

Comparative Study Between the Omani and the British Legal Systems in Terms of Judicial Independence and Separation of Powers

Rashid H.S. Al Junaibi

Brunel University - London

Abstract

The legal system of Oman is a junction of the locally inherent religious legal norms and foreign influence of the French and British legal systems. The legal documents of the country, such as Constitution Articles 60 and 61, may claim the judiciary to be independent, yet the status of Sultan Qaboos as the leader of the executive branch, his role in legislation, and his life demonstrate that the Middle-Eastern state stands in sharp contrast to the UK, where the SOP has been in effect since at least 1701. Considering the cross-branch intervention of the sultan and the resultant cases of rights breaches, Oman may be said to be in urgent need of domestic reforms, including power reform, the creation of a regional prosecutorial body, and the enforcement of international judicial independence and conduct resolutions. Still, as the willingness of the sultan may stand in the way of reforms oriented towards SOP implementation, Oman may require the involvement of foreign institutions.

Keywords: comparative study, Omani, British, legal systems, judicial independence, separation of powers

Introduction

The Omani and British Legal Systems in Terms of Judicial Independence and Separation of Powers

Overview of the Research

Often, people hear their political regimes claim their countries to be judicially just. However, this may not necessarily be as claimed. In Oman, legal documents, such as the national constitution, reveal how the separation of powers (SOP) is a guiding principle. Still, a cursory inspection of the executive, legal, and judicial branches reveals the influence of Sultan Qaboos on the legal branch. The legal system of the country is a unique fusion of Sharia law and the legal traditions of France (as a civil written legal system) and the UK. The separation of powers is a concept regarded as a critical pillar of democracy.

Oman, a Middle Eastern state, may not facilitate democracy due to its unique mentality, gravitating towards collectivism and strong centralized leadership. With this, it may come as no surprise that the country has no actual separation of powers, unlike the UK, as the sultan appoints judges, commutes sentences, and even grants pardons, as stipulated in Article 42 of the Basic Charter. He commands important judicial institutions, such as the Supreme Judicial Council, thereby reinforcing his authorities.

The United Kingdom seeks to prevent the accumulation of judicial functions in one institution, as seen in the enactment of the Constitutional Reform Act of 2005, which established an autonomous Supreme Court, independent from the House of Lords. The influence of Sultan Qaboos on the judiciary affects the performance of judges and decisions they make. On paper, Omani Constitution Articles 60 and 61 require judicial independence; however, the state ruler's role in the appointment and removal of judges is crucial. The same cannot be said of the UK, where the branch has enjoyed autonomy since at least 1701, when the Act of Settlement was enacted. As opposed to Oman, the UK has clear rules for judges' removal. The same is true of the prosecutorial process and the responsibilities of judges, which are more outlined in the British judicial context. Moreover, there are process stage overlaps in the countries' systems, such as arrest, investigation, legal defence by lawyers, and appeal. Even judicial institutions such as magistrate courts can be found in the Omani system, which indicates the British–Omani relations legacy.

Religious influence makes its presence known in the availability of Sharia courts. Taken together, Omani courts show great judicial diversity and inclination towards specialization; this order and attention to detail do not add to court independence, as each institution finds itself under the sultan's influence.

The ultimate proof positive of this conclusion is the state of civilian and suspect/defendant rights. Sultan Qaboos has enforced a number of decrees that provide the judiciary with the tools to make the respective decisions, which affects civilian rights to free speech, expression and assembly, and the rights of suspects to aggression-free, grounded arrest, and access to lawyers. His intervention in the judicial process via the legal body seems motivated by his desire to retain power. To *reverse* the situation, the sultanate needs a mixture of domestic and foreign measures to reshape the judicial landscape and keep authority figures separate from branches where they do not belong. Thus, unlike the UK, Oman has no real separation of powers due to the state ruler's interference in the legal branch and judicial proceedings, and requires measures.

Methodology

Primary data enabled the introduction of original sources, such as the penal code and national constitution, conveying the essence of legal provisions accurately, while secondary data allowed presentation of the views of subject-field experts, who performed their analysis and interpretation of the SOP issue, which provides opinion-based value. To collect data for this extensive research, databases were searched to gather relevant reports, books, governmental websites, and other sources. The project will use the systematic literature review method.

Once formulated, the research question made it possible to study what search engines could offer regarding factual evidence for the subsequent shortlisting of the most relevant sources, and extraction of their relevant information.

The formulation of the research question led to the choice of the exploratory research method, as the task involved evaluating judicial independence in Oman and the extent to which it helps guarantee the rights of suspects and law-abiding civilians.

The research question will also narrow the range of methods by necessitating the choice of the case study technique, which will help in studying the separation of powers in Oman.

Research Value and Its Contribution

There seems to be a particular research gap in the form of the deficit of the studies, which made it necessary to list the most important rights of civilians and suspects, identify their presence in state legal documents – such as the constitution, penal code, and royal decrees – and gather the facts of SOP violation or cross-branch influence by the royal executive branch.

On the other hand, such evidence-backed analysis of multiple human rights makes a contribution to SOP research in its own right. Comprehensive examination of search engines and databases does not return any results associated with the comparison of the legal and judicial systems of the UK and Oman; this research will provide value in terms of the presentation of detailed information on the judiciary and legal frameworks of the states.

Overall, the research of topics related to power and state mechanisms in the Middle East, whose political landscape is heavily dotted with dictatorial, centralized regimes, is always a difficult task to complete with regard to finding sources of information on delicate legal and judicial aspects. The problem is often the availability of sources detailing the judicial nuances of Oman, which may be an indicator of poor transparency, rationalizing the lack of proper separation of powers.

Research Question

Compared to the English legal system, how does Judicial Independence in the Omani Legal System, which is rooted in the country's constitution, contribute to protecting the rights of citizens, and what can be done to ensure this protection?

Aims and Objectives

1. Examine the role of Articles 60 and 61 of the Constitution of Oman in promoting judicial independence.
2. Discuss how the separation of powers in the Omani legal system contributes to protecting the rights of citizens and influences fairness and effectiveness in judicial judgements, with focus on suspects' rights.

3. Consider what can be done to guarantee that the independence of the judiciary in the Constitution of Oman leads to fulfilling suspects' rights.

Background and Literature Review

Executive, Legislative, and Judicial Branches in Oman

The chief of state tops the executive branch hierarchy, acting as both the sultan and prime minister. Sultan Qaboos bin Said Al Said assumed the position of sultan on 23 July 1970, assuming the position of prime minister exactly two years later. The monarch appears to be both the chief of state and head of the national government. Cabinet appointment is the prerogative of the state ruler. Since Oman is a monarchy, there is the institution of succession; thus, the Ruling Family Council chooses a successor from the extended family of the sovereign. The Defense Council will relay a predetermined successor, as chosen by the sultan, if the Family Council falls short of reaching a consensus three days after the ruler passes away or becomes incapacitated.

