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The Constitutional Reforms
The Constitutional Reforms

The Kingdom of Saudi Arabia has been governed without a written constitution since its unification in 1932. In fact, the term constitution, *Dustur*, is not commonly used among the Saudi population. The Saudi monarchy believes that only the Qur'an could be called a constitution.

The various constitutional instruments that were enacted during the formative time of the Kingdom were only limited to the Hijazi region during the early days of its amalgamation with rest of the Saudi domain. These constitutional instruments were undertaken as an attempt to cope with the new realities of the more developed region of Hijaz. Their potential growth and evolution in controlling a broad range of areas, however, were halted several times, until they finally disappeared in the early nineteen thirties. These various constitutional instruments include the Consultative Council, the Fundamental Instructions of the Kingdom of Hijaz, and the Council of Deputies. A few remarks regarding these faded instruments, especially the Fundamental Institutions and the Consultative Council, are essential at this stage to pave the way for a comprehensive understanding of the newly promulgated constitutional package.
of 1992. The new Saudi constitution is notably based on elements from these previous constitutional documents.¹

**Constitutional Reforms**

In 1901, when Abdul Aziz returned to his fatherland, the Najd consisted of scattered, independent tribes and villages, each ruled by an *Amir /governor/* tribal Shaykh. The ruler’s primary duty was to ensure the survival and well being of his constituents through wise leadership, in consultation with its senior members. Leadership in the Najd was necessarily informal and mobile, and the Majlis (council) was the only institution of any importance, which provided the forum for all important debates on decisions affecting the welfare of the tribe, legal disputes, and social contracts, such as marriages. It held its meetings wherever the governor happened to be. The leader combined the roles of a mayor, judge and general, as war was as much a part of daily life as peace. The elders of the leading clans and the Ulama carried the most weights, but everyone could participate in the discussions, provide suggestions, raise objections, or make personal complaints, and arbitrary decisions by the ruler were not tolerated. Expected to seek the wise counsel of his kinsmen, the Shaykh usually approached
decisions on the basis of a consensus, but once a course of action was agreed upon his orders had to be obeyed. 2

In the early years of his campaign to unify the Najd, Abdul Aziz did not need to establish a government in the western sense, relying on traditional patterns, which adjusted the expansion of his domain. He placed loyal governors in charge of provinces and dealt directly with the tribal and village notables, as the paramount, meeting with them as often as required in a Majlis, intending to gather information and advice. The mobile Majlis thus served both his own needs and the needs of his constituents.

Abdul Aziz inherited Sherif Husain's administrative system and a sophisticated government machinery when Abdul Aziz conquered the Hijaz in 1924. The next major step in the administration of the Hijaz came when a Constituent Assembly composed of eight elected and five appointed members was charged with writing a constitution for the Hijaz, and the resultant "Basic Instructions for the Hijaz" was published in September 1926. This constitutional document resulted in the establishment of a consultative council (Majlis al-Shura) for the Hijaz, and a number of city and village councils. 3
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After further amendment of the Basic Instructions, the consultative council was constituted in July 1927, with four members chosen in consultation with prominent members of the community, another four appointed by the government, and the viceroy as Chairman. Its mandate was to account for reviewing budgetary questions, new projects and other economic matters, and the enactment of laws and statutes. Further changes, rooted out a year later, included the stipulations on consulting community members for some appointments and the necessity of including the Najdis after a year. Its size was increased to 20 members in 1952, and 25 in 1955. This consultative council was not designed as a "democratic" institution in the western sense, it was directly responsible to the King and the viceroy as an appointed body.

A consultative council was accepted for Mecca in 1925, with representatives of the religious leadership (Ulama), notables and merchants, each electing delegates to the 15-member council. It was substituted six months later by a broader council with two members representing the ulama, one member representing the merchants, and 12 members each representing a different quarter of the city; another three members were selected by the King. Similar councils were announced for the
Hijazi cities of al-Madina, Jeddah, al-Taif and Yanbu, and these councils, together with key tribal Sheikhs, were to elect the members of a General Consultative Council.

