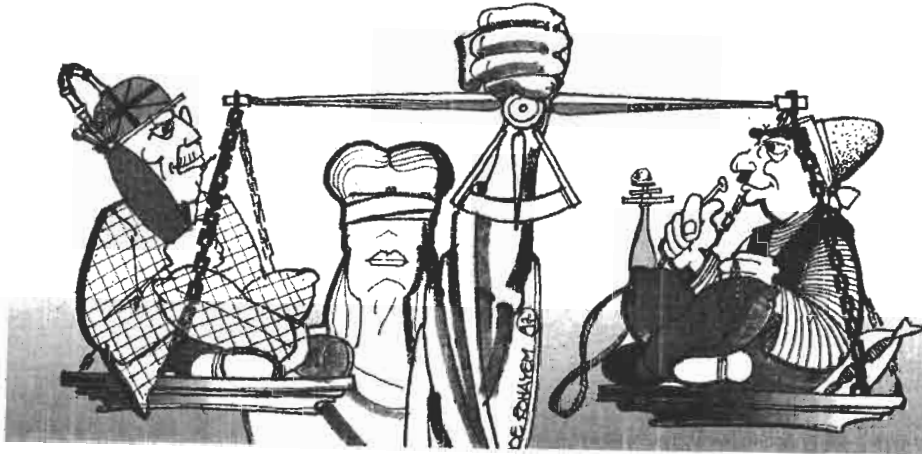


# dossier on two legal systems



## Comparative benefits:

**T**oday's law page is dedicated to the general structure of the English and Lebanese legal systems, writes *Chibli Mallat*. This treatment offers an up-to-date appreciation of the court structure and the main divisions in the legal professions.

Together, judges and lawyers operate the immense machinery which produces the rule of law – and, one hopes, justice – in their respective countries. There are several benefits from such a comparison.

First, the legal structure and the fundamentals of the two systems offer a blueprint which is universal in each case: England was the point of departure for what is known as the common law, and, as the British empire started expanding in the sixteenth century to slowly cover much of the planet, many countries in the world have adopted the common law, which has survived colonialism.

The so-called "common law family" is now the most widespread legal system in the world, from the United States, Australia, India, Pakistan to half the jurisdictions of Africa.

Lebanon offers a microcosm of the other

great family of legal systems: the civil law system. French law is dominant in the country, and lawyers refer as a matter of course to French legislation and judgments. At the same time, the Lebanese system is unique. Until the end of the 19th century, it was dominated by the common law of the region, Islamic law. Some law relating to family matters remains, and the sectarian division in the court system for marriage, divorce, and inheritance, is an offshoot from this legacy.

Secondly, the influence of judges has increased significantly. This is currently happening across the world, including in the civil law countries. A decision by the French Court of Cassation featured prominently across several columns on the first page of *Le Monde* last week (inconceivable a few years ago), and the Italian public swears by its judges, who are the only officials who are taken seriously in a country riddled with corruption.

In Lebanon, a day rarely passes without some political grouping reaffirming its trust in the judges and the judiciary.

Increasingly, judges are perceived as the

main guarantors of the rights of the citizen, and the respectable protectors of the fairness of the political process as a whole.

There is, however, a crisis developing within both systems. We shall examine this crisis soon in the *Daily Star* with a depiction of a criminal trial in London and one in Beirut, in special contributions to this law page. This crisis is wider than the problems in the penal system, and a major review has just been completed by the Master of the Rolls, Lord Woolf, to overhaul the civil system in England.

The review, called *Access to Justice*, was released last July, and will introduce one of the most significant changes in civil procedure since the great English judicial reform of 1875. Both the comparative method of Lord Woolf's team and its substantive conclusions and suggestions should offer ample food for thought to the much-needed reform of Lebanon's clogged courtrooms.

Before one embarks on reform, however, the basics need to be stated in as clear a form as possible. The articles on this page should be of assistance.

## Court outlaws tribal practices

The customary use of young women as compensation payment by tribes in the mountainous South Pacific nation of Papua New Guinea is illegal and must be abandoned, according to a national court judge.