Influence of the Legislature in Oman:

The legislative branch is bicameral in Oman, composed of Majlis al-Shura (the consultation council) and a lower chamber consisting of 84 seats, occupied by members elected through a popular vote for a 4-year service period, which implies legislation drafting, in complete subordination to the ruler. It exercises its powers through four main bodies: the Chairman, the Council office, the standing committees and the Secretariat General, along with Majlis al-Dawla (State Council), or the upper chamber, consisting of 71 seats occupied by sultan appointees who hold advisory power.¹ The powers granted to this Council are part of the general policy of progressing in a series of stages to address important changes taking place in the sultanate. The Omani ruler is the ultimate authority on the Sharia Ibadite legal code as well as state legislation.² Based on Article 29 of the Council of Oman's Law, referring to Article 58 of The Basic Character, which states the parliament (Council of Oman) is composed of the members of the State Council and the consultation council, if the public interest requires so, the sultan can issue and approve laws without their preliminary review by the Councils, which have no power to initiate legislation.³

The judicial branch is formed by the Supreme Court. Referring to Article 60 of the Basic Law, the budding civil court system, administered by region, has judges practising sharia and secular laws.⁴ Different bodies and judicial officials handle different matters. The Imam and the qadi/judge are involved in justice administration. The qadis have the judicial power to hear disputes between people, while an inter-tribal disaccord requires settling by the Imam. Although the qadis are entitled to condemn to death, their order will not gain legal power unless approved by the Imam, then the Sultan.⁵ Qadis/judges represent a part of Sharia courts that coexists with secular institutions, such as magistrate courts established by royal decree in 1984.⁶

Oman Legal System as a Mixture of Religious Justice Traditions and Foreign Legal Inclusions Seemingly Motivated by Amicable Bipartite Relations

Judiciary Formation: Branch General Overview

It was only after the father of the current Sultan of Oman, Sultan Said bin Taimur, had been overturned by his son Qaboos that judicial reform efforts began. A bloodless British-facilitated coup ended the reign of Said, which spanned nearly four decades between 1932 and 1970. The country has since adopted a range of codes associated with tax, labour, criminal, and commercial laws. Personal status, however, remains unlegislated. Efforts to regulate sharia courts did not succeed, which resulted in the foundation of judicial tribunals and separate courts to enforce state law from the 1970s. Presently, there are both state and sharia courts. The former applies the laws endorsed by a royal decree, while the latter applies the

¹ The CIA World Factbook, 2014 (Skyhorse Publishing Inc, 2013) <goo.gl/tf3ZQF> accessed 12 November 2017.

² Joanne O'Brien and Martin Palmer, *The Atlas Of Religion* (University of California Press, 2007) 61 <goo.gl/dTNBBH> accessed 12 November 2017.

³ Basmah Al-Kiyumi, 'The Omani Constitution: A Critical Analysis' (MPhil, The University of Manchester, 2011) 152 <goo.gl/2XkqqT> accessed 12 November 2017

⁴ The CIA World Factbook, 2013.

⁵ Hussein Ghubash, *Oman – The Islamic Democratic Tradition* (Routledge, 2014) 41 <goo.gl/WwzXBt> accessed 15 November 2017.

⁶ Fanack, 'Legal System' (2016) <goo.gl/vbZXSq> accessed 15 November 2017.

Ibadi/Islamic law within an increasingly restricted area of judicial competence. The sultan reserves the ultimate appeal tool. The sultan introduced a consultative council called Majlis al-Istishari in 1981; appointed members shape its composition. In 1990, the body was replaced by a Majlis al-Shura, which the ruler staffs with members selected by the Sultan. The adoption and recommendation of amendments by a two-thirds majority, and legislation and state development plans review are the outcomes of new Majlis empowerment.¹ The role of the judiciary system is to interpret and apply the law.² If the legal system creates the legal instruments of justice administration, it is rational to trace the nature of the legal system of Oman, which has been influenced by overseas legal traditions.

Islam Legal Influence

The tribes of Oman embraced Ibadi Islam beliefs in the 7th–8th centuries.³ Islam seems to have lost its prevalence in the legal framework of Oman to some extent, which indicates secularization. According to Price and Al Debas (2009), Oman was the last member of the Gulf Cooperation Council to reform its judicial branch to adjust it to the dictates of its Basic Law. In the aftermath, a ternary courts system supplanted the earlier separate Sharia and criminal and commercial courts. The country has limited the competence of the Sharia courts to personal cases involving Muslims, meaning most criminal and all civil cases were no longer their jurisdiction. The general courts of appeal now receive appeals against Sharia court decisions.⁴ This notwithstanding, the role of Islam in Oman and the Middle East has been too potent for the religion to lose its grip on the local legal system.

Islam is a complete way of life, inseparable from other routine concerns of Muslims. Consequently, faith and culture and religion and politics are the same for Islam followers. In the Muslim world, there is no separating church from state.⁵ Thus, it is no surprise that religion has dominated the judiciary for a long time. Sharia or Islamic law principles inform commercial, civil, and criminal codes.⁶ The legal system of Oman rests for the most part on the Ibadi school of Islam.⁷ The Sharia traditions and customs can still be said to have guided the decision-making process of the judiciary.⁸ Based on Sultan Decree 101/1996 and Article 2 of the constitution of Oman, Sharia shapes the foundation for Omani legislation. The Family Law or Personal Statute Law, enforced by Royal Decree 97/32, codified Sharia provisions. Sharia court departments in the civil court system oversee personal status cases. A 2008 law determines that the testimonies of both sexes enjoy court parity. While the criminal law is a fusion of English common law and Sharia, the commercial law of Oman rests mostly on Sharia. Article 5 of the Law of Commerce defines the Islamic law as paramount in the cases of conflict, silence, and confusion.⁹ The gradual secularization of the legal system of Oman may be an outcome of the waning influence of Islam, and the growing influence of foreign legal traditions, possibly due to the trend of Westernization that comes with world globalization.

The British Trace

The region had not been subject to the forays of Europeans until the 16th century, when the Portuguese entered what is modern-day Oman. These foreigners were driven out in 1650, after which Omani power in the Indian Ocean and Gulf regions began. By the end of the 1600s, the Omani Empire integrated Zanzibar and Bahrain. In the century to follow, the decadence of the mighty state commenced. Country leaders chose to sign protection agreements with the British in 1798 and 1800, with the increasing interest of the French in the Indian Ocean. Eventually, a range of agreements and treaties brokered with Britons in the 19th century placed Oman under rising British influence, while the year 1891 formalized the

¹ Oman Criminal Laws, Regulations And Procedures Handbook – Strategic Information And Basic Laws (International Business Publications, 2015) 108 <goo.gl/x1S1qn> accessed 16 November 2017.

² Roger LeRoy Miller and Gaylord A. Jentz, Cengage Advantage Books: Fundamentals Of Business Law: Excerpted Cases (Cengage Learning, 2009) 33 <goo.gl/7UnYEh> accessed 18 November 2017.

³ Oman Criminal Laws, Regulations And Procedures Handbook, 108.

