasons. This is certainly the image Hizballah have drawn upon in their attempts to discredit the STL as an American-Zionist project. Another, slightly more subtle form, is evident in the conviction of Samir Geagea, former leader of the Lebanese Forces militia, by *Pax Syriana* after the Lebanese civil war. Here, *authoritarian selectivity* was involved where the majority of the *Zu'ama* class was guilty of some combination of war crimes, crimes against humanity and assassination, but a blanket amnesty was rolled out except for one individual. This selectivity was purely political, but this does not mean that Geagea was innocent. A third kind is indicated by the observations made in this thesis regarding the STL, what we might tentatively call, *liberal selectivity*. Here, we have observed that political conditions pertaining to the foundation of international tribunals and the consequent definition of their *jurisdiction* are systematically excluded from consideration by legal bodies (Cassese 2012, p. 501). Whilst high procedural standards *might* mitigate against the kinds of abuses seen in *show trials*, *liberal selectivity* could easily lead to similar outcomes as *authoritarian selectivity* in which one guilty party are investigated and prosecuted while others are not, on an unacknowledged, systematic, political basis. In authoritarian selectivity, this is the result of direct political pressure on the judiciary, in liberal selectivity, there is an ideological *reification* of politics and law as epistemologically and therefore ontologically, distinct. The consequence is the tendency towards a culture in which legal professionals cannot ask political questions pertaining to the functioning of the institutions they are operating, leading to theory-practice contradictions around impunity.

On closer inspection, the STL (and international law in general) are highly dependent on the UNSC, that is, the undemocratic executive which runs the world. In a domestic setting, no regime in which the executive established ad hoc tribunals for political enemies would be considered liberal. So, on this point, the liberal and authoritarian variants are synonymous. The particularly "liberal" aspect in ICL is the ideological *reification* of law and politics which allows liberal minded legal professionals to reconcile their liberal purposes with the authoritarian structure of the world order they serve. This constitutes sophisticated consent procurement under the (il)liberal world order. This reinforces the observation from chapter five, that positively valued liberal concepts such as *democratic inclusion* or *separation of powers* whilst being touted as universally beneficial are, in fact, advanced only so far as domestic politics whilst what is termed international politics remains authoritarian despite the nominal identification of this order as liberal. The reification identified in chapter one of *levels* in traditional IR between domestic and international order might go some way to explaining the

common-sense acquiescence of many supposedly liberal individuals to an illiberal world order which is dominated by a non-democratic executive and its *ad hoc* legal institutions.

Corruption and Terrorism

The 7th of May 2015 is the final day of questioning for Jumblatt and is given over entirely to defence council. Mr Korkmaz, council for Mr Badreddine (a military commander of Hizballah indicted for the death of Hariri who was killed in 2016 fighting in Syria), questions Jumblatt first, followed by Mr Hassan for Mr. Oneissi who questions Jumblatt until the end of the day. Mr Korkmaz raises the question of political corruption in Lebanon using a report on the topic conducted by the Dutch analytics and publishing house, Elsavier. He asks Jumblatt if he's read it and what he knows about corruption. Jumblatt responds

in Lebanon's history and unfortunately since the creation of Lebanon, there are accusations and counter-accusations among the Lebanese and Lebanese politicians, accusations of corruption. (The Prosecutor versus Ayyash et al. 2015d, p. 12)

This sentence includes several adjuncts to the main sentence clause which makes it appear grammatically messy. There are three *overwordings*. The first is a relation of hyponymy *Lebanon's history* and the *creation of Lebanon*. The second revolves around *accusations*, *counter-accusations* and *accusations of corruption* with the former two *synonyms* differentiated, not as concepts, but as relational frames and scripts, while the latter functions as a *hyponym* elaborating the type of accusations. In the third example, *Lebanese* and *Lebanese politicians*, the latter functions as a hyponym of the former. The overwording of *accusations* functions as a *euphemism* to the extent that Korkmaz is actually asking Jumblatt about corruption, not accusations. Thus, *accusations* functions to ameliorate negative values by reducing the phenomena *corruption*, to a possibility *accusation*. This means that it also serves as an *ambiguity*, to the extent that Jumblatt does not actually answer the question directly. Whilst Korkmaz requires only a general answer as to whether corruption exists in Lebanon, Jumblatt seems to construct a superfluous relational frame of undefined Lebanese in an antagonistic script, *accusations* and *counter-accusations*. Here, accusations of corruption are instrumentalised.

As described in chapter two, clientelism pre-dates the establishment of Lebanon and traces its roots to the feudal system of patronage which has experienced many iterations alongside societal

change. Clientelism implies, by its very nature, corruption in the ideal modern sense because it encourages patronage based on personal relationships and wealth and/or access to goods and services by the patron for the benefit of his clientele. Thus nepotism, abuse of public positions, conflicts of interest and other issues are inherent to the structure of clientelism. In his response, Jumblatt refers only to accusations, not to the phenomena. Despite the mention of Jumblatt's anti-sectarian preferences and his father's attempts to reform towards a secular national citizenship, the clientelist side of the equation is never directly addressed.

Korkmaz's questioning addresses the rise of Sunni radical movements in Lebanon post-civil war and the areas in which they were most prominent "Akkar, Beqaa, north of Lebanon, Western Beqaa" (Ibid, p. 30) and he asks Jumblatt "did it [extremist Sunnism] really break out quite considerably in those areas according to you?" (ibid, p. 30). Jumblatt responds

Back then, during that period of time, there was nothing called Sunni radicalism. Most of the Sunnis in Lebanon are moderate. They are not fundamentalists. And what do you mean by "extremist"? When you say "extremist," it is ambiguous. Now they use the term "fundamentalist." But we can also characterize the others as being fundamentalists, but from my own point of view Sunnis are not extremist. (ibid, p. 30)

This answer is replete with formal features. It includes an *overwording* of concepts with which Jumblatt is concerned, *radicalism*, *fundamentalism*, *extremism* all of which are *negatively valued vocabulary*, but which are combined with *negations*, *reformulations*, *ambiguities* and other features to constitute an *oppositional rewording* to the account given by Korkmaz. The first sentence, prefaced by an adjunct indicating temporality *back then*, is an *SVC attribution process* combined with a negation, indicating the non-existence of Sunni radicalism at that temporal and spatial moment. The following sentence is also an *SVC* sentence but in the positive form. Here *moderation* is attributed to the subject *most of the Sunnis in Lebanon*. Notice that the modifier *most of* is employed here which tacitly accepts that some Lebanese Sunnis fall outside of this attribute of moderation.

The next is yet another negated *SVC* sentence in which *they* (read intratextually as *most of the Sunnis in Lebanon*) are absolved of the attribute *fundamentalist*. Thus far, Jumblatt has challenged the very premise of Korkmaz's question; that there was Sunni extremism from 1992 onwards. The next sentence is a *grammatical question* which subverts the usual passive role of the witness. It also has the function of *controlling the topic* (or directing it elsewhere). The sentence is a complex one characterised by *subordination*. The first clause *when you say "extremist"* is subordinated to the main clause *it's ambiguous*. Thus, the *presupposition* is that the very use of the concept of *extremism* leads inexorably to the main proposition and negatively valued *ambiguity*. The next sentence, an *SVO action*

process appears to build on this idea. The use of the pronoun *they* indicates an *intertextual connection* given its apparent non-relation to any group or individual mentioned textually. It thus relies on the reader/listener's MR for understanding. *They* would appear to constitute an ephemeral and generalised *they* which can relate to academics, journalists, politicians or lay persons with whom the cluster of concepts, *extremism, fundamentalism* and *radicalism*, have become common currency. The next sentence starts with an adversative *but* which treats the previous sentence as a *coordinated clause*. The clause which follows this adversative *but* is an SVO action process in which the pronoun *we* appears to denote a collective subject meaning anyone, rather than simply himself and Korkmaz. In this action process, the modal auxiliary verb *can* is used to indicate possibility and ability and is combined with the regular verb *characterize* which, by definition, relates to representation, not reality. The object *the others* being characterised is heavily reliant on MR as it consists of *the definite article* and does not appear to relate to a subject or object in the text, making it an *intertextual connection*. What *the others* are being contrasted with are *the Sunnis*, and thus, coherence seems to rely on contrast with other sects in Lebanon. However, the characterisation of *fundamentalism* might also relate more generally, within the frame of *relativist interpretivism*, to anyone one might disagree with or disapprove of. This interpretation appears to be borne out in the *adjunct* to the last clause *from my own point of view* after another adversative *but* where, despite the ability of one to characterise enemies as fundamentalists, he invokes a *negated attribution process* SVC in which *Sunnis are not extremist*. This last clause is an instance of *ambiguity* in that it addresses a general accusation which was not made by Korkmaz.

Thus, the Schema pursued by Korkmaz questioning the witness regarding the presence and location of Sunni extremism in Lebanon is subverted by Jumblatt into a schema of defence of the Sunnis of Lebanon as a whole, chiefly, through the introduction of a *relativist interpretivist* questioning of the concepts of extremism. This is necessitated by Jumblatt's frame in which admission of the existence of Sunni radicalism equates to the total conflation of Lebanese Sunnis and radicalism. As noted, the chief way Jumblatt resists this is to employ relativist frames in which extremism is in the eye of the beholder and a script in which accusations of radicalism are instrumental but do not accord to any ontological reality. This relativist argument and representation are almost identical to the ones he employs to discuss corruption in which corruption is typified by *accusations*, rather than *practices* and exists as part of the instrumentalised discourse of the *Zu'ama* against one another. Thus, the instrumental use of *corruption* and *radicalism* in Lebanese political discourse is meant to assuage our fears that these things nevertheless, to a greater or lesser extent, exist.

One of the biggest claims of Jumblatt is that Lebanese Sunni extremism did not exist back in the 1990's or early 2000's. This rationale is expressed further when Jumblatt states "We are talking

about 1999, 2000, 2004, this [Sunni extremism] was not a relevant question. This is a relevant question right now as a result of the wars in the Middle East.” (Ibid, p. 32-33). Thus, the frame of Sunni extremism is part of a script in which it arises only in response to Western intervention or war. Korkmaz, in response to the accusation of ambiguity, *enforces explicitness* from Jumblatt by rephrasing his original question more precisely “To enable you to answer my question ... there are Jihadist movements or Salafist Sunni movements that were accused of being behind Mr. Hariri's bombing.” (Ibid, p. 31). Jumblatt can no longer claim that these concepts are ambiguous. To clarify, the Sunni Islamist movements in Lebanon, and globally, have a very specific lineage and ideology. In short, the intellectual lineage emanates from the thirteenth century scholar Taqi al-Din Ahmad ibn Taymiyya through the eighteenth century scholar Muhammad ibn Abd al-Wahhab through to twentieth century Sunni Islamists such as Sayyed Qutb (Hamzeh & Dekmejian 1996, p. 218).

Inter alia, and with variations in terms of strategy, the followers of these scholars pursue the establishment of religious theocracy, often with recourse to violence and domination of Muslims who are deemed to have deviated, and non-believers. The two primary lineages are the Muslim Brotherhood (Ibid, p. 220) and Al Qaeda (Haddad 2010, p. 552). Wahhabism/Salafism is also the official interpretation of Sunni Islam in Saudi Arabia. More concretely, several organisations following variations of this ideology have arisen in Lebanon. During the Lebanese civil war, a local franchise of the Muslim Brotherhood *al-Jama'a al-Islamiyya* arose and, in turn, gave rise to the spin-off *Harakat al-Tawhid* in 1982, both of which were involved in hostilities (Hamzeh, Dekmejian 1996, p. 219). Later, a major insurrection by *al-Takfir wa-al Hijra* was instigated and subsequently crushed by the LAF (Haddad 2010, p. 549). A destructive conflict wracked Lebanon nearly a decade later in 2007 when the jihadist outfit *Fatah al-Islam* made a final stand in the Palestinian refugee camp of Nahr El-Bared (ibid, p. 555). General Francois Hajj, who was responsible for the LAF victory, was subsequently assassinated for his efforts.

Whilst Jumblatt's assertion that Sunnis are not all extremists is true as a function of generality, his assertion that there was no such thing as Sunni extremism in Lebanon before the recent wars in the middle east is demonstrably untrue. At most, it can be argued (very convincingly) that the destabilisation of the western wars of the Middle East has offered opportunities and succour to these movements. This discursive strategy can be explained by his need to maintain relations with the future movement (*Al-Mustaqbal*) of Saad Hariri, and their patron Saudi Arabia. This externalisation also mirrors that which takes place in a more general way in the *war of others discourse*; these problems are external until foreigners bring them. This explanation is borne out in the following exchanges where Korkmaz asks Jumblatt

Now, you, yourself, Mr. Witness, you stated -- I mean, tell me if I'm wrong, but you expressed concerns with regard to the building up of Sunni militias through the Al Mustaqbal Movement, which was your ally at the time that was infiltrated supposedly by Jihadists. (The Prosecutor versus Ayyash et al. 2015d, p. 31)

Jumblatt responds

I have never said this. Al-Mustaqbal Movement is a moderate Lebanese movement that represents the majority of the Sunnis in Lebanon. (Ibid, p. 31)

Jumblatt's first sentence is an SVO action process which is *negated* and is both declarative and categorical in denial of holding such opinions. The second sentence is an SVC attribution process where the positively valued vocabulary *moderate* is attributed to Al-Mustaqbal. Ambiguity comes in to play here as Jumblatt, once again, answers a question which was not asked, namely he does not address the potential *infiltration* of Al Mustaqbal. Rather, he makes a blanket assertion regarding the moderation of the whole institution. Once again, this appears as a result of Jumblatt's frame and script in which the admission of the existence of Sunni jihadism is equated with a conflation of the entire Lebanese Sunni community with extremism. It transpires that the source for Korkmaz's questions are leaked U.S. diplomatic cables which, due to the STL's ruling, cannot be used as evidence and thus Jumblatt is empowered to deny having held these opinions or concerns.

