

OJ Simpson - could it happen here?

by Chibli Mallat

When I discussed this with my class yesterday, we decided the simple answer is 'no'. The trial saga of OJ Simpson could *not* have happened in Lebanon - simply because, following the French system, *le pénal lie le civil*, the criminal trial binds the civil trial.

The American system is more decentralised and more compartmentalised. The OJ Simpson case demonstrates the severe separation between the civil and criminal law suits under Californian law.

It resulted in the apparently absurd decision of Tuesday, which considered a person responsible for "wrongful death" of the victims, while the same person had been six months earlier found not guilty of their violent death. These were two diametrically opposed judgements of the same event.

In defence of the American system, one should point out that the argument rests in procedural details, some of which make sense when examined more closely. In a criminal trial, jurors must reach a verdict on the criminal guilt of the accused "beyond a reasonable doubt", but civil jurors face a much lower burden of proof.

They have to decide whether the defendant was responsible for "wrongful death" based on "a preponderance of the evidence". Further, unlike the criminal trial, where a unanimous verdict must be reached, just nine of the 12 jurors in a civil trial have to agree to the verdict. They can condemn the defendant, if considered guilty by that majority, only to pecuniary reparation. They cannot send him to jail. Simpson will be much poorer, but he will not find himself behind bars.

The possible rationale behind the difference is that more compelling evidence is needed for a criminal charge. A person, after all, is innocent until proven guilty, and proof of criminal guilt should be weighty in a society which believes in the natural innocence of a human being. When matters are considered on the civil plane, where jail - or capital punishment, as in some US states but not California - is not at stake, the balance of justice requires a less strict burden of proof.

Lebanon has adopted a different set of values. The criminal investigation is so important here that it is not reasonable to contemplate a different civil result than the one the criminal trial reaches. This legal logic contrasts completely with the OJ Simpson case, where a person is held responsible for civil damage resulting from his or her act, while, at the same time, judged innocent of the criminal damage resulting from the very same act.

On balance, I suspect the arguments of logic and the seriousness of the criminal trial should encourage Lebanese law-makers to stick to the status quo. The apparent absurdity of the OJ Simpson trial - and the situation is further complicated by a third trial which has judged him fit to have custody of his two children by his murdered wife - is a further reason not to separate too sharply the civil and the criminal processes.

Simplicity and fairness demand the 'consolidation' of charges and trials, so that the accused faces justice only once. This might be defended by a more extensive understanding of the famous 'double jeopardy' clause of the American constitution, which prevents a person from being tried repeatedly once arrested.

Nearer home, it gives some food for thought for a disturbing phenomenon, which bears some similarity with the OJ Simpson saga: the repeated charges and trials of Samir Geagea. He was arrested for a crime for which the court later ruled he was not guilty, while the same court sentenced him to life imprisonment for a crime of which he was charged well after his initial arrest.

But there are many other differences between the Simpson and the Geagea trials.

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Opinion
TheDailyStar, THURSDAY, JANUARY 6, 1997