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Short step from rule of law to law of jungle

by Chibli Mallat

The arrest of a former governor of Beirut comes in the wake of a troubling series of judicial moves against people who are close to Rafik Hariri. Having been the first to suggest that a change in the premiership was useful for the country, as it was necessary for the presidency to rehabilitate the principle of alternation which is crucial for the democratic tradition in our country, it might come as a surprise that I take the present stand.

Further, the protection of the rule of law is the most important message of the current government, and it can only be lauded and supported. Still, it is high time to consider a stop to a McCarthy-style witch-hunt, for our country is moving away from the rule of law to a rule by law, and nothing can be more destructive of the former than the latter.

The arrest of Nicolas Saba comes as the latest in a series of judicial moves which focus on people who are close to Hariri. The legal grounds for such moves may be, in strict law, correct. This, however, in a country like ours, cannot be considered in the absolute. Lebanon was left reeling by the law of the jungle for the two decades up to that day in October 1990 when the guns went finally silent, except for the war in the south.

Lebanon, with all the pride we have in it, is not Switzerland, and use of texts on the books must be done with a sense of perspective, lest we see the destruction of trust in our judiciary.

Whether in Lebanon or in Switzerland, there are dozens of laws on the books which could be applied, but which are not, simply because the country would go under in judicial terror. Imagine an investigation into enterprises on the basis of the lack of respect of security or tax constraints which abound on the books. Judges and investigators would simply collapse under the weight, especially if the criminal penalties that sometimes accompany these texts were to be enforced as a matter of course.

The balance is not easy: From the law of the jungle to the full-fledged rule of law the greatest difficulty is in the measure of application. In that particular instance leading to the jailing of Saba, the charge is laxity with the appropriation of waterfront areas to a private entrepreneur incidentally one of the most remarkable and dynamic persons in his protection of Beirut's cultural heritage. A mere look at our coastline from Sidon to Tripoli suggests that singling out the Saba case cannot be right.

What we are witnessing here is a heavyhandedness that is not commensurate with the stature of the people arrested, nor of what should be procedurally used in criminal cases, especially with regard to the powers of the prosecutors. Coming on the heels of eight such arrests, all close to the former prime minister, there are reasonable grounds to be worried about motives and fairness.

No one is above the law, the message says. Fair enough, but the age-old problem of who is being targeted as opposed to who is being forgotten and left alone is not an idle question. Nor is the gradation in the way the law is being applied to be lightly overlooked: There are several measures which should be taken before the state resorts to putting in jail people whose political positions can never be neatly detached from their actions or omissions.

As a measure of contrast, it is in present-day Lebanon beyond the pale to question current and former ministers under the criminal process despite countless exactions, ranging from ignorance of the rights of prison inmates to collusion with quarry owners who have defaced our country to large-scale instigation of sectarian killings. Not pursuing political officials may be the right first attitude, for there is a political process which should be allowed to run its course before high drama in the form of arrests and imprisonment should be contemplated.

Similarly, the attacks against people who were close to Hariri cannot start with criminal procedures, for they must belong to the stricter realm of political invectives for which the adequate fora in the country are fortunately numerous. If this fails, after a drawn-out process, fines are available. Then, and only then, should the heavier hand of the law in the shape of arrests be considered, and this ought to be done with caution attentive to symbolism and equality.

The witch-hunt has never served the rule of law. It should be stopped, and most of those arrested released on bail, lest the country goes back to a different law of the jungle, in some ways much more pernicious than during the ugly days of the militias.

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