Syrian Tutelage or Occupation?

Korkmaz's questioning eventually turns back to the Syrian presence from 1976-2005 in which he attempts to discuss the propriety of their presence and the mode of their interaction with the Lebanese. What emerges is a typology which includes the Syrians' entry into Lebanon in 1976, the post-*Taif accord* and *Brotherhood Cooperation and Coordination* treaty era of 1991 and the end of the Syrian presence in 2005. Korkmaz questions Jumblatt as to whether it is true that the Syrian intervention in 1976 was at "the expressed request of the Henry Kissinger" (Ibid, p. 53) in concordance with the Lebanese government. Jumblatt responds

That's right. At the time, that was the political compromise that allowed the Syrians to enter into Lebanon in order to undermine the leftist groups, and the only one that objected to that was Kamal Jumblatt with some minority, including, as I mentioned, Raymond Edde. (Ibid, p. 53)

The first sentence here is a straightforward SVC attribution process which assents to Korkmaz's account. The next sentence is a *coordinated complex sentence* indicating the equal standing of both clauses for Jumblatt. The first clause is an SVC attribution process where the extremely lengthy attribute *the political compromise that allowed the Syrians to enter into Lebanon in order to undermine the leftist groups* is attached to the agreement. This attribute utilises the causal connector *in order to*, which makes explicit the purpose of that agreement in Jumblatt's view. The second clause is also SVC and renders Kamal Jumblatt a dissenter to this agreement and its purpose. The historic bloc which eventually established *Pax Syriana* was coordinated between Syria and the U.S. very early on. It is often presented that the U.S. acquiesced to *Pax Syriana*, along with other states, in a last ditch to end fifteen years of destruction in 1990-91. However, Jumblatt's testimony demonstrates that without the Cold War collaboration of Hafez and Kissinger, the Lebanese war might have ended a lot sooner with a clearly defined victor. It demonstrates that a view of Syria as somehow counter-hegemonic or anti-imperialist is wrong. It is quite capable of coordinating with Western powers to advance its own neo-colonial and imperialist interests. Jumblatt reveals this underlying tendency towards colonial tactics of divide and rule by Bashar al-Assad when he first met him in which The first meeting was "weird. He was asking me where do the Druze live, where do the Christians live, as if he was an orientalist." (The Prosecutor versus Ayyash et al. 2015a, p. 39).

The conversation continues and Korkmaz questions Jumblatt about the number of troops which Syria maintained in Lebanon from 1976 to 2005 and their funding. Korkmaz's position can be summarised in the following statement/question

the Syrians aren't an occupying force to the extent that they are occupying any land. No. They entered within the framework of a joint policy that they struck up with the Lebanese and which is enshrined in the cooperation agreement. Is that true or not? (ibid, p. 56)

Though this passage is rendered as a grammatical question at the end *is that true or not?* The first part constitutes an argument. The first sentence features literal repetition of the negatively valued vocabulary *occupying*. The sentence is an SVC attribution process in which a *negation* is used to present the Syrians as *other than* occupiers. The negation is reiterated in the next single word negation *No*. The next sentence is a complex one with three clauses. The first clause is an SVO action process where the Syrians *entered* within the positively valued metaphor *framework*. The metaphor of a framework relates to legal provisions and the rule of law essential for legitimacy and invoking of Liberal MR. The following connected clause is also an SVO, but the action is backgrounded as a *subordinate clause* indicating a *presupposition* or an intentional de-emphasising. Thus, Korkmaz *presupposes* that the Syrians *struck up* this *framework* with the Lebanese. In this way, Korkmaz is

presenting an argument to *legitimise, naturalise and mystify* Syrian hegemony. These clauses are connected to a final one which is an SVC attribution process where the positive vocabulary *framework* is endowed with further positive value by the attributes *enshrined* and *cooperation agreement*. The *negations* serve as a rebuttal to Jumblatt in the intratextual context when he explicitly *oppositionally reworded* the Syrian *tutelage* as an *occupation*. The frame of occupation is replaced with that of the framework and cooperation agreements. Two things are interesting here. The first is that the subordinated conjunction relates to the circumstances under which the 1976 framework was *struck*. What is *mystified* is that it did not have the consent of all parties to the conflict and, in this sense, could not be legitimate in the Habermasian sense. Indeed, it was done on behalf of the government which represented the right-wing Maronite militias, thus not disinterested and not representative.

Once again, we detect the presence of an ideological feature which recurs throughout Lebanese history and among different parties to conflicts, that of *false universalism*. This was also done as justification at the UNSC with regard to establishing the statute of the STL through resolution 1757, it was done by Jumblatt in claiming the Lebanese did not want to be part of Syria in this testimony and it was done when the Syrians, the West and the Maronite parties presented the 1976 intervention as on behalf of all Lebanese. Whilst foreign and domestic factions continue to employ false universalism, it is unlikely that peace or durable stability can emerge. The second striking feature is that Korkmaz seems to retrospectively justify the Syrian presence from 1976 by reference to the *Taif* accord and *treaty of brotherhood coordination and cooperation* of 1991. This could be interpreted easily as systematically distorted communication aimed at the *rationalisation* and *hegemonic legitimation* of *Pax Syriana* and *mystification* of the possession and use of unequal power in bringing it about. Jumblatt notes this when he states

Later on when the Taif Agreement was adopted, we sealed -- or some bilateral agreements were sealed between both countries. But prior to that - and here allow me to disagree with you - Syria did not enter Lebanon upon the approval of all the Lebanese. (Ibid, p. 57)

Here we have a conflict of discourse types. Korkmaz is making an argument that *legality* flows from the government of a state, however constituted. Jumblatt is presenting a more Habermasian vision in which legality can be illegitimate if it does not include interested parties. From a purely practical point of view, inclusion of all parties in decisions such as this, irrespective of legality, is a prerequisite for a lasting peaceful solution. The failure to do so is an instance of false universalism.

Challenging Patrimonial Clientelism and Memory-Making

The last defence questioning of Jumblatt is undertaken by Mr Hassan who appears to take a more adversarial tack than his predecessors. The interactional conventions of the discourse, which begin quite traditionally, become conflictual. The intensity of the interaction is reflected in the repeated interventions of the interpreters “Speakers are kindly reminded to pause between questions and answers.” (Ibid, p. 85). Hassan’s grammatical questions are concise, direct and fairly rapid. After confirming that Jumblatt inherited the LNM and PSP from his father, Hassan asks “during the 1980s, the situation changed somewhat and you have joined other political camps that were different from the ones that you have joined in the past; is this correct?” (Ibid, p. 83). Jumblatt responds “I never changed camp, except that the political circumstances and situation changed.” (Ibid, p. 83). This answer is categorical in its denial through negation. The second clause is subordinated, and thus, de-emphasised. It is obvious that Jumblatt wishes to emphasise the main idea that he was always in the same camp and this is coherent with his earlier statements regarding keeping the journey of Kamal. In challenging this, Hassan is challenging the memory making which Jumblatt has been undertaking at the STL.

Hassan moves swiftly to ask whether Emile Lahoud had removed a statue of Kamal Jumblatt from the Palace of the President at Baabda and sent it to Jumblatt’s Mokhtara residence. Hassan presses by stating that Lahoud said

If a statue for Kamal Jumblatt must be placed at the residence of the president, also we need to put a statue for my father because he was the first one to bear -- brandish the flag of the independence (Ibid, p. 84)

This purported paraphrasing of Lahoud begins with the logical connector *if* which functions to introduce a condition which must be met for a second clause to be correct. It also functions to subordinate the first clause and thus background it to the second *we need to put a statue for my father*. Thus, the *presupposition* of the conditional statue of Jumblatt is subordinated to the main idea that Lahoud’s father is deserving. The first clause contains formal and/or technical vocabulary *residence of the president* which draws on the intertextual MR of the audience. This MR indicates the location is symbolically intertwined with state power and the prestige of *the Republic*. This interpretation is borne out in the final *subordinate clause* which utilises a logical connector *because* and a cluster of formal *bear, brandish* and positive *flag, independence* vocabulary related to the frame of Lebanese nationalism. Both the first clause and the third clause are thus subordinated to the main idea; Lahoud’s father needs a statue. Moreover, the logic *because* is also *presupposed*, namely that Lahoud’s father was literally the first one to *brandish the flag of independence* and that this is a reason that he should have a statue. Whilst the argument purportedly put forward by Lahoud is couched

explicitly in nationalist frames, its implicit frames are those of patriarchal, zero-sum, *clientelism*. This is evident in the key scripts of the interaction, namely the promotion of one's patriarchal genealogy to advance one's standing and lower those of your rivals by comparison. These clientelist frames and scripts are linked to the nationalist frames and scripts of independence which, within the hegemonic MR of Lebanon, imbue gravitas. This is precisely the culture which generates petty jealousies, assassinations and promotes foreign patron-seeking. The short-termism, instrumentalism and zero-sum nature of this petty *Zu'ama* behaviour is highlighted when Hassan ascertains from Jumblatt that their fathers were, in fact, political allies and friends.

Hassan enquires further "President Emile Lahoud had taken this measure [removing Kamal's statue] that upset you, maybe." (ibid, p. 85). Jumblatt responds

Yes, it upset me. It made me angry, but sometimes we get upset and that's it. It's over. You are reminding me of something that's silly. (ibid, p. 85-86).

This response contains *negatively valued overwording* which is both literal repetition *upset* and a hyponym relating to emotional state *angry*. The first two sentences are SVO action processes where the sentence subject is Lahouds' removal of the statue which resulted in *upset* and *anger*. The second sentence is connected by the adversative *but* to two other clauses which indicate that these negatively valued emotions went no further. Indeed, the pronoun *we* is invoked in a general sense to activate MR which indicates that humans often get angry and then let things go. This message is reinforced by the next SVC attribution sentence where the feelings are attributed the condition of being *over*. The last sentence attributes the negatively valued condition *reminding me of something silly* to the pronoun *you*. It is clear from the context that this refers to Hassan. The last formal feature of note is the uncharacteristically large reliance on *informal* contractions *that's* and *it's*. The main schema is one of Jumblatt answering a question in which he is challenging. The adversative *but* and the general use of *we* to universalise moments when anger passes are instances of this.

However, Jumblatt admits to the emotional frame of anger at Lahoud's actions and this anger appears to be still present in this through its terse tone. This is detectable in the very short sentences in combination with an uncommon amount of contractions *that's* *it*, *it's* *over*. It can also be detected in the negative vocabulary *silly* which is attributed to Hassan's question and by extension, the questioner. The question almost seems to have been calculated by Hassan to illicit a negative emotional reaction from Jumblatt within the context of the questioning. Jumblatt makes a good show of not being bothered but his terse manner and attempts at delegitimising the line of questioning indicate he is triggered. It must be said that emotion relating to one's dead father is quite natural. Arguably though, Jumblatt's *memory-making* at the STL has demonstrated his penchant for promoting

the memory of Kamal as a historical figure in line with the theories of clientelism and memory operationalised in this thesis. Thus, Hassan's calculated provocation seems to include historical insults to Kamal's memory and their reproduction at the STL, which may have doubly infuriated Jumblatt. There is no neat dividing line between the emotions of a bereaved son and the functional aspects of genealogical memory-making and martyrdom brand promotion. Both appear to be elements within a causal complex.

Jumblatt: Democratic Party Leader or Sectarian *Za'im*?

As Hassan's questioning continues, the *interactional conventions* between himself and Jumblatt becomes increasingly conflictual.

Hassan. Do you exercise democracy inside your party?

Jumblatt. Please, come and join the party and you will see if we are democratic or not. Please, be my guest.

