

On Lawyering in Lebanon

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A law office is costly. There are staff and lawyers to be paid, and constant need for quality oversight which distance, despite the internet, does not allow. There are considerations of a Freudian nature, in my case I suppose, in addition to profitability, that keep me running it three years of exile and 10,000 miles removed.

Several aspects of lawyering are shared by Lebanese lawyers with the profession the Western world over. Part of the work is consultancy work, and part of it is in-house, especially with commercial companies and banks. The mainstay, of course, is litigation. Special to Lebanon is the Third Worldish aspect of delays and political interventions. I have reached a content of the mind over the concept of 'Third World'. I define it as a world where the rule of law is structurally inadequate. In my *Introduction to Middle Eastern Law* (Oxford 2007), the specificity of legal work in the Middle East is described as one where 70-80 per cent depends for the success of the case on factors that are not purely legal. This is a staggering figure, and characterises the Third World. Despite the disappearance of the Second World, I believe 'Third World' is a useful, correct, telling concept, with a structurally deficient rule of law at the heart of its definition. This requires elaboration, and I am curious of the experience of colleagues in our neighbourhood and elsewhere to test the proposal that the world is divided in two: one where the rule of law and the judiciary are adequate, and a Third World where they aren't.

I have also underlined in my *Introduction* that the way to the rule of law in the Middle East is political, not legal. Regardless of politics, which is antithetical with law for our purposes, here are a few characteristics of lawyering in my experience:

- One special dimension of work in Lebanon is language. In Lebanon, Arabic is inevitable in one's work, and while the quality of Arabic often leaves a lot to be desired, lawyers cannot operate without it. It is hard to manage without foreign languages, however, and not knowing French, and especially English, is devastating.
- Another dimension is the dominance of the solo practitioner or family law firm. If business is serious, one is not quite a solo practitioner, or the owner of a family law firm: in many ways, associate lawyers at the firm depend on the manager or owner bringing in the work. Their contacts are often not sufficient for that, and their own pool of clientele remains theirs, but they help with the more important cases that the firm handles. This is a very specific Lebanese structure of the business, and some Lebanese firms have moved away towards a partnership model Western-style. I am not sure it works well in these contexts, and that the one or two dominant owners/managers/partners operate in the neutral, capitalist sense one finds in the West. I am reluctant to see this as a cultural trait, but it might well be the case. Even banks in Lebanon are mostly family-based, so it may not be totally surprising to see the pattern reproduced in law firms.

- This also explains the difficulty of billing. Hourly billing does not work easily in Lebanon, and I had to adjust because of the dominant pattern in the West. It is hard to resist the world trend, especially when one deals with Anglo-American clients. But hourly billing does not work well, in part because clients in Lebanon are not used to it, and because the volume of work does not always warrant it. Procrastination in a Third World system means hours waiting for a few minutes in court repeating banalities. How does one bill a client for just waiting as the judge yawns his docket away ? I recall a case that I had at heart, an old lady as a tenant being evicted, and I made a point of standing before the judge to litigate her case -- there is a right to make an oral argument in any trial. I recall the judge's bewildered look at a lawyer with a reputation standing at the bar for a tenant-landlord case, after waiting for a couple of hours for the case to come up. Interestingly, recent trade news in the profession abroad shows the crisis in the billing system. There is no way for lawyers, even the best lawyers in the Arab world, to charge one thousand dollars, even half of such sum would sound preposterous. A proportionate, success-based rate with variations on the retainer continues to make more sense both for lawyers and clients. Again, this is a culturally difficult product to pass muster across frontiers.