The successors of King Abdul Aziz assured their people a Representative Assembly. In fact, every time the King or the regime as a whole was afraid of a legitimacy crisis, it was met with the promise of a Shura.

King Saud declared his intention of promulgating a new constitution and a Shura. In 1962, when Faisal constituted a new government, he proclaimed a 10-point program as the major task before him. One of the points referred to the previous attempts of forming a consultative council and promised people that he would satisfy their aspiration in this regard. King Khalid also applied the same promise to his people. All these promises finally materialized when King Fahd declared a set of constitutional reforms on March 1, 1992, which among other constitutional measures intended to set up a 60 member Majlis al-Shura (consultative council). King Fahd increased the membership of the Majlis to 90 in 1997, and again to 120 in 2001.
Constitutional Reforms of 1992

Saudi Arabia has been an Islamic absolute monarchy with a closed political setup since its inception in 1932. The institutions and processes of western liberal democracy show anathema to the Saudi political establishment. The political process in Saudi Arabia has been a family enterprise and Saudi Kings have proven to be "total rulers". Saudi rulers have opposed calls for democratic change and have declared that Quran as the constitution and that Shari'a must be the guiding principle of the state. On March 1, 1992, King Fahd ordered a package of constitutional reforms, which showed major changes in the state's organic institutions. The package was made up of three separate documents and was enacted in three separate royal decrees: [1] a Basic System of Rules; [2] a statute covering the establishment of a Consultative Council within six months; and [3] a statute requiring administrative devolution, with regional assemblies within one year. The package also possessed several permanently entrenched fundamental rights and freedom. Thus, a set of general guidelines outlining the powers and limits on the government and the rights and obligations of the citizens was issued for the first time. These three statutes were intended to reestablish the basis for government and regulate political
participation through the establishment of the consultative council and regional government. The Basic System of Rules, however, remains subordinate to the official constitution of Saudi Arabia, the Shari'a, despite the move towards political modernization.

**Background of the Reform**

The need for a constitution towards the working of the government was realized from the initial unification of the Kingdom to cope with the emerging political and economic problems. A constitution and the establishment of a Consultative Council were first introduced during the rule of King Abdul Aziz. King Saud, in his struggle for power with his younger brother Prince Faisal and to appease the democratic princes led by Prince Talal, revived the proposal of adopting a constitution. He assured several steps towards a democratic and constitutional government. But King Saud finally lost the throne owing to the determined effort of Prince Faisal who succeeded him in November 1964. As the Prime Minister in 1962, Faisal declared a ten-point program, and determined to promulgate a fundamental law. With the assumption of throne in 1964, Faisal framed a constitutional committee composed of several members from the Council of Ministers to draft a constitution. King Faisal declared
a resurrection of the old Consultative Council as part of his reform package announced in November 1962. King Faisal did not, however, try to involve the ordinary people in the process of constitutional reform. The pressure on the committee to produce its report was simplified, and by 1967, with no threat to Faisal's rule, the promise never materialized.

King Khalid in the wake of the attempted 1979 Mecca mosque take-over by opponents of the regime broached the idea of creating a consultative council and assured to promulgate a basic law. The siege of the Grand Mosque cleared a degree of popular unease in Saudi Arabia. Although the royal family kept a firm grip on power, there was misinterpretation with the royal family's conspicuous consumptions and privileges. An eight-member committee under the chairmanship of Prince Naif, Minister of the Interior, was appointed in March 1980 to draft a 200-article "System of Rule" based on Islamic principles. The committee revived the earlier constitutional committee that had been formed by King Faisal during the 1960s power struggle among the royal family.

King Fahd confessed the promise to enact a constitution and constructed a National Assembly Complex in 1984. Though the government appeared serious about the need to respond to
the increasing demands for constitutional reforms, the King was not inclined in promulgating a constitution until the very last moment. Thus the announcement of the constitutional reforms by King Fahd in March 1992, showed the end of politicking that the Saudi rulers had devoted themselves to vis-a-vis the people, on the sensitive issue of injecting elements of democracy and political pluralism into an otherwise confined political setup.