Hassan. My question is to you, Mr. Walid. Is your party democratic, yes or no? (Ibid, p. 88)

Hassan's question is met with a highly irregular formal feature for this testimony, *imperative sentences* VO impelling the interlocutor to take some action. This is ameliorated by the use of polite vocabulary *please* and *guest*. The grammar indicates a speech act of *command* or *challenge* but the vocabulary implies a speech act of *request* or *invitation*. A combination of all of the above is not beyond question. MR relating to the phrase *be my guest* can relate to a declaration that the speaker has nothing to conceal. This stands out for the reasons elaborated above but also because it constitutes an instance of *ambiguity* to the extent that he has not actually answered the question. Hassan notices this ambiguousness and *enforces explicitness* with similar levels of politeness *Mr. Walid*. Thus, despite the politeness, we have here a conflictual script in which Jumblatt is in a somewhat contradictory power position in that he is using ambiguity, the position of the powerless, with imperative sentences and speech acts of command. Hassan's veiled challenge to the legitimacy of his party through the frame of democracy is probably the reason Jumblatt feels he needs to be proactive in discourse. He must know that a party based on social democratic principles, but which has consistently stuck to the clientelistic logic of keeping chairmanship within the Jumblatt family is subject to the accusation of *theory-practice contradiction*. The overlap of democratic and clientelist legitimacy is what causes this discrepancy. It is not beyond the pale to envision a situation in which the loyal clientele within the PSP

continue to vote for Jumblatt as leader out of choice and loyalty. However, this is a point at which the PSP's legitimacy is vulnerable and certainly invokes MR in the audience relating to Jumblatt the feudal warlord rather than Jumblatt the modern statesman. In reality, the constitution of the subject as both is likely and is dependent on context.

In due course, Hassan presents audio of a famous speech made by Jumblatt on 14th February 2007 in Martyrs Square in which he called Bashar a whole list of *negative vocabulary*, some figurative "you whale vomited by the ocean" some seemingly literal "you criminal blood-shedder in Syria and Lebanon" (Ibid, p. 92). He rounded off the speech by stating "the international tribunal will come, bringing with it punishment, justice and a death sentence." (Ibid, p. 92). This SVO action process posits that the positively valued subject *international tribunal* will bring other positively valued vocabulary *justice, punishment and death sentence*. These concepts form *overwordings*, indicating a preoccupation. These overworded concepts constitute a variation on those made in the earlier speech regarding Saudi Arabia's funding and the four generals in this chapter. There, it was noted, that the positive vocabulary *justice* imbued its hyponyms *punishment* and *execution* with *positive value* and that this was only possible within a non-liberal frame of justice. Jumblatt seems quite comfortable invoking liberal and non-liberal MR, either strategically or as a representation of his inconsistent positions. This brings his genuine commitment to liberal concepts into question. Jumblatt may have been quite aware that the STL would not bring a death sentence but used it as a rhetorical device to embolden his supporters. This illiberal frame of justice now constitutes an intertextual connection and recurring theme across his speeches. Judge Re *self-selects* to state "Mr. Jumblatt ... you appreciate that international tribunals generally, although they might bring justice, don't have a death sentence." (ibid, p. 93). This sentence consists of three clauses. The first clause is an SV *agentless passive process* which subordinates the following clauses. The main idea is that Jumblatt *appreciates*. Interpretively, it is hard to gauge whether this is impelling him to understand or is a statement of fact, but it is not beyond possibility that both meanings are possible.

The next sentence starts with the positively valued vocabulary *international tribunal*. This second clause is interrupted by a third which utilises the modal auxiliary verb *might* in conjunction with the positively valued vocabulary *justice* which highlights justice as equivocal rather than guaranteed. Completion of the second clause utilises negation within an SVO action process to designate *death sentence* as negative vocabulary within the liberal frame. The negation serves as a direct intertextual contradiction to Jumblatt. In keeping with his categorical and declarative style of discourse, Jumblatt simply replies "that is correct" (ibid, p. 93) which logically means he was either lying at the time or covering his misunderstanding presently. Hasan then *self-selects* and states "You read my mind, Your Honour ... I'm not happy with these words. Not at all." (Ibid, p. 94). The first

sentence is an action process SVO where the judge is reading Hassan's mind or, more literally, presenting his argument. The use of the formal vocabulary *your honour* which serves as *marker of power*, in conjunction with this sentence, has the effect of lending Hassan said power. Both Hassan and Judge Re's self-selections have constituted *power in discourse* which Jumblatt is obliged to accept. In this case, the power has been used to promote the frame of liberal justice at the expense of illiberal justice. The second sentence is of an SVC attribution process where the positive attribute *happy* is negated *not* and attributed to Hassan himself. This is quite unusual in the testimony so far where council rarely refer to themselves and when they do, they avoid appearing anything other than value neutral. Here, Hassan is openly attributing a negative emotion to himself relationally to the witness. Indeed, Hassan is building an accusation and treating Jumblatt more like a defendant.

This forms the preface to the most conflictual interactions of the testimony. Below is an edited version of these interactions. Jumblatt makes the point that March 14th politicians and personalities were being assassinated on a regular basis when he made this speech and that he made it as a political statement. He states that it is up to the STL to find the perpetrators.

Hassan. If it's not your job, why did you say –

Jumblatt. Is it forbidden to have a political statement, to talk in politics? This is crazy.

Here, Jumblatt *interrupts* Hassan and *controls the topic* of the conversation by asking a *grammatical question*. This appears to constitute an attempt by Jumblatt to impose some *power in discourse* in the face of the criticisms of Judge Re and Mr. Hassan. The negative attribute *crazy* is attached to the criticisms levelled against him.

Hassan. ... This is a piece of information that you were sending to thousands of people who were emotional. Weren't you afraid to see a kind of a catastrophe or a crisis and to see all these people face the Syrians with hatred and this will lead to a humanitarian crisis?

Jumblatt. What kind of humanitarian crisis? We said that there will be an international tribunal who will identify those who killed Rafik Hariri. As to the emotions in my political statement, this is my right. Please do not interfere in my rights.

Hassan. You are calling it a highly emotional political statement, but in law we call it incitement ...

Jumblatt. I'm not inciting on killing. What's this? (Ibid, p. 94-95)

Hassan's first statement contains *overwording of negatively valued* concepts in relations of hyponymy, *catastrophe, crisis, humanitarian crisis*. These clearly form his preoccupation. The pronoun *you* is used

twice and designates Jumblatt as the one who is responsible for distributing information as well as addressing the *grammatical question* directly to him. Though the vocabulary *information* and *emotion* are technically value neutral, the intratextual context indicates that these are negatively valued in this case. The use of the negation *weren't* to phrase the question is interesting in that the question would have worked just as well without it. MR of this kind of phrasing is required to make sense of this choice. *Were you* indicates a disinterested search for an answer in the affirmative or negative form and the majority of questions in this testimony have been phrased in this manner. *Weren't you* as a *negation* highlights something which Hasan thinks Jumblatt overlooked and, moreover, should not have. The negation indicates an intratextual rebuttal to Jumblatt's argument that his political reasons for presenting this wrong information justify the risk he took by doing so. The *negative vocabulary* of the overwording is supplemented by negative vocabulary of *hatred*. By asking the *grammatical question*, Hassan is *controlling the topic* and *selecting* Jumblatt to answer in the normal order of discourse for questioning a witness. Thus, he is exercising *power in discourse* by virtue of his positioned practice. The schema is one of questioning but there are also speech acts of accusation regarding wrong information to emotional people and of either being negligent or malicious in his lack of concern about how the crowd might behave.

The frames and scripts are those of the nexus of clientelist and sectarian violence in which the violence and rhetoric of *Zu'ama* have the potential to cause spontaneous violence against (surrogate) victims. Theodor Hanf (1993, p. 279) reports that during the Chouf war of 1983, Jumblatt said to his troops "It will be a carnival ... a bloody carnival." This style of creative, violent and belligerent *Zu'ama* war rhetoric fits with the style of that reported in the Martyrs Square speech and indicates a regression to this belligerent war rhetoric. This sort of history could easily form part of Hassan's MR but the *power behind discourse* in the form of *amnesties* and *limited jurisdiction* ensure that Jumblatt is in the positioned practice of witness, not defendant. Nevertheless, Hassan appears to use his limited agency creatively to bring a covert schema in which Jumblatt is treated as a defendant.

Jumblatt responds by asking a *grammatical question* which immediately subverts the order of discourse by *controlling* (or deflecting) *the topic*. The next sentence is a complex subordinated one. The first main clause is an SV *non-directed action*. The acting subject in this sentence is the pronoun *we*. Textually, this makes no sense given that we know that it was Jumblatt who made the speech. The kind way to interpret this is that there were other speakers who gave the same message at the same rally. The unkind way to interpret this is that the use of *we* dilutes Jumblatt's responsibility for his own words. The object of the sentence, the crowd, is missing from this *non-directed action*. Instead, it connects to a subordinated clause where the positively valued *international tribunal* is said to identify the perpetrators of the negatively valued *killing* of Rafik Hariri. This backgrounded clause has the

function of minimising what Re and Hassan were chiding Jumblatt for; his incorrect assertion that the STL would bring a *death sentence*. The next sentence involves a preposition which constructs the subject of the subsequent SVC attribution sentence. Jumblatt repeats the vocabulary of Hassan *emotion* but couples it with the possessive pronoun *my* which switches the owner of said emotions to himself rather than the crowd.

The subsequent sentence asserts categorically that *rights* are attributed to his emotions. Thus, the frame of the crowd has disappeared from his action in giving a speech and their emotions have been re-allocated to himself. His last sentence is a striking follow up to this assertion. It opens with polite vocabulary *please* to ameliorate but is followed by the negation *do not* of the negatively valued verb *interfere* combined in an *imperative sentence VO* amounting to a speech act of command. The negated negative *do not interfere* amounts to an *oppositional rewording* of Hassan's criticism of his speech. Thus, the schema of Jumblatt answering a question is supplemented by one in which he is commanding Hassan to limit the scope of his enquiries in line with the *power behind discourse* which shields *Zu'ama* from questions regarding their conduct. This is achieved by jettisoning the frame of the crowd *and* the script in which he addresses them whilst co-opting the crowd's emotions. This follows the now familiar pattern of the frame of Jumblatt as a victim, not a perpetrator, which is a function of the STL's jurisdiction.

Hassan's next statement sidesteps Jumblatt's sleight of hand in which the emotions of the crowd were attributed to himself and strategically uses it to his own advantage. The first sentence is a coordinated complex one in which both ideas are given equal value. It opens with the pronoun *you*, which places agency squarely with Jumblatt. The first clause is an SVC *attribution process* in which the attribute *calling it a highly emotional political statement* is attributed to Jumblatt. This is followed by the adversative *but*, which facilitates the next SVO *action process* which oppositionally rewords *emotional* as the negatively valued *incitement*. The schema of questioning a witness is thus used again by Hassan to impose another schema which accuses Jumblatt as a defendant. This is signalled in particular by his use of legal frames and terminology which naturally implies the speech act of *accusation*.

Jumblatt appears to understand this in his response which includes a categorical negation *I'm not inciting* and his grammatical question *What's this?* This could be interpreted as directed towards the Judges and council and to reflect his consternation at being in the position of a defendant rather than a witness. This interpretation seems justified by the timely interventions of Cameron and Re, both of whom determine that the questioning is inappropriate (Ibid, p. 95). Thus, Hassan has used his agency creatively and constitutes the only council to highlight the clientelist/ sectarian nexus of

violence which *Zu'ama* so often exploit in order to surreptitiously accuse Jumblatt of negligence or malice. He is, it goes without saying, precluded from addressing Jumblatt's alleged actual crimes by the *power behind discourse* which has limited the jurisdiction of the STL and positioned Jumblatt as a witness. Nevertheless, Hassan is able to pressure Jumblatt on his violent rhetoric and the danger of violence until his accusation becomes too overt in his use of legal vocabulary *incitement*. At this point, *the power behind discourse* is enacted through Cameron and Re's *power in discourse*, structurally constraining Hassan.

Judge Re asks Hassan if he has any more questions to add to which Hassan responds, "If this is enough to convey the meaning I was looking for to your Honourable Chamber, then I should stop at this moment in time regarding this topic." (Ibid, p. 96). Judge Re notes that he does not understand what "convey the meaning I was looking for" means. Hassan replies "This is a common catchphrase among legal practitioners in the civil law system." (Ibid, p. 96). Rather than appear bashful, Hassan is resolute and effectively reminds participants that the legal system of Lebanon is civil and, by extension, that the statute of the STL stated that the applicable law should be Lebanese. In this way, he highlights the *2011 decision on applicable law* which effectively imported international definitions into the Lebanese system and subjugated its agency by ruling that its provisions are always read with (subordinated to) international definitions dominated by the common law system. In effect, this problematises the *naturalisation* which has taken place with regard to this exceptional decision and, by doing so, de-naturalises it and highlights it as a form of domination.

Interim Findings

The elaboration of the second half of Walid Jumblatt's testimony in this chapter has presented further findings which are summarised and discussed here. Though the titles and content of these summaries differ somewhat in form and content to the ones presented at the end of the last chapter, upon reading, it will become obvious to the reader that they constitute *developments* of these insights and differing *perspectives* on these themes. All interim findings are then discussed using historical and comparative analyses. These all inform the conclusion which follows.

Consociationalism, dissonance and relativism

Jumblatt's testimony on Hizballah demonstrates a propensity for conciliation in marked contrast to the way he discusses Syria. This is curious given that Hizballah and Syria's interests are closely aligned. The categorical way Jumblatt states that Syria murdered his father and Hariri and the pejorative way in which he designates them as *totalitarian* and *criminal* is nowhere to be seen in relation to Hizballah who he *appears* to have pre-judged innocent. Whilst Jumblatt is seemingly willing to risk the ire of Assad, he is not willing to do so with Nasrallah. A clue as to why is present in his discourse when he invokes the frames associated with *consociational power-sharing*. Here, *dialogue* is emphasised, *elimination* rejected, and Hizballah categorically designated as an inalienable part of Lebanon. This may be with a view to *warning* Hizballah against the (alleged) continued use of violence against Lebanese, as well as *reassuring* them that they will not be marginalised or eliminated. It also appears to function as a message to domestic and international elements that Hizballah are part of Lebanon and any denial of this or threat to Hizballah's security would be counter-productive.