⁴ David Price and Alhanoof AlDebasi, The Development Of Intellectual Property Regimes In The Arabian Gulf States: Infidels At The Gates (Routledge, 2017) <goo.gl/qZBY4C> accessed 18 November 2017.

⁵ Timothy L. Gall and Jeneen Hobby, Worldmark Encyclopedia Of Cultures And Daily Life (Gale, 2009) 752 <goo.gl/Py7ZKX> accessed 18 November 2017.

⁶ 'Oman' (US Department of State, 2010) 3 <https://www.state.gov/documents/organization/160076.pdf> accessed 12 November 2017.

⁷ The Bertelsmann Stiftung's Transformation Index, 'BTI 2016 - Oman Country Report' (Bertelsmann Stiftung, 2016) 11 <goo.gl/R1j2Sd> accessed 22 November 2017.

⁸ David Price and Alhanoof AlDebasi, 2009.

⁹ Oman Criminal Laws, Regulations And Procedures Handbook, 108.

status of Oman as a British protégé. The sovereignty of the Sultanate of Oman and Muscat was recognized after 60 years, in 1951 under Sultan Said ibn Taimur.¹ The presence of British elements in the current legal system of Oman is explainable in terms of the country's role in the ascension of the current ruler; the British brought Sultan Qaboos to power following a 1970 coup.² Currently, British relations with Oman have shifted from alliance-based to relations-oriented towards strategic partnership and commerce.³ It is only logical that the British legal doctrine co-shapes the legal system of Oman following a long period of interaction. As identified by Fanack (2010), the Omani system rests upon Islamic law and English common law. British influence makes itself felt in the presence of specific courts within the branch. For example, the magistrate court system was instituted by royal decree in 1984, which allows it to take over all criminal cases from Sharia courts.⁴

The French Trace

The public law systems in all Arab states, Oman included, were influenced by the legal system of France. These states with written constitutions have experienced the great influence of France as regards administrative and constitutional law, as well as civil codes.⁵ Although Oman entered the 1970s free of any foreign judicial influence, it went on to borrow from the civil law of France, having evolved in the Middle East.⁶ The better part of Oman's legislation shows significant influence from the Egyptian legal system, shaped by the Napoleonic Code.⁷ The code represents the combination of conservatism and liberalism typical of Napoleon, although the majority of basic revolutionary accomplishments, such as the abolition of feudalism, the freedom of religion, and equality before the law were consolidated within code laws. The code made all property rights absolute, including those of the acquisition of the biens nationaux, or confiscated properties. The document strengthened patriarchal power by placing husbands at the head of the household.⁸

The acceptance of French legal traditions and doctrine may be the outcome of cooperation between the states and the non-hostile, respectful attitude of the foreign state. In the 1840s, Oman was at its greatest, politically and commercially, ruling over an immense marine empire stretching from Cape Delgado and Zanzibar on the African coast to the coasts of Baluchistan and Persia. The head of state at the time was Sultan Said, who proved diplomatically active by signing treaties with the USA, UK, and later with France, which had new adjacent possession in the Comoro Islands and Madagascar. After the first deal in 1841, a Treaty of Trade and Friendship followed on November 4 1844, gaining legal power in 1846. Apart from enabling a notable development in the relations between the Reunion and Zanzibar, the deal led to the expansion of direct commerce between metropolitan France and the Omani Empire. The Chamber of Commerce of Marseille facilitated the well-known and successful expedition of the merchant vessel of Oman called "La Caroline". The sultan's representative Hadji Derwich paid a visit to Paris and Toulon, being welcomed by Louis-Napoleon Bonaparte, who was the republic's president.⁹

Upon the demise of the sultan in 1856, the empire came undone, that is, it continued its political and economic existence divided. The sons of the late sultan inherited two parts of the empire. Paris and London vowed to respect the autonomy of the sultanates of Muscat and Zanzibar, although London did transform Zanzibar into its protectorate in 1890. Still, owing to the agreement reached between the colonial powers, the sultans' sovereignty enjoyed the full respect of the two. The intercourse of Oman and France became stronger after France established a consular representation in Muscat, which was the decision of the foreign affairs minister of France. The year 1894 witnessed the arrival of the vice-consul Pierre Ottavi, who quickly gained the trust of Sultan Faysal. Being well disposed towards France, the sultan donated a house in Muscat

¹ *ibid.*

² Oman Criminal Laws, Regulations And Procedures Handbook, 108.

³ Francis Owtram, 'A Close Relationship: Britain And Oman Since 1750' (Qatar Digital Library) <<https://www.qdl.qa/en/close-relationship-britain-and-oman-1750>> accessed 22 November 2017.

⁴ Fanack, 2010.

⁵ Mohamed A.M., Ismail, *International Investment Arbitration: Lessons From Developments In The MENA Region* (Routledge, 2016) 3 <goo.gl/TQRe8p> accessed 12 November 2017.

⁶ Carol J. Riphenburg, *Oman: Political Development in A Changing World* (Praeger, 1998) <goo.gl/RDXQE> accessed 24 November 2017.

⁷ *Conducting Business In Oman - A Guide For Foreign Investors* (Trowers & Hamilins LLP, 2009) <<https://goo.gl/eZLz>> accessed 24 November 2017.

⁸ 'The Civil Code' (The Napoleon Series, 2017) <<https://goo.gl/ryt6VT>> accessed 12 November 2017.

⁹ 'Presentation And Chronological Account' (Embassy of France in Muscat) <goo.gl/ohtAWT> accessed 2 December 2017.

known as the “Maison de la France”.¹ Having had rich contact with prominent liberal legal systems often built around democratic values, Oman should observe the separation of powers as a tribute to long-standing amicable contacts and democratic sanity.

Separation of Powers Overview in Both States and Legal Systems of Oman and the UK in Terms of Judicial Independence

SOP Stems from Democracy – Omani Interest in Democracy

The separation of powers acts as a driver of democracy. The SOP in Oman is a rule of principle, according to articles 60–61 of the basic law, stating “There shall be no power over judges in their ruling except for the Law”. Albert (2010) stated that democratic presidential systems employed the separation of powers in a bid to achieve the goal of preventing a single state organ from gaining absolute power. The conventional narrative maintains that democracy demands the SOP. International popular culture representatives similarly share an understanding that such separation is central to democracy.² The presence of democracy appears to make judicial independence vital. An authoritative opinion expressed by the Courts and Tribunals Judiciary of the UK suggested that it was essential in a democracy for the judiciary and individual judges to be unbiased and independent of all manner of external pressures, as well as mutual influence, which allows the wider public, defendants and other participants of proceedings to have confidence that criminal cases will receive just resolution in line with the law.³