Reasons for the Announcement of the Reforms

Many factors have contributed to the decision of the King to introduce reforms in the confined political setup. Both domestic and external events made the King feel that the time was ripe to declare the reforms. The reforms targeted at satisfying the existing dissent among the people, as well giving further credence and legitimacy to the rule of the House of Saud. The following may be summarized up as some of the reasons that directed the announcement of the reforms.

The most significant factor was the economic growth as a result of the oil boom in the country. This has changed a highly illiterate, traditional society into a wealthy, urbanized and educated one and effectively incorporated the masses into a political society. Saudi Arabia's demographic profile is a unique one. According to the World Development Report 1993, in 1991,
43 percent of total population was below 14 years of age and 54.7 percent was in the 15-64 years age group. The report supposes that by the year 2025, the total population below 14 years of age will fall to 34.8 percent, and that the percentage of the 15-64 age group will rise up to 59.6 percent. Saudi Arabia's demographic structure (i.e., smallness and youthfulness of the population), heavy presence of expatriates, and massive socioeconomic growth has put the leadership on the spot. The new generation of well-informed and well-traveled Saudis has been irritated by what they have seen as the incompetence of the government in convincing mounting problems, and they have shown a greater say in the running of their nation.11

The internal policies of Saudi Arabia and its stability have been seen as concerns of the international community at large. The Muslim world avails the opportunity for Haj (which is for more than two million pilgrims annually), and western as well as other oil-consuming countries of the world are dependent on its oil. These factors have confined the country's internal stability of paramount importance, and the ruling establishment has been encouraged if not pressured by its allies among the western nations to reform its outdated system so as to be in line with the new international order.15
The growing assertiveness of the Saudi middle class for political change arose because the people had been saturated by the empty promises made by their rulers. In April 1991, several key Saudi figures including 43 intellectuals and businessmen posted an open letter to King Fahd, urging him to initiate steps towards political reforms, including the following: establishment of national and municipal councils; changes in the activities of Mutaween (Religious Police); changes in the field of human rights; establishment of a rule-making representative assembly; creation of political parties; and freedom of the press, expression etc. Immediately, the Saudi Ulama was energized with their own brand of memorandum for Islamic reforms. In May 1991, a group of 500 religious scholars demonstrated a petition to King Fahd, which among other things called for a consultative council, greater Islamization, fundamental changes in the army, equitable distribution of resources, radical judicial reforms, and opposition to pacts and treaties with the west.

The 1979 Islamic Revolution in Iran, which overthrew the Shah, sent shockwaves throughout the Gulf. The Islamic revolution in Iran expressed a direct challenge to Saudi legitimacy, as Ayatollah Khomeini declared monarchy to be an un-Islamic form of government and invoked Saudi citizens to
rebel against their government. The Khomeini-led popular upsurge in Iran posed a serious challenge to the Gulf Sheikdoms. The Ayatollah openly discussed exporting his brand of Islam to halt the unpopular and anti-people monarchical systems operating in the oil-rich Gulf states. As far as Saudi Arabia was concerned, the sensational seizure of the Mecca Mosque was a timely warning bell to awaken the Saud dynasty. Faced with a threat of regime instability, the King once again availed shelter under the oft-repeated, yet never implemented proposal of sharing power with the people through the creation of a Majlis.

Drawing on its considerable political and economic resources, the Saudi leadership has consistently acknowledged that it has pursued domestic policies in support of modernization and development, with an emphasis on cooperation, negotiation and compromise that is consistent with the Quran. Nonetheless, the royal family has been resistant to criticism and threats to its political legitimacy. Opponents of the regime, whether secular or religious, complain that the oil wealth has been used to enrich the Saudi family more than the country as a whole, that the government is corrupt, and that the refusal of the House of Saud to share power is non-Islamic. There is also dissatisfaction
among some with the close ties between Saudi Arabia and the United States.¹⁹