- The nature of the work in Lebanon, in my experience, is unusually broad. In addition to international human rights law, -- more precisely litigation related to international criminal law, which is an unusual trait of my own practice, with direct involvement in cases against leaders in Iraq with the Indict movement (and the sorry developments of the Iraqi High Tribunal since), Israel with the indictment of Ariel Sharon in the Sabra and Shatila case, Libya with the arrest warrant against Mu 'ammar Qaddafi in the Musa al-Sadr case, and the Hariri Tribunal, -- the practice covers a large array of cases and consultancies conducted in several languages. When I returned to Lebanon in 1995 to take over the family firm, I had a strong sense that criminal practice required a talent and an experience which are special, including being on the terrain with investigative judges and prosecutors. I wasn't keen to do that, considering the quality of the personnel one deals with, and would at first suggest to clients that the office would not handle those cases. I had to reconsider, especially when it came to a friend who was wrongly arrested, and I could not avoid stepping in. Often cases will have a criminal component in the system, and it is hard to shut one's work off irremediably to criminal law practice. So the lawyer, and his small law firm -- small by American standards, an office with about ten attorneys and staff is a medium- to large-sized firm in the Middle East -- which is the most common vehicle in the trade, have to confront all kinds of specialties, and are required to rise to the occasion: I had cases in commercial arbitration, exequatur, inheritance, real estate projects, tax disputes, tenants-landlord eviction, tax-sheltered companies in territories I could not put on the map, and of course run of the mill company law. I even had a case in aviation law that found me perusing specialized journals in London libraries. I must say I have found these cases particularly enticing, and their sheer variety, if time taxing, a particular joy lost to the specialised and narrow fields Western practitioners tender to.

- Now on the more personal side of why I keep a law firm in Beirut. The lawyer has an extraordinary non-violent weapon at hand: to lodge a case.

The leverage afforded by a law office is immense. The financial offshoot somehow follows, but this is not the most important dimension: initiating an action is. I would feel toothless without it, in so far as law is the most rewarding weapon for a pacifist, or at least someone who believes that peace deserves its own non-lethal tool to advance civilization. This is part of a general philosophy of non-violence which sees its crowning force in the absence of the death penalty, even if it accepts that the monopoly of violence in the state is only useful to ultimately bolster the contempt order for the judge. There is a personal coherence there which is essential, this is why I am reluctant to abandon the courtroom, to wit, the possible resort to the courtroom afforded by one's law office in Beirut.

Here is the latest example: I have been toying with an idea which would not be possible without such a tool, that is suing the Speaker of Parliament, indeed all the Members of Parliament, for not meeting over the past two and a half years. The argument is simple: we the ordinary citizens pay for their salaries, and they do not meet to discharge their duties. The obstacles are evident: the majority is prevented by the Speaker from meeting, so the action would be directed first and foremost against him. Taking on the Speaker, or any MP, is not a light task, and, without further research, I can't think of a precedent, domestic or international, for such an action. Nor is there, it is true, a precedent known to modern parliamentary democracies where MPs fail to meet consistently over two years. There is also the problem of immunity, although one could make the case of an immunity for parliamentary action, and not immunity for failing to discharge one's duty. We had a good laugh last week when I discussed it with two MPs of the majority: my argument was that they should actually bring an action against themselves. Bizarre as it seems, such an action is not unprecedented in Lebanese recent memory. We have two tragic instances, this time by the pro-Syrian faction, including a general in jail, bringing a case against himself two years ago, and the very Speaker, who has joined criminal action for the killing of MPs on the pretext that they are 'family', while he does not hesitate to visit a head of a state whose security apparatus is suspected by the United Nations investigators of participation in those very killings.

Now what sort of action would that be ? Would it be initiated individually or collectively, i.e. a class action ? Would it be brought against selected MPs, especially the heads of parliamentary groups ? Or collectively, against the minority, or majority, or both ? Against the Speaker, who holds the fort, or the Vice-Speaker, who should step in under Parliamentary rules when the Speaker fails his duty ?

And then, what sort of case ? An administrative case, for *abuse of power*, more technically *recours en excès de pouvoir* ? A civil one, for recovery by the tax paying citizen of some thirty months of receiving a salary for not doing one's job ? Or an injunction Owen Fiss-style ?

Third World indeed...