Jumblatt appears to externalise his negative emotions on to Syria which allows him to absolve Hizballah so he can continue working with them in the consociational system. In reality, it is more than possible that Syria utilises local allies in Lebanon, including Hizballah, to carry out destabilising assassinations and bombings or that local allies take this upon themselves. The distinction between patron and client is not definitive and it is increasingly difficult to ascertain which is the tail and which is the dog. Having said this, the pattern of assassinations in Lebanon beginning with Marwan Hamade began *after* the imposition of resolution 1559 whose unique feature was to call for the dismantling of Hizballah with no recourse to Lebanese politics. This perceived existential threat emanating from the UNSC arguably undermined the consociational checks and balances designed to assure and could easily have led to a decision on the part of Hizballah to assassinate politicians who were perceived as Western collaborators. Jumblatt appears to work on the theory that if the various parties and sects can adhere to consociationalism, they can avoid conflict.

This dissonance when dealing with Hizballah is mirrored in his reluctance to discuss Sunni Jihadism and the potential infiltration of Future Movement militias. The principal method through which he achieves this is resorting to *relativist* arguments about the inherent ambiguity of the concept of extremism. This is reinforced by a script in which accusations of extremism are used by all sides in confessional politics against opponents and an apparent fear that admitting Sunni extremism exists would be tantamount to accusing the entirety of Lebanese Sunnis. Thus, the instrumentalisation of the concept for political gain by different factions appears to preclude Jumblatt's willingness to countenance its existence. This appears to be repeated in Jumblatt's discussion of corruption. The obvious explanation for this is that he does not want to alienate Lebanese Sunnis and the Future Movement of Saad Hariri in the former and *Zu'ama* generally in the latter. Overall, Jumblatt is

positioning himself as the bridge between Hizballah and Future Movement and his medium is the consociational system. *Dissonance* and *relativism* allow him to overlook potentially problematic aspects of reality. Given Lebanon's consociational structure, these kinds of coalitions are imperative for any kind of functioning government and Jumblatt is wise to position himself in this way. However, they are prone to sabotage by patrons and *false universalism*. False universalism by actors presents the Lebanese and their perspectives as *definitive* whilst, in reality, referring to their own allies and preferences. It is a trait shared by all parties to these conflicts over time and is one of the greatest factors undermining stable and peaceful relations. Consociationalism, by nature, divides people by sect and is injurious to personal freedom as part of a deeper hegemonic sectarian system. However, given the dynamics of patron seeking behaviour and the potential for instability and violence, consociationalism should be respected and protected in the short and medium term. Foreign powers should not enact policies of false universalism which undermine the system, such as resolution 1559 or the Lahoud extension.

Whilst a long-term goal of secular citizenship and intermarriage through the scrapping of personal status law would eventually undermine the sectarian aspects of consociationalism, in the short term, consociationalism is the only system which can prevent conflict and is, therefore, the least bad option. More importantly, it is for the Lebanese, free of foreign interference and interests, to abolish sectarian consociationalism for themselves, should they so choose. Foreign intervention and meddling reinforces the arguments for the necessity of this system by its supporters, making it difficult to break away from. The implications of these findings for Lebanon are further discussed in the conclusion.

The nexus of Clientelist and Sectarian conflict and violence

Both Ms. Abdelsater-Abusamra and Mr Hassan, to greater or lesser extents, touch upon the nexus of clientelist and sectarian conflict and violence which was discussed in chapter two. Both of these interventions were a product of their agency and both were somewhat impeded by the structural *power behind discourse* at the STL. Ms. Abdelsater-Abusamra was interested in the *purpose* and *effect* of the Hariri assassination and employs a comparative frame between Hariri and Kamal Jumblatt's assassinations. Seemingly, she is attempting to understand the mechanics of the wider phenomenon. In questioning Walid Jumblatt, she draws focus on the rumours, revenge and surrogate victims after Kamal was killed. Though she does not say so explicitly, she has, in fact, alighted upon the nexus of clientelist and sectarian violence where assassinations of political leaders lead to the activation of the

frames and scripts of sectarian rivalry and potentially lead to conflict, violence and massacre. Unfortunately, she is unable to articulate it in these terms. This appears to be partially as the result of conceptual confusion which results in her emphasising prediction by perpetrators and the hopelessness of the victims, both of which undermine her own points. Thus, conceptual development, possibly through collaboration with social scientists might be fruitful for the framing of questions in these contexts. She is also constrained by, and demonstrates the effects of, the *power behind discourse*. These are manifested in her designation of *the* victims which are victims only in so far as they relate incidentally to the Hariri crime.

Victims of other crimes in Lebanon have been systematically excluded. This structural power also leads her to describe Jumblatt as a victim. This is a reflection of the STL's structural inability to consider *Zu'ama* protected by amnesties or Western allies as perpetrators and, once again, gives lie to the *some justice is better than none* argument that this is a first step among many disinterested steps. Thus, impunity is once again in evidence. Ms. Abdelsater-Abusamra is also constrained when Judge Re limits her time on the basis of her question's "marginal relevance" (Ibid, p. 114). However, questions pertaining to the dynamics of the nexus of clientelist and sectarian violence are not marginal to Lebanese peace and stability, but central to it. Indeed, the main argument for establishing the STL through use of exceptional chapter VII powers and on its selective basis is the threat to peace and security posed by the assassination of a super-*Za'im* precisely because of this nexus. Otherwise, the selectivity of the STL is purely partisan. The limiting of questions concerned with the nexus thus suggest that instrumental, punitive and hegemonic concerns are higher on the agenda than understanding and preventing the dynamics of violence associated with this nexus.

Jumblatt manages to utilise Abdelsater-Abusamra's questioning to do some memory-making around Kamal and link it to himself through the metaphor of the *journey* which enacted the *active remembering* identified in chapter five. Mr. Hassan's questioning challenges this, and other, memory-making by Jumblatt at the STL. He challenges the notion that Jumblatt's PSP kept the journey of Kamal and the democratic credentials of an institution which has been in the Jumblatt family since its inception. This highlights a potential theory-theory contradiction between social democracy and patrilineal *Zu'ama* clientelism. Understandably, Jumblatt is defensive. Though never mentioned by name, Hassan's discursive strategy highlights the pettiness of patriarchal, zero-sum clientelism. Lahoud's removal of Kamal's statue and his alleged jealousy that his father did not have one emphasises this, in addition to the fact their families were once friendly. Hassan's conflictual discourse with Jumblatt culminates in his alighting upon the nexus in reference to Jumblatt's 2007 speech which utilised *Zu'ama* war rhetoric. Hassan uses this to accuse Jumblatt of incitement. Hassan is precluded from accusing or trying Jumblatt for things which took place during the war, so he appears to creatively

use his agency to question Jumblatt's use of violent language within the limited *temporis* and *loci* of the STL. The moment at which he truly accuses Jumblatt is the moment at which *personae* comes in to play and he is prevented from continuing. The context of this speech was clearly trying for Jumblatt, but Hassan alone among his peers appears to criticise the use of *Zu'ama* war rhetoric and the potential for violence. The implications of this nexus for Lebanese politics are discussed in the conclusion.

(II) liberal world order

It was argued at the outset of the STL by scholars of ICL that the transparent funding and diversification of funding away from partisan parties was necessary for legitimacy. This chapter has demonstrated that, while the names of *most* contributing states are mentioned by the STL, some states are obscured, and the annual itemised contributions of states are absent. Thus, the funding structure of the STL is opaque. This necessitated a cross reference with leaked U.S. diplomatic cables from Wikileaks detailing the funding for the first year of STL operation. These accounts did *not* contradict each other. Through a process of deduction and inferences based on available evidence, the five biggest foreign contributors for the first year were the U.S., Regional State (Saudi Arabia), The Netherlands, Kuwait and France. The STL's provision of 26 of 28 names of states but omission of itemised sums appears to be an attempt to mystify power relations and intentionally distort communication to procure consent for hegemony.

Asked if he still believes the STL is politicised and invited to reflect on the meanings of politicisation, Jumblatt merely states that he had read some inaccurate news reports and effectively recants. Reflecting on the findings so far, three models of politicisation of tribunals were elaborated. First, *show trials* which judge the innocent guilty for political purposes. This characterisation inheres in Hizballah's designation of the STL as an American-Zionist project. Secondly, we have *authoritarian selectivity* such as that which made an exception to imprison Samir Geagea under *Pax Syriana* when his fellow warlords were amnestied. It cannot be over-stated that the selectivity and arbitrary nature of this justice does not imply innocence on behalf of Geagea but rather the instrumentality and politicisation of the decision and the undue influence of the executive on the judiciary. Assuming that the STL is not a *show trial* or unfettered American-Zionist stooge, we alight upon the third model of (il)liberal selectivity indicated by the findings of this thesis. Here, the epistemological distinction between law and politics is *reified* by practitioners.

The concrete effect appears to be that law cannot question the politics which bring tribunals and their selective jurisdictions about. This reification shields liberal legal practitioners from the

theory-practice contradiction of serving (il)liberal world order and furthering impunity. This is also achieved through apparent procedural propriety and eschewing of torture and the death penalty (unless it is outsourced). Despite these features, (il)liberal selectivity appears as the result of the same feature which authoritarian selectivity does; executive dominance of the judiciary. This leads to a further insight. What would be considered illiberal or authoritarian at state level, lack of democracy and the insufficient separation of powers, are accepted as core features of the core institutions of world order. There is an apparent hegemonic ideology of nation-statism which allows universal liberal values of good governance to be ignored.

The approximation of the STL's funding structure would not be possible without the use of Wikileaks. The STL trial chamber came to the decision that Wikileaks could not be used as evidence, despite their wide publication in reputable media. This decision was taken on the basis of providing a fair trial. This decision on its own merits appears reasonable. However, it forms part of a wider pattern of decisions by the STL which consistently protect powerful interests; not allowing WikiLeaks as evidence, not allowing judicial review of the UNSC's decisions and the retroactive creation and application of a core crime of transnational terrorism over the Lebanese civil code. Another hegemonic effect is to cast doubt on analyses which utilise leaked documents. Where no official documents are available and have not been provided on request, this leaves journalists, scholars and members of the public delegitimised in their use of the only available information.

Another aspect of the illiberality of world order was present in the discussions of Mr. Korkmaz and Jumblatt regarding the intervention of Syria into Lebanon in 1976. This was brought about by the collaboration of Henry Kissinger and Hafez al-Assad. This demonstrates that the U.S.- Syrian historic bloc was in formation long before 1991 and, indeed, led to the prolonging of the war. It relied, like so many damaging decisions, on *false universalism*. Claims by Syria to be anti-imperialist should be treated with disdain in this light. The Assads have apparently relied on colonialist, imperialist and authoritarian tactics and strategies. This interpretation is indicated by Jumblatt's recollection of Bashar's "orientalist" interests in Lebanese sectarian communities and Jumblatt's designation of the Syrian *Tutelage* as a Syrian *Occupation* (the language of Tutelage is discursively interesting, arising both here, and in the historical case of the 1860 commission. This may be a fruitful avenue for further research). Hafez al-Assad's collaboration with the U.S. and Israel to destroy the LNM and, most likely, assassinate Kamal Jumblatt, indicate the SAR is an alternative colonial project to that of Zionism or the U.S., rather than an anti-imperialist force. Thus, at times, the Syrian colonial project overlapped with that of the U.S. and resulted in *Pax-Syriana*. Later, this instrumental relationship faltered, and they became dominating, violent and rival imperialisms.

The breakdown of the U.S.-Syria historic bloc has much in common with the *Zu'ama* politics of Lebanon, where former allies turn on one another, sectarian communities are mobilised, and violent conflict engaged in. The context of the breakdown of the U.S.-Syria historic bloc and the consequent discourse of conflict and violence; the invasion of Iraq, the *Syria Accountability Act*, resolution 1559, Lahoud's extension, the assassination campaign, the UNIIIC's arbitrary detention of Syrian allies and the Israel-Hizballah war, includes the STL as a partisan actor. This perspective is justified by the partisan actions of the UNIIIC, the *false universalism* embodied in overriding consociational politics through the use of Chapter VII to create the statute in resolution 1757 and the Jurisdiction limitations. Whatever the moral justification of 1757, the likelihood of its practical success of providing peace and security, given its obviously partisan nature, was non-existent. False universalism has been the Achilles heel of both 1559 and 1757. The illiberal nature of ICL is now discussed under historical comparison and inform the conclusion which follows.