In the wake of 1990-91 Kuwait crisis, the struggle for democracy and people's participation in the decision-making process received serious momentum. The Iraqi invasion of Kuwait expressed a serious challenge to the very existence and territorial integrity of Saudi Arabia. Iraq's invasion of Kuwait was both a military and political challenge to Saudi Arabia, as Saddam Hussain branded the Saudis as traitors to Arabism and Islam, like Khomeini, before him, urged Saudis to overthrow the monarchy.²⁰ Many citizens stared questioning the wisdom of King's policy. The realization that people should have a role in policy-making and control over the way the country is run, gained momentum. This was especially so with the country's growing educated middle class. The expression to western educational system convinced the younger generation about the necessity of a more democratic and open political system in Saudi Arabia. This section of the Saudi society got further credence and legitimacy when the Kingdom played host to the two-day Kuwaiti people's conference. The central theme of the conference rotated around the strategy to liberate Kuwait and to revive parliamentary democracy in the liberated Kuwait. The
implication was serious when the Kuwaitis explained the policy of sharing power with their rulers, in the very heart of the Kingdom where the Saudis cannot do the same.  

Further, the arrival and stationing of thousands of non-Muslim US-led allied troops on Saudi soil during the Gulf War, obtained the wrath of the strong and influential religious establishment. The sight of US women soldiers, with shorts and jewelry, driving around Saudi Arabia's Eastern Province must have come as a shocking humiliation to the self-proclaimed protectors of the Quran and Islam. They too desired changes within the existing system.

**Features of the Reform Package**

The following are the important components of the reform package declared by King Fahd on March 1, 1992.

1) **Monarchy**

The Basic System of Rules explains the system of government as a Monarchy and institutes a new system of succession to the throne. It calls for the formation of an Electoral College made up of Abdul Aziz's brothers and grandsons to name a successor. The King, however, possesses the right to dismiss the Crown Prince and name someone else at anytime. The King
selects heir apparent and relieves him of his duties by royal order.\textsuperscript{22} The heir apparent is to orient his time to his duties as an heir apparent and to whatever missions the King entrusts him with; also, the heir apparent takes over the powers of the King on the death of the King until the act of allegiance has been removed.

The Basic Law does not mention any limitations constraining the King's execution of his prerogative as the 'final resort.' The Basic Law provides full discretion to the King in the times of national crises. The King possesses the absolute power to defend the country from an external force that threatens the safety of the nation or its institutions.\textsuperscript{23} The King also possesses the power to unilaterally amend the Basic Law, and to suspend the Basic Law at the time of war. Even for the judiciary, the King, as the commander of the faithful, serves as the highest court of appeal and source of pardon. Thus, the King is the point of reference, and the final authority for all of the state's power.

2) The Executive

The executive power of the country is vested in the King. The Basic System of Rules orders that the King carries out the legitimate policy of the nation in accordance with the provisions of Islam, and that he oversees the implementation of the Islamic
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Shari’a, the system of government, the state's general policies, and the protection and defense of the country. In this task, he is supported in carrying out his duties by the Council of Ministers of which he is the chairman. With regard to the executive organization, the Basic System of Rules constructs a hierarchical system: the national government represented in the Council of Ministers, and the local governments of various regions of the kingdom with their own regional councils. These local governments are subordinate to the national government and accountable to the Minister of Interior.

The Council of Ministers is responsible for laying down the policy of the state with respect to internal and foreign affairs, finance, the economy, education, defense and all public affairs, and to oversee the execution thereof. The Council of Ministers has regulatory, executive, and administrative authorities. It is the ultimate authority for financial affairs and for all matters concerned with various ministries of the state and other governmental departments, and it clears what measures should be taken in these matters. Treaties and international agreements would not be considered effective until approved by the council. The decisions of the Council of Ministers are final except for
those which need the issuing of a royal decree or order, in accordance with the Council regulations.