Omani society will have democracy no more than it will have the separation of powers, if it does not find itself wishing for both. There can be no democracy, nor the separation of powers accompanying it, if people do not want democratic rulers. If Omanis wanted such rulers, the following factors would not be decisive in the electoral process which brings the officialdom that must oversee reforms and democratization to power. According to Transformation Index BTI 2016 (2016, 7), voters’ choices were governed by ethnic or tribal affiliations, clientelism, and even money in 2011 and 2012, as was the case with the Majlis al-Shura elections in 2003 and 2007. Clientelism is a political exchange, whereby a politician who acts as a patron offers patronage, which can be a privilege or financial support, in exchange for a vote cast by a client offering his/her electoral support.⁴ If clientelism reigns supreme in the Omani electoral setting, the country’s mentality may be such that it has no room for democracy. Under the legislature in practice, this act is an offence according to Section 3 of Article 36 of Election Regulations, which states “to take any action that would affect the conduct of election, will be punished by imprisonment for 6 months and/or charged 3000 OMR”. Andrew Green, who used to be ambassador to Syria and Saudi Arabia, claimed democracy not to be a solution for societies that were extremely complex. All Western intervention, with democratization intentions, makes matters considerably worse.⁵

The West fails in applying the democratic model in the Middle East due to factors such as personal friendships, sects, and families, which take precedence over the state apparatus, contributing to democracy failure. These societies are not governed by the rule of law. “Favour for favour” best describes these societies. If people should have any issue, they look for somebody related to them by region, tribe, or family, who may offer them assistance. Requests most likely never meet refusal, for the bonds are particularly potent. With no efficient social security in place, Middle-Eastern countries leave people little choice other than relying on extensive family.⁶ This is clientelism at its most conspicuous. There being no room for democracy in Oman, there may be no place for the according separation of powers either. The actions of the sultan and his potential influence on different branches in the country, declaring its powers separate in its documents.

¹ ‘Presentation And Chronological Account’.

² Richard Albert, ‘Presidential Values In Parliamentary Democracies’ (2010) 8 *International Journal of Constitutional Law* <<https://goo.gl/YuTzST>> accessed 12 November 2017.

³ ‘Independence’ (Courts and Tribunals Judiciary, 2017) <<https://goo.gl/dfXM4w>> accessed 4 December 2017.

⁴ James A. Robinson and Thierry Verdier, ‘The Political Economy of Clientelism’ (2017) 115 *The Scandinavian Journal of Economics* <<https://goo.gl/B99Ph8>> accessed 4 December 2017.

⁵ Andrew Green, ‘Why Western Democracy Can Never Work In The Middle East’. *The Telegraph* (2014) <<https://goo.gl/Y3z2HB>> accessed 5 December 2017.

⁶ *ibid.*

Oman's Separation of Powers and Judiciary

As mentioned earlier, Oman has borrowed much in terms of judicial traditions from its long-standing allies and protectors; however, this borrowing may not include judiciary independence. The attitude of French procurers is such that they view themselves as accountable to the law in the first place, rather than to hierarchical superiors.¹ Omani legal documents may express the same independence ardour. As follows from Article 59 of the Basic Law, law sovereignty forms the basis of governance in Oman. Judges' impartiality and probity, along with the dignity of the judiciary, guarantee people's freedoms and rights.² De jure, the judiciary of Oman seems independent. The 1996 Basic Charter asserts the autonomy of the branch. De facto, different courts are subordinate to the supreme ruler and his infinite influence.³ Truly, the judiciary is still said to be under this influence, contrary to judicial autonomy guarantees of the Basic Law.⁴ The government's executive branch attempts to exercise its powers legitimately.⁵ However, as seen in the extent of interference in the judicial branch by the sultan, the executive branch may not be succeeding in running the state legitimately, by ruining law sovereignty. According to Transformation Index BTI 2016 (2016, 10), the country has no system of checks and balances and, thus, the separation of powers is non-existent, with all powers accumulated by the sultan, who happens to be Minister of Foreign Affairs, Minister of Defense, chief of staff of the armed forces, and even chairman of the Central Bank. The sultan, who is inviolable, expects others to submit to his will, without questioning it.

The influence of the executive branch remains strong despite the State Security Court having been rendered defunct in 2010.⁶ The influence of the sultan leading the executive branch is strong, as it was he who abolished the court on September 22 via his royal decree. While active, the institution used to review criminal and national security cases considered to require delicate and expeditious handling. Competence to review these cases passed to military and civilian courts.⁷ Even positive shifts towards the provision of judicial bodies with a greater set of commissions do not make for greater separation and lesser executive branch influence. February 2012 saw the country given cause for optimism, when a royal decree enhanced the independence of the Supreme Judicial Council from the Minister of Justice through the restructuring of the management of judicial affairs. Even so, the document reasserted the primacy of the sultan and reinstated his control over all competent authorities, as the decisions of the council not made in the presence of the sovereign required his ratification. Concerning the prosecutorial division of the judicial branch, in February 2011, another royal decree expanded public prosecutor prerogatives. The Public Prosecutor office obtained all powers of the Inspector General of Police and Customs mentioned in the public prosecution law. Still, the office is answerable to the sultan directly. Unsurprisingly, the office has played a proactive and decisive part in the repression of independent opinion, expression, and peaceful protests since 2012.⁸

The influence exerted by the state ruler manifests itself in a broad range of the sultan's judicial competence and commissions. Royal decrees have effected every piece of legislation since 1970. The sultan is in a position to commute sentences, grant pardons, and appoint judges.⁹ The appointment prerogative does not imply his occasional involvement in this matter, as the head of the state fulfils all judicial appointments.¹⁰ The commutation of sentence power implies the change of a criminal punishment to a less severe one, when perceived to be overly stringent.¹¹ The sultan would not hold such extreme judicial commissions without having taken the competence of judicial institutions that are usually separate in Oman. As confirmed, the sultan has virtually assumed the power of the court of final appeal. Having made himself chairman of the Supreme Judicial Council, he possesses the power of pardon. This position implies his supremacy over the top national legal body authorized to review all judicial decisions.¹² Since the council formulates judicial policy and oversees

¹ Jacqueline Hodgson and Laurène Soubise, *Prosecution In France* (2016) 15 <<https://goo.gl/phmBQo>> accessed 8 December 2017.

² The Bertelsmann Stiftung's Transformation Index, 10.

³ Fanack, 2010.

⁴ The Bertelsmann Stiftung's Transformation Index, 11.

⁵ *ibid* 10.

⁶ *ibid* 11.

⁷ 'Oman', 3.

⁸ The Bertelsmann Stiftung's Transformation Index, 11.

⁹ *ibid* 10.

¹⁰ *ibid* 11.

¹¹ Daniel E. Hall, *Criminal Law And Procedure* (Cengage Learning, 2017) 600 <<https://goo.gl/eePnPh>> accessed 12 December 2017.