Historical Comparisons

The pentarchy and sovereignty

In terms of the historical structure of world order, there are several distinct similarities between the world order which produced the STL and that which produced the intervention of 1860. In both structures there are a pentarchy of great powers who, *inter alia*, control the mechanisms of law and intervention within a system of differentiated sovereignty. In the present world order, the pentarchy constitute the five veto wielding permanent members of the UNSC. In the world order of 1860, the the pentarchy constituted the five most powerful european states at the concert of europe. If we define sovereignty from the perspective of law and politics as those powers who only abide by treaties they have signed and who can, by extension, expect non-intervention in their sovereign affairs, then, in both world orders, it is only the pentarchy who are sovereign. In the 1860's, the legal order of sovereignty was explicitly divided by supposed civilisational/racial level with Europe as the universal standard with "semi-civilised" and "barbarous" communities having lesser or no recognition or legal personality. In the contemporary world order, the civilisational/racial criteria have been jettisoned but a legal differentiation of sovereignty remains.

The pentarchy enjoys sovereign impunity (with most favoured clients) through control of the mechanisms of law and intervention at the UNSC, chapter VII powers, and veto. All other states are sovereign only to the extent that they can engage with the system of *pacta sunt servanda*, but they

are not immune from intervention in sovereign affairs from the pentarchy. Thus, for post-colonial states, the *sign* of sovereignty was attached to the *signified* of recognition rather than non-intervention, which had been the nineteenth century definition. Quietly, this earlier definition of sovereignty was reserved to the neo-pentarchy. However, the contemporary pentarchy is no longer a purely European or western affair. What remains in ICL is the sovereignty/impunity nexus in which only the pentarchy and favoured clients enjoy non-intervention. In both historical structures the crimes of the pentarchy (or favoured clients) fall outside either law or jurisdiction. Interestingly, there appears to be a historical move from the nineteenth century where it was beyond the realms of the possible for sovereign European states to be subject to criminal liability vis-à-vis non-sovereign peoples (no matter how genocidal their acts). The contemporary pentarchy are *nominally* liable to the same core international crimes as non-pentarchy states. The contemporary pentarchy rely instead on UNSC mechanisms to exclude themselves from jurisdiction. Whilst manifestly unjust, it potentially represents a move towards equality before the law. The legitimacy of this inequality is potentially vulnerable to being *de-naturalised* through the contrast of universal human rights and criminal liabilities with the reality of structural inequality.

Executive domination of the Judiciary

In both the 1860 intervention and the STL there is little judicial independence in the sense that investigations and jurisdictions are defined and determined by the pentarchy. However, this underlying truth presents itself in different forms in both cases. In the case of the 1860 intervention, the commissioners, including Fuad Pasha, represented a conflation of the political and the legal where balance of interests, prejudices, and genuine concern for “justice” became conflated and, at times, indistinguishable. This was an age of *authoritarian selectivity* and *show trials* where commissioners, as representatives of their governments, promoted the interests of particular clients and domination was essentially naked. For the Ottomans, total obedience from subject peoples was simply an expectation (one which was increasingly weakening in Lebanon). For the Europeans, their cultural and military dominance was such that they saw no need to hide their partiality or exercises of power. This reflected a balance of power in which Europe was in the ascendent and European public opinion was saturated with imperial ideologies of European/Christian civilisational superiority. Thus, for Europeans, domination of peripheral peoples depended on the hegemonic common sense of imperial ideology in the metropolises. The STL (and other contemporary tribunals) by comparison, are staffed by legal professionals and judges concerned with procedural propriety and perceived legitimacy. This

system emphasises, indeed relies, on the nominal and epistemological distinction between politics and law. Thus, it is a system defined by *(il)liberal selectivity* where, rather than direct executive representation or intervention in the court, the pentarchy rely on their predetermination of jurisdictions on ad hoc and hybrid bases and a compliant judiciary and counsel who enforce the epistemological distinction of politics and law. This *mystifies* the ontological reality in which the latter is dependent on the former. In this sense, the contemporary world order is defined by hegemony rather than dominance.

It is in this hegemonic context where ICL discourses emphasising *some justice is better than none* and the equation of respect for judicial independence with being “careful to front-load jurisdictional limitations” (Cerone 2012, p. 62) perform the *rationalisation, legitimation, universalisation, and naturalisation* necessary to *mystify* the structures of uneven power and *reify* a non-existent egalitarian *international community*. The fact that this hegemonic and ideological work has become necessary should indicate that societal norms of universal human rights, jurisdiction and democratic legitimacy have become widespread. However, ideological hegemony is more pernicious than naked ideology and domination and therefore, harder to highlight. This presents both problems and opportunities on the path to Habermasian legitimacy. This movement from domination to hegemony and from authoritarian selectivity and show trials to *(il)liberal selectivity* is reflected in the move from political power to methodological power. The commissioners of the 1860 intervention directly interceded and influenced trials in order to balance interests or attain political goals. In the nominally independent judiciary of the present, political goals are seemingly achieved through application of positivist or interpretivist methodology as necessary; finding that transnational terrorism exists as a core crime, that Lebanese terrorism definitions are routinely read in conformity with this law, that the STL cannot judicially review the UNSC, or that there is no criminal liability for the crime of *aggression* in English law. Methodology’s innocuous nature makes it perfect for processes of *naturalisation, rationalisation, universalisation and mystification*. In chapter four, we learn that article 20 of the Lebanese constitution allows for tribunals made up of judges of different nationalities and that this was done both during the French mandate and during the Syrian intervention. This analysis suggested that the presence of courts with mixed personnel might co-occur with forms of foreign domination. The analysis contained in the present chapter reinforces this impression. 1860 was a naked instance of imperial rivalry and prejudice manifested in military, political and judicial intervention, and it thus gives one a view of the underlying mechanisms and processes unadulterated by legal *rationalisations*. Various combinations of Ottoman military tribunals and Pentarchy Commissioner hearings with cross-fertilisation, oversight or autonomy reflective of geopolitical logic and relative power, indicate that mixed tribunals and hybrid law have been part of the historical

experience of Lebanon and that instances of hybridity and mixed courts have been correlated with colonial and imperial domination.

The dialectic of intervention, destabilisation and domination

Another similarity between the interventions is that the violence and escalating conflict in Lebanon and its immediate environs, which precipitated the interventions, was the unintended and indirect result of intended and direct instances of western imperialism and aggression. With regard to the 1860 tribunal, destabilisation at the regional level started in 1798 when Napoleon toppled the Egyptian Mameluks and left a power vacuum which was exploited by Mohammed Ali who had pretensions to regional hegemony. The nine years of Egyptian rule of Syria witnessed proxy conflict between France and Britain, played out through Egypt and the Ottomans, and resulted in the first pitting of sectarian forces against one another in Mount Lebanon.

In the twenty-first century, it was the unprompted aggression against Iraq in 2003 which led to the undermining of the Syria-America historic bloc and the escalation in conflict between political and sectarian camps in Lebanon manifested through; the *Syria accountability act*, resolution 1559, the extension of President Lahoud, the assassination of anti-Syrian figures and the 2006 Hizballah-Israel war. Both eras witnessed a proliferation of potential patrons for Lebanese groups, making dynamics of conflict more complex. However, the nineteenth century patrons tended to be European pentarchy powers, whereas the diffusion of power globally and the regional state system locally, mean that there are many more patrons muddying the water in the present conflicts. As always, due to the clientelist dynamics of Lebanese *and* global politics, foreign conflicts are often translated into Lebanese ones and vice versa. Thus, the interventions are both implicated in the wider conflicts of their sponsors. In chapter five, we noted that Walid Jumblatt oppositionally reworded *Pax Syriana* from *tutelage* to *occupation* whilst Mr Korkmaz attempted to *hegemonically legitimise* and *universalise* the collusion of Henry Kissinger and Hafez al-Assad which led to this tutelage. Tutelage in these accounts was inferred, therefore, to relate to a legitimate and positive, *patronising*, relationship, even if the discourse participants themselves disagreed on whether the Syrian presence was tutelage or occupation.

However, historical analysis in the present chapter indicates that the European pentarchy and their lawyers, represented their creeping colonial and imperial domination of the Ottomans as “*la Turquie est en tutelle*”, a tutelage (Rodogno 2012, p. 47). This indicates the term has long been associated with a hegemonic project of colonialism. Though further research on this contention is

warranted, it indicates that Jumblatt's distinction between tutelage and occupation is largely superfluous, as the former is a *hegemonically legitimising* term for a range of colonial practices. It also contributes to the argument that the Assad's can be conceived as a rival colonial project, rather than as true anti-imperialists, and that they have learned and applied the techniques and discourses of European colonialism and imperialism at various stages.

Worthy and unworthy victims

Another parallel regarding these interventions is how access to justice is reflective of the key interests and prejudices of powerful actors. In 1860, the death penalty and harsher punishments were often reserved for commoners and irregular soldiers. The Ottomans decided that the arrest and exile of Muslim notables in Damascus was punishment enough. The British protected the interests of the Druze *Manasib* as their proteges, ensuring that many who were guilty of massacring defenceless Christian peasants escaped justice. British concern for *Manasib* "property rights" reflected their class bias. At the STL, the entire jurisdiction covers the murder of a billionaire, Saudi and Western connected super-*Za'im*, and victims are deemed as such only as they incidentally relate to this crime. Lower class Lebanese, largely Shia, victims of alleged Israeli war crimes in 2006 were intentionally excluded, just as they always have been through the various excessive uses of force and occupation by Israelis, historically. These victims do not register under the current system of (il)liberal selectivity. The STL's deference to social class and thoughtless reproduction of clientelist structures is manifest in the repeated reference to Walid Jumblatt by STL Judges as *Beik* during his four days of evidence (The Prosecutor versus Ayyash et al. 2015a, p. 11, 22, 23, 29, 49, The Prosecutor versus Ayyash et al. 2015b, p. 7, 17, The Prosecutor versus Ayyash et al. 2015c, p. 8, 69, 110, The Prosecutor versus Ayyash et al. 2015d, p. 18, 32). This is likely a corruption of the Turkish honourific *Bey* which in turn corresponds to the Arab honourific *Sheikh*. Only one of these utterances was by a non-Lebanese, but it highlights the importance of class and deference to status reflective of a wider culture of warlord amnesty and present among the Lebanese judiciary.

European Commission for Syria Vs STL: inclusivity vs exclusivity

However, whilst both interventions feature prejudice based on patron interest, culture, or class, the intervention of 1860 was entirely encompassing and inclusive of relevant state patrons (providing a

semblance of *universality*), whereas the STL is not. In 1860 the concert powers, including the liminal Ottoman authority, operated with rules detailing unanimity and inclusion. Thus the outcome of punishments and political agreements reflected these actors' interests and, therefore, to a larger or lesser extent, they cooperated. Perhaps this is part of the reason that the 1860-61 peace lasted for so long. By contrast, the STL is bitterly opposed by the "resistance alliance" and represents the sole interests of Western UNSC powers, and their regional most favoured clients. In this sense, it can only ever be polarising and partisan within a wider conflict.

Though the Lebanese communities were disenfranchised and many victims overlooked in 1860, there was at least some assurance and balance in the fact that their community "interests" were to some extent being promoted by the French, British and Ottomans on behalf of Christians, Druze and Muslims, respectively. This was not the case with the STL in which Russia and China abstained and where important patrons like Iran were not included (UN Press Release 2007). At the time of writing (June 2018) Russia has begun using its veto to protect Syria and aligned itself with the resistance alliance (See Dag Hammarskjöld Library 2017). Unfortunately, this appears more as a pursuit of impunity and a polarisation between the West and Russia, than a sign of cooperation between UNSC members to bring "justice", as in 1860. In the classic Coxian sense, the STL reflected the material, ideational and institutional forces prevalent at the time of its inception. Those underlying forces, have, to a large extent, shifted. The West can no longer promote its ethico-political leadership at the UNSC. However, the structures which promote impunity remain in place.

Consociationalism: from colonial solution to neo-colonial problem

A distinction between these world orders is found in the way that they dealt with consociationalism. With regard to the violence of 1860, it is a historical irony that it was European ideologies of nationalism, orientalist constructions concerning religion as a primary identity, and colonial practices of patronage and proxy war which facilitated the attachment of clientelism and sectarianism in Lebanon and Syria. It is galling that the scale of violence this unleashed necessitated a consociational settlement. However, it appears that, given the laws of entropy and the new realities of cantonisation and insecurity, it may have been a necessary arrangement. Nevertheless, it has the unpalatable side effect of freezing these distinctions in place. Its longevity suggests it was at least partially successful in deterring and assuring its constituent communities.

In the early-twenty-first century, the West and its most favoured clients managed to undermine this system and drive conflict. The security of the Ba'athist regime of Syria was severely

undermined by the 2003 invasion of Iraq and the consociational system of Lebanon was entirely overridden by the pentarchy with resolution 1559, demanding Hizballah and Palestinians be disarmed. Resolution 1757 completes the picture of consociational override and deepening conflict. This is particularly salient in a world order in which the resistance had no pentarchy representation and is reflected now (June 2018) in the polarising situation in Syria and the UNSC. From this perspective, the STL was just one polarising step on the path to these wider conflicts. In terms of justice, the main progressive development between world orders, despite its many flaws, is the establishment of a permanent international court, the ICC. This was not something countenanced in the nineteenth century. This also indicates that ad hoc and hybrid tribunals are associated with partisan, rather than public, interest.