The new Provincial System, covered in the constitutional package of 1992 calls for the reorganization of the local governments around the country, and lays down several regulations influencing the governorship. The new regulation does not differ a great deal from the previous ones. They are, in fact, a slightly modified revision of the previous Provincial Regulation of 1963. The Kingdom is parted into regional units. Each region is parted into a number of governorates, controlled by a governor. The governorate is further divided into districts. Each district is controlled by a director, appointed by a decision of the Minister of Interior and defined on a recommendation by the Amir of the region. The districts are further divided into centers, each with a chairman who is appointed by a decision of the Amir of the region based on the recommendation of the governor of the governorate. The division of these regions and their subunits are to explain the demographic, geographical, and security considerations, environmental conditions, and communications. The regulation grants the governors and the local council extensive autonomy in deciding the priorities of
spending and development plans affecting their region. The governor remains answerable directly to the King.

3) The Legislature

The Basic System of Rules arranges for the establishment of a Consultative Council. The Consultative Council lays down regulations and motions to meet the interests of the state or remove what is bad in its affairs, in accordance with the Islamic Shari’a. It debates government policies and presents draft regulations to the King. The council shows opinions on the general policy of the state, which will be referred to it by the Council of Ministers. Ten members of the council have the authority to propose a new draft law or amendment of an executive law and submit it to the chairman of the Consultative Council.

In particular, the Consultative Council can do the following:

a) explain the general plan of economic and social development, and express an opinion on it,

b) study international laws, charters, treaties, agreements and concessions, and provide appropriate suggestions regarding them,
c) predict the regulations,

d) explain the annual reports submitted by ministries and other government bodies and make appropriate suggestions regarding them, and

e) question the ministers and other government officials. 27

All of these functions had previously been commanded by the exclusive monopoly of the Council of Ministers. The introduction of the Consultative Council, however, entails an adjustment of government functions. Article 56 of the Basic System of Rules invites the Council of Ministers to amend its statutes in order to align with "the provisions of this and other laws," which simply means that the Council of Ministers' power over legislative functions is to be decreased. According to the constitution of the Consultative Council, the government's actions have to be rectified by it; those not rectified will be transferred back to the King. Additionally, Article 69 of the Basic System of rules provides provision for joint meetings between the Consultative Council and the Council of Ministers, and for summoning and calling on non-governmental officials to explain whatever matters the King fixes. In addition to its basic role as a 'regulatory' body participating in a formal legislative process (the consultative process), the Consultative Council is activated as a
watchdog over the government, and argues government policies—both executive as well as legislative. It is empowered to disagree with and even disappoint the executives (the Council of Ministers).28

4) The Judiciary

The Basic System of Rules apparently reaffirms the independence of judiciary in rigid terms. It proclaims that the courts are not dependent and further implores judges to be governed only by the Islamic Shari'a. Accordingly, Article 46 orders that there is no command over judges in dispensation of their judgements except in the case of Islamic Shari'a. Some of the usual constitutional protections of judicial independence including protection against abolition of tenure and similar apprehensions, i.e., a reduction of salary, are not specifically explained.29 Safeguards on the appointment and removal of judges are generally included. Article 52 of the Basic System of Rules forms the Council of the Grand Ulama to act as Higher Council of Justice, responsible only to present the appointment, promotion, and dismissal of judges. Such recommendations are held by royal decree. Additionally, the Higher Council of Justice guides the work of the courts.
5) The Bill of Rights

Since the legal system of Saudi Arabia is dependent on the Islamic Shari'a law, rights and liberties need not necessarily have been enumerated in the constitution, as they are already implicitly secured by the Islamic law. Nevertheless, the constitution does in fact spell out selected constitutional rights for ordinary citizens. These incorporate freedom from arbitrary arrests, punishment and search. There can be no fine without due legal process. No person can be arrested, jailed or have his actions restricted except under the law.

Article 37 states that private homes cannot be searched except in accordance with the law. The Basic System of Rules also restricts the rights of the government to spy on its citizens and guarantees the privacy of posts and telecommunications. They cannot be confiscated, delayed or published. The right to take action in the court is also guaranteed on an equal basis for the citizens as well as the non-citizens residing in the country. The state guarantees the rights of the citizen in case of emergency and social security for its disabled and old citizens. According to the Basic System of Rules, the state saves freedom of private property and its sanctity. No one is to be stripped of his property except when it serves the public interest.
Drawbacks of the Reforms

The kind of system that the new constitution proposes suffers from numerous drawbacks.