¹² 'Oman', 3.

the judiciary, the sultan is involved in both as the head of the body.¹ The ruler does not preside over each judicial establishment, but still enjoys control; the magistrate court is not autonomous, as its president reports directly to the ruler.²

British Judiciary and Separation of Powers

In 2005, the country took essential measures to deepen the separation of powers between the legislature, judiciary, and the executive branch. Before the reform, the Lord Chancellor was Speaker of the House of Lords, a member of the cabinet, and judiciary head with the authority to appoint judges, which was deemed problematic with regard to the edifice of the separation of powers. The document introduced considerable changes to the relations between all three branches.³ The duty of maintaining judiciary independence was placed on government ministers, now prohibited from attempting to influence judicial decisions via special access to judges. The act reformed the position of Lord Chancellor, passing its associated judicial functions to the President of the Courts of England and Wales, a new title bestowed upon the Lord Chief Justice, now tasked with the deployment, guidance, and training of judges, and representation of the views of the judiciary of Wales and England to parliament.⁴

The act is unambiguous, as seen in the way it formulates the matter of judicial independence. Rather than taking a brief form, the independence provision is a multi-point provision specifying the judiciary in all its diversity. Within the document, it comprises the Supreme Court, any other courts created under the law of any part of the UK, and any international court. Interestingly, the act authors included the guarantee of judicial autonomy for Northern Ireland.⁵ Countries often seek to reassert their claim in semi-autonomous regions, as a means to prevent their potential secession. By reinforcing this judicial autonomy, the UK reveals itself democratic and respectful towards the separation of powers, even in less controllable regions, which is legal behaviour that dictatorial regimes such as that of Oman have yet to adopt.⁶

The act also established an autonomous Supreme Court that functions separately from the House of Lords, with its own building, budget, personnel, and autonomous appointment system. The act established an autonomous Judicial Appointments Commission, responsible for the selection of candidates for judicial appointment to the Secretary of State for Justice, which guarantees that merit is the only appointment criterion in a transparent, open, and modern system. The document relieved the Lord Chancellor of the duty to sit as a House of Lords speaker, with the role now elected by the House from its own members.⁷ It would now be rational to examine the British judiciary to measure its autonomy. It is believed independent, although, naturally, it does draw from the legislature.

The Chartered Institute of Legal Executives (2017) revealed that some laws applied across the entire territory of the UK, while others applied to just three, two, or one of the countries. Common law, legislation, the European Convention on Human Rights, and European Union law form the backbone of British law. These laws provide the legal rules of conduct and economic performance from which to build judicial decisions, and the guarantee of independence from foreign influence allows judges to use these laws efficiently to administer justice. Indeed, as informed by the Courts and Tribunals Judiciary (2017), the UK offers the branch due protection to ensure its autonomy.⁸ British judges enjoy immunity from prosecution for whatever acts they implement while executing their judicial function. They also benefit from immunity from being sued for defamation regarding what they say about witnesses, defendants, or plaintiffs during proceedings, which sparks claims of being above the law hurled at the servants of Themis, so to speak. The Lord Chancellor or Lord Chief Justice is free to refer a judge to the Judicial Complaints Investigations Office, which determines whether it is acceptable to remove the branch colleague from office in particular circumstances, in which he or she is known to have perpetrated a professional offence.⁹

¹ Al-Kiyumi, 153.

² Fanack, 2010.

³ 'The Three Branches Of Government' (Law Wales, 2016) <<https://goo.gl/P6gmpn>> accessed 13 December 2017.

⁴ *ibid.*

⁵ Constitutional Reform Act 2005 (2005) 2-4 <<https://goo.gl/f4hDJD>> accessed 18 November 2017.

⁶ *ibid.*

⁷ 'The Three Branches Of Government', 2016.

⁸ 'The Legal System Of The United Kingdom' (Chartered Institute of Legal Executives, 2017) <<https://goo.gl/W1wc5t>> accessed 18 December 2017.

⁹ *ibid.*

What immunity and independence really mean in the British judicial context is that judges can exercise their powers unhindered: the media, the state, litigants, or influential figures or entities such as big companies will not be able to exert influence on them legally.¹ This principle is vital, for judges often hear matters between British residents and powerful organizations, and residents and the state. To quote an example of actual independence, a judge handling a criminal trial against a resident will never be under the influence of the state. Only the law and case facts govern the process.²

In the UK, Britons have not had a codified constitution formulating the rule of law, nor the separation of powers. Despite this, the role of law has prevailed on British soil, and the judiciary has retained its autonomy. The Act of Settlement 1701 provided judges with independence by guaranteeing their wages,³ and guaranteeing that senior judges would perform their duties undeterred until removed by a motion in both Houses of Parliament, the only means to remove judges.⁴ More importantly, the acceptance of the convention made it impossible for a sovereign to intervene in legal proceedings.⁵ In fact, the judicial branch of the country gained a great deal of sovereignty, such that it came to question the actions of the executive branch.

From the 1960s onwards, judges questioned the decisions of public bodies and the national government, in a move heralding a social change which made people less deferential and more willing to challenge the decisions of ministers. The UK entered the EU in 1972, which caused British law to become inferior to that of the economic bloc. In the wake of this change, judges were capable of ruling against Acts of Parliament. International law redevelopment and the newly acquired capacity of Britons to take cases to the European Court of Human Rights resulted in judges using new legal principles, which could potentially collide with government's intentions regarding immigration and anti-terrorist legislation. The Human Rights Act of 1998 expedited this process, thereby giving judges the ability to regard the Acts of Parliament as such that contravened the act making the body revise the legislation.⁶ In fact, it would be unlawful for a public authority to act in a way that runs counter to a Convention right. A Minister of the Crown may order amendments to legislation that he/she deems necessary for the removal of the incompatibility.⁷

Details of the Prosecutorial Process in the Omani and English Systems, and Judges' Responsibilities

The Prosecutorial Process in the UK and Judges' Responsibilities

The prosecutorial process is a complex one, involving a variety of stages: pre-arrest investigations, the decision to press charges, the filing of a complaint or arraignment, preliminary hearings, arraignment on the indictment, pre-trial conferences or motions, trials, sentencing, appeals, parole, and expungements.⁸ Blond (2009, 2–5) defined the first stage as crime reporting, adding the arrest and booking process, post-arrest investigation, the first appearance, and grand jury proceedings, while dropping some of the stages included by the previous source, and changing the sequence/position of stages within the chain of the prosecutorial process. The list of stages varies across countries.⁹

Concerning the UK and its prosecutorial process, a person contacts the police, reporting that an offence has been committed. Law enforcers will proceed to perform an investigation that may result in the detention of a person suspected of committing a crime.¹⁰ The office of public prosecutor had not existed in Wales and England before the enactment of the Prosecution Offences Act of 1985. The removal of the prosecution decision from the police and its assignment to the service ensure separation between the stages of investigation and prosecution, establishing autonomy in the decision-making of the Crown Prosecutor.¹¹ In his book, "The Antinomies of the Law Officers", Neil Walker stated that law officers often had to

¹ 'Independence'.

² 'Independence'.

³ Act Of Settlement, 1701 (1701) 4 <<https://goo.gl/qekDYm>> accessed 23 December 2017.

⁴ 'Is The Judiciary Independent?' (Brit Politics) <<https://goo.gl/QvvpkQ>> accessed 23 December 2017.