Conclusion

Thesis Context

Chapter one presented a theoretical framework developed from Robert W. Cox. This centred around the ontology of historical structures of world order and state-society complexes. It was argued that Cox's ontology was best applied with an undergirding meta-theory of CR rather than interpretivism. Key concepts of Gramscian Critical Theory, such as historic bloc, were elaborated as part of this theoretical framework to explain how relations of domination, hegemony or legitimate stability come in to being or breakdown. This informed, *inter alia*, the analysis in chapters five and six which found that Syria and the U.S. had forged a historic bloc in the hegemonic domination of Lebanon and that the bloc's breakdown had precipitated conflict leading to the death of Hariri. Importantly, the explicit undergirding of CR for these concepts allows arguments to be made for the *reality* of these conditions, and not simply as discursive representations. Moreover, the core concepts of Critical Theory central to the concerns of this thesis, namely ideology and hegemony, are only coherent in the context of CR meta-theory emphasising intransitive ontological reality and transitive epistemological relativism because if there is no reality over which one can be intentionally misled, then ideology ceases to exist. The thesis argued that there is an ontological reality over which one can be ideologically misled, and this informed the methodology.

Realism was also central to operationalising legitimacy which was argued to be a concrete practice in line with the Habermasian definition, rather than something simply perceived, as in the dominant Weberian definition. This realist definition was a mixed deliberative and procedural definition which democratically includes stakeholders and proceeds according to an agreed procedure. Interestingly, mainstream ICL sources rely almost entirely on the Weberian definition in which legitimacy is simply perceived rather than actual. This gives rise to extended discussions about altering the perception of legitimacy without any consideration of structural inclusion or exclusion, highlighting this as an idea in the service of hegemonic power. It was demonstrated, furthermore, that the historical structure as it pertained to ICL emanated from the colonial encounter which relied on a stratification of sovereignty which guided the thesis in searching for sovereign stratification as an indicator of continuation of ICL as a tool of power, rather than as a post-colonial rupture.

The focus on historical structure of ICL as it pertained to Lebanon led to the discovery of the 1860 European Commission for Syria and its inclusion in this thesis as a historical comparison with the STL through which the development of the historical structure could be elaborated. The CDA of

Norman Fairclough represented the ideal set of techniques through which to pursue the research questions. It provided a rigorous approach to descriptive, interpretive and explanatory analysis through the theoretically sampled transcripts of Walid Jumblatt's testimony to the STL.

The thesis then discussed the different forms of violence associated with clientelism and sectarianism, namely, feuding and assassination in the former and disproportionate, generalised, and surrogate violence and massacre, with the latter. Further discussion led to the insight that this conceptual difference was reflective of the differing origins of clientelism and sectarianism as forms of identity and social organisation. The argument was advanced that, up until the eighteenth century, clientelism was the predominant form of social organisation which placed emphasis on family name and social hierarchy in a heterogeneous culture. Clientelism was defined as a dyadic, hierarchical, relational, structure dependent on patronage and loyalty. Moreover, it was noted that under the Ottoman Empire, this relational structure had one terminus, the Sultan. This demonstrated that the relational social structure of clientelism constituted an intra-regional and inter-cultural relation at this time and, furthermore, became an inter-state relation upon the establishment of the Lebanese state, the Middle East state system, and the imposition of foreign powers into the region. Indeed, the argument was advanced that it was the establishment of European powers as sources of regional patronage equal to, or greater than, the Sultan, which gave the relational social structure of clientelism a conflictual, multipolar aspect which it still retains. Even more problematically, it was demonstrated that European powers from the eighteenth century onwards established patronage on the basis of religious sect, thus, establishing sectarianism as a primary mode of social organisation. It was demonstrated that, whilst clientelist and sectarian forms of violence had differing origins and forms they had, nevertheless, come to inhere within the Lebanese state-society in a causal complex where, often, one form of violence led seamlessly to another. It was demonstrated that *Zu'ama*-led militias and parties during and after the civil wars of 1958 and 1975-1990 embodied both clientelist and sectarian dynamics and that assassination during the civil war had often initiated sectarian, surrogate massacre. Thus, the nexus of clientelist-sectarian violence and conflict was posited as a key causal tendency in Lebanon.

The thesis then moved to define and discuss consociationalism. In particular, it was noted that this concept could be discussed in descriptive or normative ways, with an emphasis on ideal types or its concrete manifestation in Lebanon. It was advanced that consociationalism was useful as a concept for the description of Lebanese state-society structure, but that normative proscription should not be uncritically adopted. Consociationalism in Lebanon is inherently bound to the clientelist and sectarian logic of elites. Their fractious politics makes a consociational system of elite power-sharing based on mutual deterrence and assurance somewhat necessary. The sectarian logic is expressed in the key

positions of state being allocated to the major sects. The logic of deterrence and assurance is expressed constitutionally through the requirement that major branches of government (and thus major sectarian groups) must agree on foreign treaties before they can be enforced. This was born largely of the experience of the 1958 war caused by the Maronite president attempting to align Lebanon with the west. It was argued that, though consociationalism might have some merit as a necessary way of preventing conflict between elites, it nevertheless represented the pinnacle of a deeper sectarian system in which the state abdicated its role of providing national citizenship and identity by allocating this responsibility to sub-state sectarian institutions. This has the effect of freezing sectarian societal segments in place and reproducing sectarian subjects with deleterious effects for personal freedom and collective security. This gave rise to a paradox which this conclusion seeks to address.

The final aspect of the Lebanese state-society defined in this thesis was that of memory. Definition of the importance of memory for Lebanon begins with the recognition of the dual dynamics of amnesty and amnesia which have a pre-modern lineage. Obliteration of the past in times of elite transgression was the mode through which harmony was restored in Ottoman times and which the Lebanese elite now enact for themselves. It was suggested, following key scholars, that memory cultures in Lebanon should be considered in a plural way and that the phenomena of post-memory should be accounted for. The complexity of the Lebanese relationship to memory, particularly of traumatic events, is highlighted in the ubiquitous motif of the martyr; this amounts to a socially acceptable remembrance of victims in a culture of elite amnesty and ostensible amnesia. A specific discourse of interest was highlighted in the “war of others” positing that the Lebanese war was simply a proxy war on Lebanese territory.

Chapter four provided perspectives from world order through a critical and historical review of the ICL literature. This literature was constituted by ICJ, TJ and CLS approaches and addressed three key events in chronological order, the 2007 enactment of UNSC resolution 1757 establishing the STL, the 2011 Decision on applicable law, and the 2012 Decisions on legality and legitimacy. Broadly speaking, ICJ and TJ scholarship can be defined as the mainstream. Mainstream literature on these decisions often highlight problematic issues with various aspects of world order but then expend considerable energy and utilise discursive tactics to legitimate or minimise these issues. This was the case with the observation that the UN transgressed Lebanese constitutional provisions ensuring consensus on foreign treaties when it negotiated for the STL with only the Prime Minister. The imposition of 1757 was excused using the semantic argument that the treaty was a blueprint not an annex. Discussion of 1757 highlighted the constitutional residue of acceptability of mixed tribunals which correlate historically with periods of foreign intervention and domination. Principally, the 2007

literature showed an ICL consensus that the applicable law through the statute was conceived to be the terrorism definition of the LPC. Mainstream sources from this period appeared to invoke a “some justice is better than none” logic to selectivity which appeared to rely on an implied incidental selectivity rather than a systematic one emergent from the structure of the UNSC.

The 2011 Decision which attracted sustained critique and praise from mainstream sources decided that, contrary to the statute, the STL would apply an already existing core international crime of transnational terrorism, the existence of which was a controversial topic. This decision relied on an unorthodox interpretive methodology which argued that a transnational crime could be detected by aligning core aspects of national and international treaties and legislation while excluding aspects which did not align. Moreover, it was argued that, though the statute of the STL stipulated that the terrorism definition applied would be Lebanese, the standard practice was for all states to read their definitions in line with international definitions. Upon analysis of the transnational element of the invoked transnational terrorism, it was argued that it was not so much a truth claim relating to some empirical facet of the crime, but a speech act located with the UNSC and subject to the institution’s structural power and constraints. Thus, the effect of this determination was to empower the UNSC.

The 2012 Decision, instigated by defence challenges to the STL and the UNSC, was somewhat precluded by RPE. The STL also relied on positivist methodology to argue that the statute did not explicitly allow the STL to judicially review UNSC Decisions. This Decision rested on precisely the opposite methodology to that of the 2011 Decision but was similar in the fact that it empowered the UNSC. In this context CLS literature provided meta-analysis of the ICL discipline in general, and with regard to the STL in particular. In general, these sources highlighted ICL’s core narratives of progress, colonial and post-colonial rupture, nominal externalising of politics from law and the central purpose of ending impunity, a purpose stated explicitly by states in passing resolution 1757 and establishing the STL. With specific regard to the STL, CLS literature highlighted recourse to a narrative of politicised Lebanon in need of non-political ICL in view of its state failure to sign a treaty. This is in contrast to the reality that consociationalism was constructed to function in precisely this way.

Chapter five and six applied this approach to the testimony of Walid Jumblatt and then re-contextualised this analysis through reference to the 1860 commissions. The conclusions of these chapters have been summarised in the previous chapter and will not be repeated here, though the key findings are elaborated below and used to develop theoretical models and answer the research questions.

Research questions

1. What are the differences and similarities in hegemony, domination and legitimacy in the 1860 commissions and the STL?
2. What ideological, hegemonic and legitimating discursive practices are employed at the STL?
3. How do these strategies inform structural power in international law and politics?
4. What do the 1860 commissions and the STL tell us about hegemonic world order? And what are the implications for Lebanon?

Research findings

This thesis noted that there appeared to be a potential link between foreign intervention, domination, and colonialism on the one hand, and the presence of hybrid tribunals in Lebanon, on the other. The original Lebanese constitution was drafted under the French high commissioner and mandate. Thus, the fact the constitution leaves room for hybrid tribunals should not come as a surprise but is emergent from these conditions. Historical comparison with the 1860 intervention reveals that hybridity in that case was a function of contested geopolitics between the concert pentarchy and the Ottoman authorities, with the level of hybridity and European oversight having direct correlation to relative material power and strategic manoeuvring in various locales. Similarly, Walid Jumblatt's testimony detailed how UNSC resolution 1559 emerged from a conflict between Syria and Western pentarchy members and how the domestic opposition to Syria were excluded from the drafting process. Resolution 1757 occurs as part of this wider conflict. These insights give further credibility to the notion that, in the historical Lebanese experience, judicial hybridity is related to foreign domination or conflict of various kinds.

In contemporary world order, and with respect to the establishment of the STL, John Cerone candidly admits that support for hybrid and ad hoc institutions by the U.S. is inversely proportional to its resistance to permanent ICL institutions, particularly the ICC. Thus, these dynamics are capable of feeding back in to, or reflecting, wider political conflicts over the structural mechanisms of ICL in world order (See figure 6). Moreover, it indicates that not only mixed tribunals, but also ad hoc ones, have

been associated with various forms of domination in the Lebanese experience. This is certainly demonstrable with the 1860 commissions which were directly reflective of political and military power.

Sphere of Activity	Ad Hoc and Mixed Tribunals correlated with ...
World Order	1860: Maintaining Balance of Power and Preventing Conflict. Multiple competing national interests linked to local proxies. Present: Undermining the ICC, maintaining UNSC impunity, limiting jurisdiction over UNSC favoured clients.
Lebanon	Foreign Domination and Intervention: 1. Concert Pentarchy 2. French Mandate 3. Syrian Intervention 4. UNSC intervention

Figure 6: *Mixed Courts and their Political Context*

In chapter four, CLS literature indicated that contemporary ICL considered itself as having moved beyond its colonial origins, emphasising a rupture with history. Chapter three established that the nineteenth century world order was based on a racial and civilizational hierarchy which recognised only Christian European powers as sovereign. The question then became whether sovereign differentiation continued by other means. Some results relating to this question are displayed in figure 7. The top row of this table, *type of judicial power*, demonstrates that judicial power was exercised politically in 1860, and, explicitly so. Indeed, in 1860, judicial power was not exercised through judges but through commissioners and extraordinary envoys which reported directly to their respective national executives and combined both political and judicial functions openly. Regarding the present, judicial power is exercised by a dedicated ICL judiciary which explicitly rejects political considerations.

Nevertheless, at the STL, and the majority of ad hoc and hybrid institutions, this judiciary functions within pre-defined jurisdictions dependent on UNSC Chapter VII powers and pentarchy veto. The question then becomes, do its decisions support this political executive from which it is emergent? It was concluded throughout this thesis that a pattern of key decisions of the STL support the UNSC agenda and that, moreover, these legal decisions were arrived at by apparently contradictory legal methodologies. It was posited that this constituted an exercise of power through the application of

methodologies with the key ideological effect of *mystifying* this exercise of power on behalf of a specific political group, the UNSC. Methodology could constitute a key mode, or even *the* mode, of contemporary judicial power in ICL.