1. The King remains constant as an authoritarian as before. The Basic System of Rules only shows the powers of the King in a formal and written form. The new reform doesn't precisely explain the distribution of power between the branches of government administration. It nonetheless reforms a horizontal as well as a vertical division of authority within the workings of the government. The horizontal division is drawn by Article 44 of the Basic System of Rules, which shows that the authorities of the state (judicial, executive & regulatory) are subordinate to the King; these three authorities are to cooperate with one another. The vertical division of power can be exhibited in the regional constitution, with its semi-autonomy for the dozen major urban areas.

2. The Consultative Council law establishes no consensus or majority rule. In fact, the consultation requirement does not impose any real restraint on the King's power. The King possesses the exclusive right to nominate the chairman and the council members, and their rights and duties are framed by royal decree. Again, the powers of the council are severely
confined. It is a regulatory body, which can only explain and predict the reports, and can advise, without any real legislative powers.

3. The problem with the Bill of Rights is not what it declares, but what it does not say.\(^{33}\) It is confined and incomplete. The Basic Law doesn’t provide for freedom of religion. Aversion to western religious freedom concept is evidenced throughout the Kingdom’s history.\(^{34}\) Although Saudi Arabia is signatory to the Genocide convention, the Slavery Convention, and the Supplementary Convention on the Abolition of Slavery, Saudi Arabia did not vote for the Universal Declaration of Human Rights on December 10, 1948, charging that the Declaration’s freedom of religion clause violated Islamic tenets.

4. Though there are a few progressive reforms in the private sphere, the Basic Law confines rights in the public realm.\(^{35}\) For example, there is no freedom of speech or expression guaranteed in the Basic Law. Nor does the Basic Law explain for freedom of the press. Instead, Article 39 stipulates that "the information publication media should define themselves in a courteous manner and abide by the regulations of the state". All actions that lead to sedition and disunity or
undermine the state's security and public relations or insult the dignity and rights of the people are strictly prohibited. Foreign and local publications are subjected to pre-distribution censorship.

5. The Basic System of Rules is silent with regard to court organization, and, the hierarchical system. It also contain no usual constitutional protections of judicial independence, including protection against termination of tenure and a reduction of salary. Also, nothing is defined of the extent of judicial power to recheck the actions of the government.

6. Protecting rights in the private sphere while curtailing them in the public sphere shows a desire on behalf of the King and the drafters of the Basic Law to extend rights to the Saudi individual in the context of conducting his private life, but not to extend rights, such as freedom of speech, which may be utilized in a public manner to undermine the government. It is this private/public distinction which most clearly differs in Saudi Arabia's approach to civil and human rights from that of other nations.

7. The Basic Law is pseudo-projected on the status of the royal family. No mention is made of any special legal status of members of the royal family. Also no explicit statement that the
royal family members will be subject to the same legal and judicial processes as commonness was not excluded either.39

8. Saudi Arabia's approach to political asylum conflicts sharply with established international principles. Whereas most states base political asylum on the demand of the asylum seeker, Saudi Arabia bases political asylum on Saudi "public interest." Article 42 of the Basic Law stipulates that "the state provides political asylum if the public interest needs it and the regulations and international agreements will define the procedures pertaining to the extradition of the criminals."40

The presentation of a written constitution with other constitutional institutions is unprecedented in the history of Saudi Arabia. These political innovations did not, of course, present an end to the authoritarian political rule in Saudi Arabia. They certainly did, however, launched a process of responses which raised hopes among the Saudis that these measures could be understood as a precedent for further political development in the future. Compared to the western experiences, these are unnoticeable democratic innovations, and they certainly launched a process of responding to the demands for a share in the political decision-making process."41
The long-awaited constitution that was declared in March 1992, has undoubtedly marked a beginning of a new era in Saudi law and politics. Although the royal family was always hesitant to promulgate a constitution (as according to them the Quran is the constitution of the country), the promulgation of the Basic System of Rules, a statute for the establishment of a consultative council as well as the regional statute, has been effectively declared to be the country's first written constitution.