National court judge Salamo Injia ruled against a tribe's decision to give 18-year-old Miriam Willingal to another tribe as part of compensation for a shooting death. Injia said the practice was "unlawful, unconstitutional and repugnant to the principles of humanity".

"If their customs and practices conflict with national laws, then they must give way to our national laws," Injia ruled on Monday.

The court in the remote mining town of Mount Hagen in central Papua New Guinea heard that Willingal and another woman were given as compensation, along with money and pigs, after her father was shot dead by police as he protected a wanted man.

Willingal's grandfather blamed the April 1996 murder of his son on Willingal's tribe and demanded compensation.

Willingal, a student, was ordered to marry a man from her grandfather's tribe, but she refused. It is not known what happened to the other woman. Willingal's case was taken up by a local human rights group after details of the compensation deal were published in a local newspaper and Willingal was freed by her grandfather's tribe.

Papua New Guinea remains one of the world's last great mysteries, with thousands of tribes, speaking hundreds of different languages, scattered over its mountainous terrain.

While 97 per cent of the population are Christian, superstitions persist in remote areas, where most people live in primitive conditions and where bigamy is widespread. — *Reuters*

## Govt criticised by child rights group

Children's rights activists criticised the Sri Lankan government yesterday for deporting a Swiss national accused of molesting boys, saying Western countries are too lenient on child abusers.

"Western prisons are luxurious compared to Sri Lanka's. They would get a much tougher punishment here," said Kalyananda Tiranagama, director of Lawyers for Human Rights and Development.

Victor Baumann was taken into custody upon his return to Switzerland, Zurich's district attorney's office said. Exact charges against him are still to be decided.

Last week, another Swiss man became the first foreigner jailed in Sri Lanka for sexually abusing children in the island nation, which is a popular destination for tourists seeking sex with children.

Armin Heinrich Pfaffhauser, a 58-year-old native of Zurich who has lived in Sri Lanka for over 25 years, was convicted last week of having sex with two boys aged 11 and 12 in 1995, and sentenced to two years in prison.

Baumann, 53, was arrested on October 16 after police raided his home in Negombo, a town on Sri Lanka's west coast, and found three boys aged 11 to 16 in his company.

A local magistrate asked police to prepare formal charges, but Baumann was deported before the case could proceed.

Sri Lankan president Chandrika Kumaratunga announced on Monday that she is establishing a Child Protection Authority and drawing up a plan to curb child labour and sexual abuse of children.

Last year, Sri Lanka toughened its laws to discourage foreign pedophiles, raising prison

terms to a maximum 20 years for pimps and their clients. But critics have accused law enforcement agencies of being lax. Estimates of the number of boy prostitutes in Sri Lanka range from 5,000 to 30,000. — *AP*

## Rifkind attacks China's plans

British foreign secretary Malcolm Rifkind said yesterday that Britain opposes moves to roll back human rights laws in Hong Kong.

"We share the view of the Hong Kong government that any proposals to repeal any of the human rights ordinances in Hong Kong would be a retrograde step," Rifkind told reporters after a meeting with Singapore foreign minister Shanmugam Jayakumar.

China, due to take over Hong Kong from British rule on July 1, has said it plans to roll back some civil rights after the handover. The move has triggered strong protests in Hong Kong and prompted the international community to lodge official protests with China.

"There's been concern expressed right across the international community, in the US, in Europe and elsewhere, and we hope that the Chinese side will give very serious consideration to these concerns and reflect on the implications of them," Rifkind said.

Speaking on his arrival in Singapore for a series of meetings between Asian and European foreign ministers, Rifkind declined to elaborate on what he would stress in his talks with Chinese foreign minister Qian Qichen on the sidelines of the Asia-Europe meeting in Singapore on Friday.

But he appeared to rule out a role for the World Court in disputes regarding Britain's handover of the colony to China on June 30. "I want to have good and constructive discussions with Mr Qian Qichen," he added. — *Reuters*