⁵ 'Is The Judiciary Independent?'.

⁶ *ibid.*

⁷ Human Rights Act 1998 (1998) 5,9 <<https://goo.gl/Jf7jzk>> accessed 18 November 2017.

⁸ 'The Prosecutorial Process' (The Law Office of Thomas Baynton, 2017). <<https://goo.gl/Pg4irW>> accessed 7 February 2018.

⁹ Neil C. Blond, *Criminal Procedure* (Aspen Publishers Online, 2009) 2–5. <<https://goo.gl/2CMUcY>> accessed 9 February 2018.

¹⁰ 'The Legal System Of The United Kingdom', 2017.

¹¹ Jacqueline S. Hodgson, 'The Democratic Accountability Of Prosecutors In England And Wales And France: Independence, Discretion And Managerialism' (The University of Warwick, 2016) <<https://goo.gl/Qny3eM>> accessed 19 February 2018.

reconcile their commitment to values related to political/legal order integrity and their attachment to the government with its political goals.¹

Regarding the Prosecution Office, if the service believes a case will be in the best interests of the public, and the case has reasonable success prospects, the Prosecution Service will undertake to prove the person guilty in court. Minor crimes such as speeding are within the jurisdiction of a Magistrates' Court. Three magistrates are present to hear cases; magistrates do not require any legal qualifications, as they seek the counsel of a Clerk, who is a qualified lawyer. It is unnecessary for these court officials to specify the causes of specific judicial decisions they make.²

Very serious crimes such as rape or murder are allocated to the Crown Court, based in around 90 centres across Wales and England. On most occasions, the decision made by the jury is unanimous; the judge advises the jury on the law. The judge's role involves passing a sentence if the defendant is proved guilty. Intermediate offences such as theft are heard by either a Magistrates' Court or Crown Court. The sentences for crimes incorporate fines paid to the state, community punishments in the form of unpaid supervised work, and imprisonment.³

The UK also uses so-called Senior Appellate Courts. Their function is to hear appeals from other courts. The Court of Appeal and the Supreme Court are two of the most senior appellate courts. The Court of Appeal, covering Wales and England, is subdivided into Criminal and Civil Divisions. The Criminal Division hears appeals about presumed law errors committed in Crown and Magistrates' Courts, while the Civil Division hears appeals against decisions made by the High Court. Being the highest court of the British judicial hierarchy, the Supreme Court hears appeals from the Court of Appeal.⁴

All four countries are legally well placed to send their civil appeals to the institution. By contrast, only Wales, England, and Northern Ireland will be able to send criminal appeals, if necessary. Only in the event that a case raises a point of general public importance will it gain the privilege to appeal to the judiciary establishment. Decisions made by the Appellate Committee of the House of Lords, the Supreme Court, and the court of Appeal become precedents for courts to follow while dealing with future cases, which excludes dual standards and ensures treatment parity, which are often perceived as critical justice aspects.⁵

The Prosecutorial Process in Oman, Judges' Responsibilities, and Suspects' Rights

The prosecutorial process does not seem well outlined in Oman. As reported, there are no written rules of evidence in Oman. The same applies for any legal provision for a public trial and the codified procedures for entering cases into the criminal system.⁶ Still, law enforcers and their specific prosecutorial functions are reflected in royal decrees. According to Royal Decree N. 92/99 (1999), the Public Prosecution Law contains articles detailing the early stages of the prosecutorial process in Oman and actors involved. Article 2 claims that the Royal Oman Police is responsible for public actions in the event of misbehaviour. Article 3 states that the Inspector General of Police can trust some police officers, who may investigate felonies on the condition that they have requisite skills.⁷ In criminal cases, law enforcers provide defendants with written charges.⁸

Law enforcers may obtain warrants before arresting suspects, yet there is no legal requirement to do so. Still, to keep suspects in pre-trial detention following 24 hours of detention, the authorities require court orders. Law enforcers will need to file charges or request that a magistrate judge grant continued detention. Judges may order detention for two weeks to enable investigations, and even offer extensions if necessary. The judicial system allows bailing. Detainees are not devoid of rights, as the 1996 Basic Charter does provide specific procedural and legal rights for them, yet these provisions are still to be fulfilled. In reality, law enforcers do not always do what is legally required. The way in which police handle detentions and arrests constitutes incommunicado detention in some cases. Officers do not bother to notify the family of detainees or

¹ David Feldman, *Law In Politics, Politics In Law* (Bloomsbury Publishing, 2013) 128 <<https://goo.gl/FG323W>> accessed 19 February 2018.

² 'The Legal System Of The United Kingdom', 2017.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ Fanack, 2010.

⁷ Royal Decree N. 92/99. <<https://goo.gl/gXuz4k>> accessed 23 February 2018.

⁸ Fanack, 2010.

the sponsors of workers if they are foreign-born residents. At times, they will make such a notification shortly before the discharge of detainees. Law enforcers sometimes bar family members and attorneys from visiting detainees, which may lead judges to intercede to facilitate visits.¹ In theory, detainees are free to deploy a lawyer. The 1996 Basic Charter confirms the right to government-funded legal representation and counsel. However, these provisions remain unimplemented, as the government does not offer legal representation funding.²

There is the presumption of innocence for all, which provides defendants with the privilege to present evidence and confront witnesses who reinforce accusations. The judge is the hearing actor through whom the defence or prosecution can direct questions. The judge is usually the only person who questions witnesses directly in the courtroom. These judicial officials pronounce the ruling or sentence within 24 hours of trial completion. The convicted have the right to appeal to a three-judge panel against prison verdicts if fines surpass an equivalent of 1,250 dollars and the incarceration period exceeds three months. However, national security crimes and grave offences automatically deprive defendants of the appeal right.³ There are different court institutions engaged in the prosecutorial process, with judges and other judicial officials holding various powers, ensuring the adequate administration of justice.

The Ministry of Justice administers the Sharia courts applying religious law as interpreted under the Ibadi school of Islamic jurisprudence. Each of the 59 governorates or wilayats have courts of first instance. A single judge called a qadi presides over such courts. Appealing the rulings of the first instance courts, including fines over 260 dollars or prison terms of 14 days or more, requires presentation before the Sharia Court of Appeals in the space of one month following sentence declaration.⁴ Magistrates' Courts, accountable to the sultan, took over all criminal cases from the Sharia courts. Regional courts of first instance hear misconduct cases. A panel composed of two judges and the President of the Magistrate Court adjudicates all felonies at the Muscat-based Central Magistrate Court. All the felony panel's rulings are impossible to appeal, with the exception of the death sentence. Although seldom used, capital punishment is often a punitive measure in the case of serious offences such as murder, yet the ruling approval is the competence of the state ruler. This harsh measure has reportedly not been applied since 2001. The Criminal Appeals Panel – composed of two judges of the court and its vice president, and presided over by the President of the Magistrate Court – will hear the appeals of rulings by first instance courts. The State Security Court will hear cases related to national security, in addition to cases that are delicate in nature or require expeditious action. Founded by a royal decree in 1981, the commercial courts system, also known as the Authority for the Settlement of Commercial Disputes, handles all cases associated with commercial issues.⁵ The authority possesses actual powers to settle issues, as follows from the Commercial Companies Law #4/1974. Thus, for example, its ruling may demand that a partner pay to a company, in cash, the difference between the true value and the estimated value of property contributed by the partner, in the case of the authority establishing an instance of overvaluing.⁶

Omani and English Judges, and Their Responsibilities

Constitution Articles 60, 61

The constitution of Oman contains articles addressing judicial matters, such as judges and their autonomy. Article 60 states that the judicial branch shall retain its autonomy, and the court shall exercise its authority in their various kinds and hierarchies. The judgements they produce must be in line with the law. Article 61 states that judges shall have no power over them in their ruling, save the power of law. Judges shall be impossible to remove, except in circumstances specified by the law. No party can intrude in lawsuits or justice affairs. In such a case, intervention shall be deemed an offence

¹ Oman Criminal Laws, Regulations And Procedures Handbook, 98.