**General Reflections**

The long-awaited constitution that was announced in March 1992 has undoubtedly marked the beginning of a new era in Saudi law and politics, and it may well break significant new ground in substantive Islamic constitutional legal terms. Although the royal family was always hesitant to promulgate a constitution, and all along it had maintained that the Constitution of Saudi Arabia is the Qur'an, the promulgation of the basic System of Rules, a statute for the establishment of a Consultative Council as well as a Regional Statute, has been effectively amounted to be the first written constitution of the country. ⁴²
The Political Implications of the Reform

Generally speaking, constitutionalism is not democracy; however, an improvement in the mechanisms of constitutionalism could lead to a form of democracy. A rising influx of unmet expectations will begin to surface, and will certainly erode loyalty to the regime if no wider popular participation and collective responsibility of the members of society are introduced to satisfy the wide expectation and the new reality. The reform has started, but the pace is yet to be determined.43

The introduction of formal constitutional change in Saudi Arabia was the result of continued foreign and domestic challenges. Such challenges did much to inspire the new reform and speed up its materialization. The continued foreign challenges, i.e., Iranian revolution and later the Iraqi invasion of Kuwait, disrupted not only the relative internal security that the Saudis have enjoyed but also threatened their very national existence. Such events enhanced the growth of a new breed of Saudi fundamentalists, who have become increasingly concerned about the westernization of the society. They are highly critical of the ruling establishment on domestic and foreign issues.
All in all, Saudi internal stability has been and will remain influenced by developments elsewhere. This fact partially explains the sensitivity of the present formal political change, which entails a softening of ties with the religious establishment. It has come into effect during a time when the Islamists are gaining popularity, not only inside the country but also throughout the Middle East. These Islamic revivalists have a greater access to a large audience through the Friday *khutba*, public speech, weekly meetings for public seminars, and most importantly, the usage of audiocassette tapes. Therefore the religious establishment is the only entity inside the country that relatively retains the quasi-independent base of power and influence from that of the royal family’s. The point here is that the 'Ulama' remains very much, as it always has been, reserved to the classical knowledge of Islam. With the new emerging realities, the religious establishment now has been subjected to new stresses related to the demands of the changing environment, for there is no other group adequately trained in Islam capable of applying traditional knowledge to contemporary problems.

It is widely believed that the reform was partially designed to curb the religious conservatives and their noticeably
increasing power in recent times. In general, the reform came following the presence of foreign troops, the defeat of Saddam Hussain of Iraq with his appeal to fight the infidels, and the popular denunciation of laxity. When it was introduced, the reform carried many elements that will certainly contribute to the weakening of the religious establishment.

Internal disturbances and power struggles, as a result of the challenge of emerging power to the royal family, have taken place in Saudi Arabia ever since its very existence. Historically, the religious ulama and the royal family have been in constant tension.\(^44\) Cases in point include the following: the 1920s Radio & Telegram dispute between the religious zealots and the royal family;\(^45\) the 1929 Ikhwan revolt against the Monarch; in the 1960s, the succession rivalry amongst the royal family and the religious establishment, the issue of the opening of girls’ schools which provoked the ulama to protest,\(^46\) the riots and the protest of some of the ulama at the transmitting of TV signals, culminating in the unsuccessful armed attack on the TV station at Riyadh\(^47\) (that resulted in the killing of their leader, Prince Khalid Ibn Musaid Ibn Abd al-Aziz, whose brother Faisal assassinated King Faisal in 1975, in revenge; and lastly, the late 1979 takeover of the Grand Mosque by some fundamentalists.
None of these religious clashes, however, raised the question of the legitimacy of the royal family, except in the two cases when the religious opposition came from a religious-tribal alliance, i.e., the Ikhwan revolution of 1929 and the taking-over of the holy mosque in 1979.

Generally, the Saudi royal family is facing two competing parties within the informal political establishment. They are the secular liberal, essentially materialistic elements, concerned with conspicuous consumption on one hand, and the religious conservatives who still adhere to the strict application of the Shari'a, on the other. The royal family shows signs of being skeptical of the ulama, and continues to make efforts to keep them as distant as possible from politics. Eventually, the gap between the two groups has been growing wider and deeper. While religion was the unifying force in the early Saudi State, it is now increasingly becoming an element of division. The royal family, standing at the apex of this setting, has done little to enhance the cohesion between these two groups.