Type of Judicial Power	1860: Political	Present: Methodological
Type of Politicisation	1860: Show trials and Authoritarian selectivity	Present: (II)liberal Selectivity
Type of pentarchy impunity	1860: Crimes excluded from legal definition	Present: Crimes excluded from jurisdiction
Type of (Post) Colonial Sovereignty	1860: Non-existent or liminal	Present: Sovereign recognition not Sovereign non-intervention
Type of world order	1860: Domination	Present: Hegemonic

Figure 7: Historical Structure of ICL

The second row of figure 7, *type of politicisation*, demonstrates that the 1860 intervention was based on *show trials* with a political agenda subordinating questions of guilt, and *authoritarian selectivity* where political considerations and prejudices effected the way the guilty were treated. This is contrasted with a contemporary illustration of *(II)liberal selectivity*, which we have defined as relying on the epistemic division of law and politics which allows for tribunals to ignore the jurisdictional jerrymandering which ensures the UNSC pentarchy and their most-favoured clients are systematically immune. Under (II)liberal selectivity, political considerations and prejudices influence which crimes are selected for prosecution and *ad hoc* tribunals are as dependent on the executive for their existence as authoritarian ones, but the nominal division of politics and law allows the ICL judiciary to externalise the political interests they pursue by default and, within that limited confine, pursue truth. These insights on politicisation and selectivity relate directly to the third row, *type of pentarchy impunity*. This row compares the type of impunity which the respective pentarchies enjoy. The nineteenth century pentarchy enjoyed impunity by not being liable to prosecution under ICL, which only applied to the uncivilised, non-European. The contemporary pentarchy, whilst nominally liable to the same crimes as non-pentarchy states, in practice, are rendered immune by virtue of their control of the mechanisms of world order which determine jurisdictions, namely Chapter VII of the UN charter and

the veto function. Thus, (II)liberal selectivity of cases arises from the same structural mechanisms as UNSC jurisdictional impunity.

The fourth row, *type of (Post) Colonial Sovereignty*, theorises sovereign differentiation as it pertains to Lebanon through its colonial and neo-colonial eras. In 1860, sovereignty was premised on sovereign non-intervention and intra-civilizational recognition among Europeans and, on this basis, it was denied to Mount Lebanon within the Ottoman state. In the present era, the Lebanese republic is recognised but, like the majority of states globally, does not possess sovereign non-intervention which is reserved to the neo-pentarchy. The civilizational and racial criteria for recognition are gone, but the stratification between neo-pentarchy sovereignty based on non-intervention and everyone else's sovereignty based on recognition, is present. Thus, we can state that a system of sovereign differentiation still exists in the contemporary world order.

The top four rows of figure 7 justify the fifth row, namely, that nineteenth century world order was characterised by overt *dominance*, where judicial power is openly political, and this politicisation manifested in show trials and authoritarian selectivity. Meanwhile, European powers were explicitly excluded from criminal liability towards colonial peoples, who possessed no legal sovereign standing in front of the European *family of nations*. These same four top rows of figure 7 also justify the characterisation of the present world order in the fifth row as *ideologically hegemonic*. Here, political interests are overtly excluded from judicial decision-making whilst being reserved covertly to the seemingly innocuous and soporific methodological arena. Ironically, the disavowal of political process, interests, jurisdiction formation, sovereign stratification and pentarchy impunity, allow ICL to externalise the jurisdictional jerrymandering and tribunal weaponizing processes whilst, simultaneously, pursuing these political interests by default.

Meanwhile, through this same process of structural impunity, the neo-pentarchy and ICL give the impression of equality before the same laws to which all are nominally liable, whilst ensuring that they are excluded from jurisdictions through control of the mechanisms of ICL. Lebanese sovereignty, whilst nominally recognised, is subject to the same structural vulnerability to pentarchy intervention as it was in the days of the Ottoman Empire. From column one to column two in figure 7, the central change in the operation of power has been from overt to covert and towards a sophisticated distortion of communication to procure enough consent for the pentarchy to maintain its structural dominance of world order and ICL. Thus, it is noting that the historical structure of world order viewed through the prism of ICL has moved from open domination to a present condition of ideological hegemony. The STL appears to be implicated in these progressions of hegemony through manifold processes, including reliance on methodological power to achieve political goals which favour the UNSC,

embodiment of (II)liberal selectivity based on the nominal division of politics and law and concrete dependence on the executive, tolerance of jurisdictional jerrymandering leading to the central theory-practice contradiction of rendering the neo-pentarchy and their most favoured clients systematically immune from prosecution and their own victims systematically excluded, and the mystification of financial contributions of politically partisan states to its maintenance.

Regarding the third primary research question, we can say that, though it is not devoid of meaning it is, nevertheless, somewhat misconceived in view of the results of the analysis in this thesis. Whilst it is totally valid to discuss what the mitigating and exacerbating factors are regarding the STL, the premise of the question is such that its underlying ontology is of an external relation between the pre-constituted STL institution acting upon the local political context in a positive or negative way. The reality, however, is that the STL and the pre-existing, internationalised, conflict in Lebanon share an internal relation. In the testimony of Walid Jumblatt can be discerned a process whereby the instrumental U.S.-Syria historic bloc (which was nascent in the 1976 Syrian intervention and consolidated with the *Taif* accords) began to break down in the context of the withdrawal of Israel from south Lebanon in 2000 and the Bush administration's invasion of Iraq in 2003. This led, in turn, to these rival colonialisms violating the consociational power-sharing system through UNSC resolution 1559 and the extension of President Lahoud, respectively. The assassination campaign should be seen in this context of deepening conflict and it is no coincidence that the establishment of the STL was achieved through precisely the same UNSC consociational override mechanisms as resolution 1559 which also targeted Hizballah and which bookend the assassination crisis. In this light, and notwithstanding the nominal division of politics and law and procedural propriety practiced within the confines of the jerrymandered jurisdiction of the STL, it should be considered as emergent from this wider pattern of conflict.

From the beginning then, its potential to mitigate this conflict, given its *de facto* partisan nature, is minute. Indeed, historical comparison with the 1860 tribunal highlights its flawed nature, particularly in relation to *false universalism*. The 1860 tribunal, whilst horrifying in its utilisation of show trials and authoritarian selectivity by contemporary standards, nevertheless achieved a partial universalism through the logic of sectarian clientelism, in which all the parties to the conflict and their respective international patrons, were represented and contributed to the aggregate outcome which was remarkably stable. By contrast, key regional patrons and local parties are actively hostile to, and excluded from, the STL. This makes the outlook grim for inducing any kind of peace. It is also the case that the constellation of power present at the passing of 1757 which established the STL has changed. Where Russia and other sceptical states were willing to abstain on the STL and thus accept Western leadership on the issue (after Russia and the U.S. colluded to prevent abrogation of immunity for their

most favoured clients) (See UN Press Release 2007, Cerone 2012, p. 55) Russia has now engaged on a policy of veto protection for Syria, representing a hardening of positions and indicating that the STL no longer reflects the current power distribution at the UNSC (See Dag Hammarskjöld Library 2017).

From chapter two's operationalisation of concepts, through the analysis of chapters five and six, we can posit two related models of causal tendencies crucial to considering prospects for peace. The first, represented in figure 8, is *the nexus of clientelist-sectarian conflict and violence* which is a tendency for political assassination to generate conditions conducive to generalised conflict or, in extreme conditions, massacre. This was present in testimony on the attempted assassination of Marwan Hamade and in Ms Abdelsater-Abusamra's questions regarding the massacre of Christians after the assassination of Kamal Jumblatt.

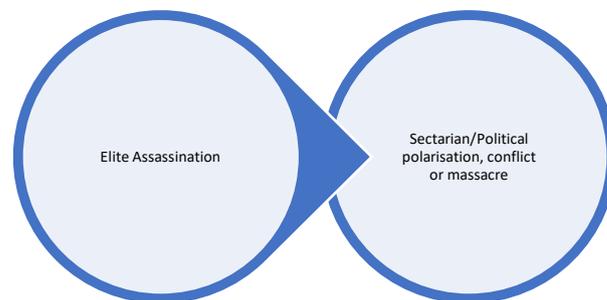


Figure 8: *The Nexus of Clientelist-Sectarian Violence*

Though the model is simple, it cannot be overstated that this does not represent a universal law but, rather, a tendency within Lebanese state-society which is context dependent as to how the conflict and/or violence is manifested and towards whom. Arguably it can be a positive force, for example in the Cedar Revolution. Nevertheless, it is central to understanding the danger posed by assassination in the Lebanese context. From the same sources, we can posit a theorisation of how memory functions when instrumentalised by *Zu'ama*, how this instrumentalisation of memory has a tendency to interact within causal complexes which include *the nexus of clientelist-sectarian violence*, and to what extent the STL mitigates or exacerbates these processes (See figure 9).

Type of Memory Activation	Description of Memory Activation Process	Zu'ama Role in Memory Activation Process
Active Forgetting	Active repression and suppression of particular crimes for instrumental purposes.	Zu'ama encouragement and enforcement.
Active Remembrance	Intentional, instrumental, reactivation of previously <i>actively forgotten</i> topics for political expediency.	Zu'ama encouragement and enforcement.
Spontaneous Remembrance	Spontaneous remembrance of previously <i>actively forgotten</i> topics. Often induced by trauma (See figure 8)	Spontaneous nature of memory activation does not require direct Zu'ama input and is largely external to their control.

Figure 9: Processes of active and spontaneous memory activation.

As figure 9 demonstrates, *Zu'ama* manipulation of memory takes place largely to facilitate or undermine instrumental political relationships in line with the ideology of amnesty and amnesia. Unlike their colloquial counterparts, these processes are active rather than passive. The most dangerous aspect of this process is what happens when civilians spontaneously remember the previously actively forgotten. This process is often induced by trauma or assassination in the present and relates directly to the *clientelist-sectarian nexus of violence* wherein lies its great threat. Whilst the STL's focus on an assassination makes most sense in the light of challenging this nexus, it fails, in Jumblatt's testimony, to challenge the *Zu'ama* monopoly and manipulation of memory which contribute to the repression of trauma. Indeed, Jumblatt is allowed a monopoly of memory in his testimony in which he can step out of *amnesia* to accuse his fathers alleged murderers whilst, simultaneously, ensuring that his *amnesty* protection remains in place and he will not have to answer questions regarding his own victims. He is allowed, by virtue of the *power behind* and *in* discourse, to advance the ideology of amnesia through a theory of synonymous healing and forgetting.

By the same power behind discourse, Jumblatt and the STL evince the class-based nature of consideration through his designation as a victim, whilst normal Lebanese victims are excluded unless they are incidental victims of the Hariri assassination. Their victimhood is entirely relational to an

internationally significant super-Zaim. Jumblatt is also able to advance, without challenge, *the war of others discourse*, which absolves Lebanese from participation in their own civil war. Finally, the contradictions inherent to Jumblatt's own testimony regarding the necessity *and* impossibility of forgetfulness are not challenged. Thus, all the major structures of power, domination and impunity are left unchallenged, transmitted and legitimated through the STL during this testimony. This suggests heavily that the STL is not contributing significantly to emancipation from impunity and violence and often contributes to it through its passive acceptance of *Zu'ama* ideologies of amnesty and amnesia. This, of course, is the central contradiction of attempting to end impunity while operating through a system with impunity at its core.

Thus, the STL's internal relation to the wider conflict of which it is a part and its lack of inclusion both make its prospects for mitigating conflict small and its potential for exacerbation large. It finds the majority of its potential for mitigating violence in the fact that it was set up to address assassination which forms part of *the nexus of clientelist and sectarian violence* central to the prospects for peaceful relations. Whilst it is possible this may have a deterring effect; this is not likely given the adversarial position of the resistance alliance and its new-found pentarchy cover. This situation differs entirely from that of 1860 which was much more successful as a function of its sectarian and clientelist inclusivity. Meanwhile, the exclusionary class-based structures of impunity, memory monopolisation and instrumentalisation which historically give rise to violence are either left in place or passively legitimated by the STL. Overall, the STL does very little to mitigate potential for violence and quite a lot to ensure their continuation and exacerbation.

One of the key problematic issues highlighted in this thesis regarding the STL, and world order in general, have been the repeated violations of Lebanon's *consociational system* of power-sharing, particularly through resolutions 1559 and 1757 and the Lahoud extension and assassination campaign. This is made even more problematic from a Critical Theory perspective given the system's reliance on, and reproduction of, clientelistic relationships and sectarian identities. Thus, there is a seeming paradox in the recognition that consociationalism enables the deterrence and assurance within the political system which enables insulation from internationalised patron-seeking dynamics and conflict, whilst simultaneously presiding over a sectarian system which reproduces sectarian subjects and societal segments which ensures the continuation of these forms of politics and violence in the long term. This leads one to a paradoxical position of arguing for the respect of a consociational system which one recognises as injurious to personal and collective emancipation. Figure 10 presents an *emancipatory strategy for overcoming the consociational paradox* with reference to the politics of world order.

Aspect of consociationalism	Description of aspect	Ideal emancipatory strategy related to aspect
Consociational power-sharing (Horizontal)	Mutual Veto and foreign policy neutrality, deterrence and assurance between horizontally opposed sectarian elites and societal segments	Respect from Pentarchy and regional patrons and policy of true <i>universalism</i> . Respect for mutual assurance and deterrence and respect for constitutional provisions regarding inclusive treaty ratification and neutrality. Non-violation through UNSC mechanisms or by state actions which are contrary to the spirit of true <i>universalism</i> .
Sectarian system (Vertical)	The freezing and reproducing of sectarian subjects and sectarian segments (suppression of civic identity and rights)	Lebanese civil society owned and lead movement for civil rights which expand the realm of secular rights and citizenship and render sectarian affiliation obsolete in the long term.