² Fanack, 2010.

³ Fanack, 2010.

⁴ *ibid.*

⁵ Fanack, 2010.

⁶ Oman Chamber of Commerce and Industry, The Commercial Companies Law, No. 4/1974 (1974) <<https://goo.gl/zvwbHA>> accessed 7 March 2018.

punishable by law.¹ Article 60 virtually declares the judiciary independent, while the next article reinforces the autonomy of judges subjected to the law exclusively.² Besides independence, the articles provide judges with freedom.³

Omani Judges' Appointment and Removal

Some researchers attribute the function of judge appointment to the Imam, who does so without any specific ceremony. The other members of the ulama assist in choosing the judges and presenting them as candidates. When picked, judges have distinctive autonomy, as does their jurisdiction, since the judges are often recruited from the ulama, performing the role of an autonomous juridical and legislative body. Resorting to the Imam is still a must, especially in essential cases.⁴ Still, this view looks outdated, as Imams may no longer be involved in the appointment process. The Sultan of Oman liquidated the office of the Imam in 1959 when he vanquished insurgents with the aid of the UK, and dissolved the Treaty of Seeb, allowing the Imam autonomous rule in the interior, with recognition of the sultan's sovereignty elsewhere in the country.⁵

The termination of the institution came as a response to the 5-year rebellion spearheaded by the new Imam from 1954, upon the discovery of oil in the interior. The Imam was exiled to Saudi Arabia in the early 1960s, never to return. The exiled Imam accepted support from the Saudi Arabian government until the 1980s, when this support ran dry.⁶ Other researchers confirmed the present lack of an Imam in Oman,⁷ and point to the sultan as an alternative to the Imam, stating that religious leaders or Imams have sometimes been elected in Oman, yet hereditary succession has been more widespread in the country.⁸ Gravitation towards the sultanate may stem from an important political decision, which is likely to have determined judge appointment and other functions in the state. Upon his ascension to the throne, Sultan Qaboos unified the coastal people ruled by sultans, and interior peoples ruled by Imams, which ended the geographical and cultural split between the Omanis.⁹ Therefore, unsurprisingly, the judge appointment function is believed to rest with the secular leaders of Oman. While theoretically autonomous, judges are appointed by the sultan.¹⁰

The Sultan of Oman also performs the duty of dismissing or removing judges.¹¹ Whether judges will keep working or have their tenure terminated is contingent on their professional conduct, which must comply with the independence expectation principle formulated in the constitution articles. The code of conduct for judges, their obligations, duties, and behaviour code is determined in Royal Decree 90/99, issuing the Judicial Authority Law.¹² Judges cannot engage in commercial activities or any work not in keeping with judiciary autonomy. Neither can the courts express political views, nor participate in political activities.¹³

British Judges' Appointment and Removal

The independence of British judges seems to be the continuation of an older legal tradition stretching back to the early 18th century. The Act of Settlement 1701 established three principles: the remuneration of judges is not to be reduced, judges are impossible to remove except through parliamentary proceedings, and the judges of superior courts can keep their power through good conduct rather than the pleasure of the Crown. While the legislature permits the removal of judges, the

¹ Oman's Constitution Of 1996 With Amendments Through 2011 (2011) 21 <<https://goo.gl/d73mdV>> accessed 25 December 2017.

² Marc Valeri, Oman: Politics And Society In The Qaboos State (Hurst Publishers, 2009) 191 <<https://goo.gl/Wm6V3M>> accessed 28 December 2017.

³ Sulaiman al-Farsi, Democracy And Youth In The Middle East: Islam, Tribalism And The Rentier State In Oman (IBTauris, 2013) 73 <<https://goo.gl/WQZ8>> accessed 7 January 2018.

⁴ Ghubash, 41.

⁵ Background Notes: Mideast, March, 2011 (InfoStrategistcom, 2011) <<https://goo.gl/tpW3RM>> accessed 13 January 2018.

⁶ Background Notes: Mideast, March, 2011, 2011.

⁷ Tony Walsh and Diana Darke, Oman (Bradt Travel Guides, 2016) 206 <<https://goo.gl/guc4vd>> accessed 13 November 2017.

⁸ The Report: Oman 2011 (Oxford Business Group, 2010) 18 <<https://goo.gl/h7yu9j>> accessed 13 January 2018.

⁹ The Report: Oman 2014 (Oxford Business Group, 2014) 16 <<https://goo.gl/LjXBw4>> accessed 25 January 2018.

¹⁰ Valeri, 191.

¹¹ Mohamed Y. Mattar, 'The Rights Of The Accused In The Criminal Justice System Of Oman' (The Federal Research Division, Library of Congress, 2011) <<https://goo.gl/iKV3gX>> accessed 27 January 2018.

¹² Mattar, 10.

¹³ 'Oman: Recent Developments' (2000) 15 Arab Law Quarterly <<https://goo.gl/eoPpHu>> accessed 27 January 2018.

procedure cannot occur anywhere except in open Parliament. Removal grounds are restricted to incapacity or misconduct, while excluding the political motivation of sacking. A measure of accountability coexists with autonomy.¹

In the UK, judges are appointed – in the case of a judge of the High Court or the Court of Appeal in Northern Ireland, the High Court of Justice or the Court of Session in Scotland, and the High Court or the Court of Appeal in Wales and England – by the Head of State acting on the advice of the Minister of Justice, following the recommendation of the Judicial Services Commission. Judges are appointed in the case of all other tribunals and courts by the Justice Minister, following a Judicial Services Commission recommendation. Judges are also appointed in all cases from individuals who possess such qualifications as are possible to prescribe by an Act of Parliament or the appropriate devolved Assembly or Parliament.²