Figure 10: Emancipatory strategy for overcoming the consociational paradox

The key to overcoming the paradox is to resist the temptation to interventionism and *false universalism* which is the bane of all progressive and emancipatory politics in Lebanon. Central is the observation that it is for the Lebanese to free themselves from consociational and sectarian politics with which they were socialised through European colonialism. Foreign states and institutions simply have the duty not to sabotage this process through the manufacturing of crises. It is in this context that the Iran nuclear deal was ideal for the stabilisation of consociational politics and a point of convergence in an otherwise polarising regional and international landscape. Its compromising by the Trump administration should be viewed unfavourably in this light as should attempts by the new Saudi administration to sabotage the new Lebanese administration. One can only hope that the un-freezing of consociational politics, the holding of elections, and formation of a government, will have enough momentum to allow room for more civil society-lead emancipatory politics. It is here, and not in top-

down politicised solutions like the STL, where Lebanese emancipation from sectarianism and violence is likely to come.

Originality and contribution to knowledge

In the introduction, four areas of originality were identified; analysis of the testimony of Walid Jumblatt, application of CDA to STL transcripts, historical comparative analysis between the STL and the 1860 intervention, and an integrated meta-theoretical, theoretical and methodological approach. These four areas share an internal relation, that is, none of them would be what they are without reference to the others. Indeed, the first three aspects enumerated are emergent from the fourth aspect, the integrated CR and Critical Theoretical approach. It is here then, that an assessment of the originality and contribution must begin. A CR meta-theory and its attendant concepts underpin this research. This includes, *inter alia*, ontological realism, epistemological relativism, judgmental rationalism, a relational conception of social structure, internal relations, emergence and a focus on tendencies, mechanisms and causal complexes. The Critical Theoretical concepts are adopted from the disciplines of IR, Political and Social Science and include, *inter alia*, historical structures, world order, state-society complexes and historic blocs. They also include operationalisations of domination, hegemony, ideology, and legitimacy. The general methodological approach this gives rise to includes, *inter alia*, multidisciplinary focus on idiosyncratic actors, critical literature review, focus on mediations between individuals and systems, dual approach of intensive explication and comparative generalisation, emphasis on qualitative, discursive and historical analysis.

The particular techniques applied through Nvivo qualitative data analysis software were adapted and adopted from the CDA of Norman Fairclough's book *Language and Power* 3rd edition, itself dependent on particular linguistic theories of language and explicitly designed to detect uses of power and ideology in language. This set of techniques consisted of three broad phases of textual analysis based on description, interpretation and explanation. The interdependence of these meta, theoretical and methodological aspects is evident throughout the research process. For example, the theoretical notion of historical structures is, first and foremost, a statement of ontological realism as is the relational conception of structure on which it depends. This in turn informs the methodological preoccupation with historical and comparative generalisation. From the other side, the CDA interpretation phase is dependent on operationalised theoretical concepts of ideology and legitimacy. The claim is not that no one has utilised this type of analysis before, rather that it is a highly particular

combination applied to a highly particular case study. It is this integrated approach which gives rise to the other aspects of originality in this thesis.

An analysis of the transcripts of Walid Jumblatt’s testimony at the STL was the logical outcome of studying multidisciplinary literature on the idiosyncratic Lebanese state-society and operationalising the concepts and mechanisms associated with this literature; clientelism, sectarianism, consociational democracy and memory. In other words, the integrated approach outlined determined this theoretical sampling. Similarly, the application of CDA to these transcripts, particularly through the descriptive phase, provided rigorous, intensive and empirical analysis which could then be explained through drawing on historical, comparative generalisation with 1860 European intervention. Discovery of this intervention itself was dependent on the historical, comparative, and multidisciplinary, approach advocated by this thesis.

Enumeration of the contribution to knowledge which this original approach has provided risks excessive repetition and, thus, for a fuller elaboration of said contribution, one can refer to the *research findings* contained in this conclusion or the *chapter conclusions* from chapters five and six. Here, they are best summarised through the observation that, contrary to the atomist ontology of mainstream IR, Lebanon is not an external, pre-constituted entity acted on externally through a similarly atomistic and pre-constituted ICL. Rather, judicial and political intervention have *literally* historically constituted the consociational and sectarian polity which now exists. The STL is simply the latest iteration of this process. This process, from the nineteenth century to the present, has been dependent on a world order of legally differentiated sovereignty which allows for the structural and systematic impunity of the pentarchy executive which deploy ICL. Moreover, these historical political and judicial interventions co-occur in history with moments of colonial domination *and* constitute the conditions conducive to the next intervention (See figure 11).

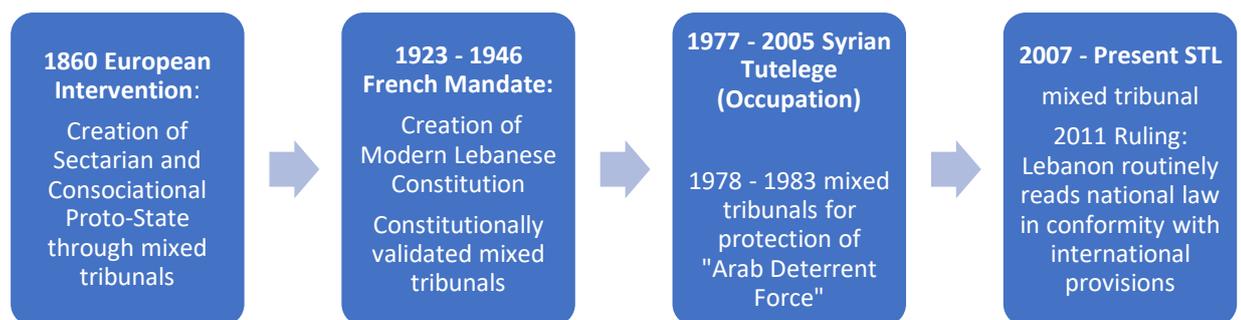


Figure 11: The historical constitution of Lebanese inferior sovereignty through judicial/political intervention

Demonstrates the correlation of mixed tribunals and colonialism and how each intervention provides favourable material, ideational and institutional conditions for further intervention

The iteration of these conditions through mixed tribunals move from establishment of sectarianism and consociationalism in Lebanon, consolidation of sectarianism, consociationalism and the legality of mixed tribunals, utilization of this law to protect the Kissinger-Assad military intervention and the STL's ruling that Lebanese law (and all other law) will now be (and always has been) read in conformity with international provisions. One can only imagine the use this last provision will be put to and by what power to justify intervention in Lebanon in the future, but a cursory comparison with English law in chapter six demonstrates that this Pentarchy member certainly does not intend to read its codified law in line with international provisions for *aggression*. Other contributions to knowledge can be summarised, in no particular order, as follows

- Elaboration of processes of *active and spontaneous remembrance* and relation to the *clientelist and sectarian nexus of violence*.
- Identification of *central theory-practice contradiction* of ICL: Ending Impunity.
- STL complicity in elite monopolisation of memory: *ideology of amnesia*.
- SAR as both complementary *and* rival colonialism to that of the west: *U.S.-Syria historic bloc* (Assad and Kissinger) colonial language of "tutelage" as synonym for *colonial occupation*.
- CDA of Ghazaleh and Hariri recording, formal text features support contention of antipathy.
- Importance of *dissonance and relativism within the consociational frame*.
- Presence of *false universalism* as key indicator of future conflict: 1860 inclusivity vs STL exclusivity.
- Distortion of communication regarding STL funding.
- Model of Legal politicisation: *Show Trials, Authoritarian Selectivity, (II)liberal selectivity*.
- Theorisation of move from *political power to methodological power* in ICL.
- STL emergent from pre-existing internationalised discourse of conflict and violence.
- Identification of, and proposals for overcoming, *the consociational paradox*.
- Continuity in ICL and world order: pentarchy of great powers with sovereign non-intervention, legally differentiated sovereignty for non-pentarchy, executive domination of the judiciary, access to justice reflective of prejudices and interests of the pentarchy, deference to local class structures.
- Change in ICL and world order: From Domination to Hegemony.
- Mixed or hybrid tribunals correlated with colonial domination in the Lebanese historical experience.

- Principal backers of both 1860 intervention and the STL *largely responsible for crises which necessitated them* through their regional imperial aggression: Napoleon in Egypt and British and French proxy conflict, George W. Bush in Iraq.
- STL no longer represents the constellation of power at the UNSC which gave rise to it.
- Consociationalism has moved from colonial solution to neo-colonial problem. Both imposition and override a function of pentarchy intervention.

The research process

One of the most gratifying aspects of conducting this research was finding, adapting and applying Norman Fairclough's CDA to conduct analysis of transcripts. One reads meta theoretical and methodological arguments about the necessity of empirical, interpretation and explanatory modes of analysis but until one is doing it you cannot really know these works in practice or how they imply each other. The most useful aspect of the CDA was how it provided a rigorous and empirical mode of engagement with this data. This, more than anything else, is what allowed this author to make the claim that this was a scientific endeavour. Having coded this data, clusters of formal features and anomalies emerged and became visible on the page and were often correlated to portions of text in which a difficult topic emerged.

As an example, this happened when the prosecution council Mr Cameron utilised a modal auxiliary verb *may* to politely ask permission from Jumblatt to ask him questions regarding the largely Christian movement, Qornet Chehwan. This might sound like a small thing, but this represented a significant anomaly and a break in the pattern of questioning. Using qualitative data analysis software, Nvivo, allowed me to code such phenomena and view these anomalies more readily. This was similarly so in Jumblatt's answer to Cameron's question, which featured overwording of the positively valued vocabulary *excellent*. Again, backgrounded against the patterns of coding, this anomaly was notable.

As per the CDA phases, interpretation played a central and unavoidable part, but, thanks to the empirical grounding of the descriptive coding of formal features, interpretation was anchored and scientifically driven, not free floating. Only once clusters of phenomena were highlighted could a rigorous interpretation begin. This interpretation was dependent on the historical and conceptual background laid out in chapters one and two. Only in this context could this author identify that these empirical clusters of formal textual features were occurring whilst Jumblatt's relations to the Maronites were raised. The CR insight that meaning is "an intransitive dimension of reality exactly as is molecular structure" (Lopez & Potter 2001, p. 13) which elevates interpretation to a scientific

activity became clear at this point. Interpretation is not simply a matter of subjective opinion, but, is a judgementally rational activity related to the intransitive world in which we can be more, or less, correct. The attachment of this process to systematic empirical observation and contextual explanatory analysis, helps ensure interpretation is not simply arbitrary or subjective.

Another way in which interpretation became scientifically rehabilitated was through observation of the process of *coherence* through this CDA. According to Fairclough, coherence is achieved when formal textual features interact with the MR in a participant's head to create meaning. Often this is automatic, especially if one is in a familiar cultural context. However, in some situations, the ideas and formal features communicated are not common sense and require a more active inferencing on the part of the participant (or analyst). In this research, this author found that there were instances where their cultural difference meant that, what a Lebanese might find common sense and coherent, this author was having to infer. This turned out to be beneficial. For example, in a Lebanese newspaper article in which Patriarch Nasrallah Sfeir was reported to have made "a gesture of clear solidarity with Jumblatt" through an injunction "to rise above grudges, revenge, and pettiness" the inference that this was a statement of solidarity was not at all obvious from the formal features *prima facie* (The Prosecutor versus Ayyash et al. 2015b, p. 16). Only by actively inferencing that grudges, revenge and pettiness were a *euphemism* for war crimes, crimes against humanity, and ethnic cleansing, could this statement be interpreted as a statement of solidarity. Interpretation was dependent on the coded formal features of *euphemism*, but also on the recognition of the gap in meaning between an alleged statement of solidarity and an apparently general injunction to eschew grudges. It was nice to experience how the things this author had read about in theory started to occur in this research practice.

The abductive process of research and the historical and multidisciplinary approach lead to a very important discovery, that of the 1860 intervention in Syria. Historical comparison adds strength and weight to insights regarding process and structure which have been occurring for a long time. The recontextualization of the discourse analysis in this way was very powerful and useful for me in generating insights and conclusions critical of the standard chronocentric view of IR and ICL.

Limitations and avenues for further research

Avenues for further research are manifold and extend in multiple directions, theoretical and empirical. One avenue for further research is to apply the CDA method wholesale to ICL literature on the STL to develop some insights which this author felt were inklings, but which need further empirical

verification or falsification, for example the presence of tautological or semantic argument in the shoring up of legitimacy. This might be best approached by combining with a quantitative approach which addresses the “structure” of the data, journal types, type of author and so on. Utilisation of Nvivo allows easier combination of these types of method in one project. This author is also interested in the genealogy of the concept of “tutelage” in colonial discourse which requires further historical and discursive analysis and verification. This author would also like to write a post-Marxist theoretical article of the complementarity of Robert Cox’s Critical IR theory and CR.

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