Regarding when judges vacate their office, judicial officials will leave as soon as they reach the age of 70. Judges will no longer perform their duties upon receipt by the chief executive, the justice minister, or the prime minister of a resignation letter prepared by the judge. The judiciary official also leaves office following the acceptance of a position or office of emolument, or the obtainment of membership in the House of Parliament. Judges will be relieved of their duties upon the expiry of the predetermined appointment period, given the lack of tenure renewal. Of course, a judge is in position to continue to act if their hearing started before they reached retirement age, where duties will continue pending case completion. The potential grounds for removal include a failure in the proper execution of duties, grave judicial misbehaviour, and taking a position not in keeping with the proper performance of the office – situations in which judges may find themselves due to personal behaviour or other reasons, and mental or physical incapacity, both lingering and permanent.³

Recommendations and conclusion

Recommendations and Their Viability

To guarantee the rights of suspects and residents, the actual separation of power must be ensured to eliminate the influence of the sultan on the legal body. If Sultan Qaboos finds the political will to implement the SOP, he may achieve it in a number of ways. Oman would fare much better by enforcing international resolutions of court independence or borrowing excerpts from the documents. There are plenty of good SOP-based resolutions, such as the “Bangalore Principles of Judicial Conduct” or the “United Nations Basic Principles on the Independence of the Judiciary and the role of lawyers”.⁴

Oman may also successfully borrow the idea of a joint prosecutorial body, such as that of the European Union. Thus, for example, the Lisbon Treaty provides a legal basis for the EU member states to establish a European Public Prosecutor with the respective authority in the courts of European Union members, for the punishment of offences committed against the financial interests of the politico-economic union.⁵ Oman will be best served by becoming a part of or initiating a similar organization, in the sense that a treaty between a range of Muslim states may create a joint prosecutorial body whose shared status will ensure the system of checks, and exclude the possibility of power abuse by individual political regimes. Foreign experience may literally come to Oman in the shape of former democratic officials. If Oman power figures fail to implement changes enabling the genuine separation of powers, an alternative may be inviting former reformers or public officials from top democracies with democratic experience and philosophy. To transform themselves, countries sometimes perform power lustration, or the purging of the judicial, executive, and legislative ranks.

To introduce quality changes, an influential, strong internal reformer or reform advocate is required, preferably from among the power holders, as authority is certain to expedite the process of transformation. The immediate problem is the sultan being the ultimate beneficiary of power abuse. It may be fruitless to recommend changes in a country where power figures do not want a democratic political system. In Oman, there has been some rotation of duty holders and the passage of powers from one institution to the other, as was the case with the assignment of the powers of the Inspector General of

¹ Richard Devlin and Adam Dodek, *Regulating Judges* (Edward Elgar Publishing, 2016) 295 <<https://goo.gl/kUxB6C>> accessed 27 January 2018.

² ‘A New Magna Carta? – Political And Constitutional Reform Contents’ (Parliament.uk, 2017) <<https://goo.gl/BmrkvL>> accessed 2 February 2018.

³ ‘A New Magna Carta? – Political And Constitutional Reform Contents’, 2017.

⁴ ‘Independence’.

⁵ Gerard Conway, ‘Holding To Account A Possible European Public Prosecutor’. (2013) 24 *Criminal Law Forum* <<https://goo.gl/vE61JJ>> accessed 15 February 2018.

Police and Customs to the Public Prosecutor Office. Royal decrees authorize all legislation, while judges are appointed by the sultan. The actual change may come from this supreme figure. If the sultan holds pardoning and sentence commuting powers, the judicial branch cannot be said to be autonomous, as it may be subject to intervention.

In these circumstances, voters emerge as the only viable way to change the situation, yet their voting behaviour leaves little optimism. Transformation Index BTI 2016 (2016, 7) reported the buying of voters in 2011 and 2012, and similar efforts earlier in the century. If the authorities attempted to buy voters, which the report suggests they did, people did nothing other than sell their votes. Once they no longer do so, the politicians unwilling to perform quality transformations by effecting reforms will no longer be there to suppress democracy and halt the genuine implementation of the separation of powers. If favours and personal friendships are this deep-seated in Oman, it may be that democracy and SOP are not as much about voting as changing the mentality of the nation, shaped for centuries, which may be an uphill task, if not comparable to the labour of Sisyphus. Omanis may attempt to stage a military coup or elite removal and do so unassisted, yet human rights violation is not sufficiently extreme to urge residents to take such drastic measures. More importantly, violence is not the way forward, as the 2011 Egyptian revolution indicates. Revolutions appear to be the product of liberty-seeking people eventually deceived by political or military adventurists, who assume the reins of power later.

If domestic efforts do not go to plan, overseas institutions should also step in, and there is a financial tool of influence to be applied from beyond Oman, as the country seems dependent on foreign money. In 2016, the country was reported to have signed a one-billion-dollar loan pact with international banks, in an attempt to close a budget deficit.¹ International banks need to be convinced to make a foreign aid stipulation, such as the separation of power. Foreign banks must act ethically by allocating funds to countries with good human rights standards, under the formal pretext that offering loans to countries with poor human rights records may deepen the respective crisis, as funds may be allocated to punitive, judicial, and police apparatus. While banks prioritize their financial interests, the inclusion of the SOP qualification principle should significantly increase the separation of power in Oman and other countries where the SOP deficit is eroding the rights of suspects and law-abiding civilians. Another effort which can be made by international human rights organizations is sending monitoring committees to Oman.

Conclusion

The legal system of Oman, providing its judiciary the legal instrument of decision-making, has been a product of locally strong religious influence, and the inclusion of French and British legal traditions/elements. In attempting to borrow the finest legal accomplishments of foreign systems, Oman failed, but then again, the country may be short of political will to practise the same principle of power separation that characterizes the UK, where the judiciary has enjoyed great autonomy from potential royal abuse since at least 1701. Of course, the UK has not been ideal in terms of judicial autonomy, yet the principal difference between the UK and Oman has been that Britons reform their branches by redistributing commissions. This prevents specific figures from accumulating too many commissions, while the redistribution of commissions in Oman often leads to their accumulation by one ruler. Oman's sultan enjoys a plethora of judicial powers, thereby making important judicial decisions reliant on one ailing dictator of rapidly advancing years, which gives reason to question his aptitude and capacity to produce constructive and adequate judicial decisions. These decisions determine the economic quality of life of hundreds of thousands of local residents, who may end up in prison for merely calling for reforms in peaceful protests.

The rights of civilians may not be obvious via the legal branch that provides the means of decision-making, as it is not only on judicial precedents that courts rely. Besides, even such precedents come from laws and norms produced by the body where the sultan presides. Oman is not at the stage where those wishing to express their views can assemble without warning the authorities and gaining permission. However, the strict security obsession limiting freedoms is not so severe when compared to some state neighbours. More precisely, the country is in urgent need of domestic transformations, such as lustration and the enforcement of international judicial behaviour conventions; however, the utility of the current quasi-present SOP shows the sultan will be reluctant to apply changes, which makes foreign involvement a vital course, nay, the only viable one.

¹ Times of Oman, 'Oman Signs \$1B Loan Pact With International Banks To Plug In Budget Deficit' (2016) <<https://goo.gl/1jPdPn>> accessed 18 March 2018.

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