The reform is indeed far-reaching for both religious fundamentalists and the growing liberal middle class. This came in effort to reconcile two different and opposing views within the Saudi society, and to bring the Islamic elements under greater
control. As a consequence, the reform will almost certainly lead to a more open conflict between the royal family and the religious establishment on the other hand.\(^{48}\) The conflict will indeed open the door to greater change.

As internal pressure mounts, loyalty among the three groups, i.e. the religious, the liberal and the royal family, is intense. Nevertheless, the royal family realizes the necessity to improve its political conduct if it is to continue its dominant traditional role. Thus the royal family increasingly realizes that inclusion of commoners in decision-making would make a large spectrum of the society feel they have a stake in the existing system and its continuity. The various petitions and memorandums requesting a reform in the system and the promulgation of the constitution vividly illustrate that political life in Saudi Arabia, which has been dominated exclusively by the royal family in the last century, is creeping towards emancipation.

Indeed, the constitutional reform has made visible the monarchy's cautious political move to the side of the liberal intelligentsia of the society, instead of its usual and traditional reconciliation with the religious establishment whenever the royal family faced difficulties. This move signaled the start of an
expansion of the bases of the Saudi political system to include other "progressive" forces -- that is, the representatives of the growing educated-middle class and technocrats. The link between the royal family derives considerable moral and political influence from its alliance with the religious establishment, and the political strength of the House of Al-Saud is still tied to its religious role. A balance favoring different representatives of society will be the detriment of the religious establishment's share of power. This share will not be surrendered passively, and may upset the internal balance of the political establishment altogether.

Because of the shift in the continuity of the monarchy's religious policy, it seems that the leadership has a dual emphasis. On one hand, the monarchy is in direct opposition to Islamic revivalists. On the other hand, the liberal progressive force has its own agenda. These progressive groups uphold the beliefs of some form of popular sovereignty and that the right to legislate rests with the people's authorized representatives. This view may come into contest with the explicit monopoly of power of the throne.

As this suggests, the constitutional reform inevitably raises many issues, and embraces changes in the way in which the
government operates and in the power structure of the state. The fact that a constitution was promulgated is a recognition of the need for political change, and thus, the constitution will certainly over time transform the political culture of Saudi society.  

It is hard to measure with any precision the extent to which people look at the royal family as a separate entity from government in general, or view the government as simply a few looking out for themselves, unconcerned with the benefit of all of the people. Nevertheless, and broadly speaking, a number of different developments could influence significantly the course of constitutional development into a democratic form. A significant factor in this development is the prospective role of women in the society. The constitutional reform did not mention the status of Saudi women as it would have stimulated a widespread religious reaction.

Similarly if the government suggested a reform in women's rights, it could ignite a significant religious opposition, in particular, by affecting the views among the traditional ulama. This potential conflict was managed during the women's demonstration of November 1990, by yielding to the position of the Ulama when the Ministry of the Interior made the ban
official. The ulama's protest, however, did not go as far as questioning the legitimacy of the royal family and their conduct. This may be attributed to the speedy response of the regime. Similar issues, nonetheless, are bound to happen and contention will certainly arise again with a different contour but with the same issue involved - the role and freedom of women in Saudi society.

Another prospective development is the possibility of a further escalation in external hostility to the Kingdom as was the case with Iraq, for the Kingdom is surrounded by several neighboring states who have shown hostility from time to time. Embarking on hostilities may put pressure on the government to side with the religious establishment. Religion would certainly be used as a vehicle to express the unity and integrity of the nation.

The Gulf crisis was embarrassing for the Saudi royal family on a number of counts, chief among them is the exposure of the weakness of the military machine, which has been consuming half of Saudi oil revenue till the last two decades, and the outright criticism of the Saudi's alliance with Western powers, among not only the Islamists but also the liberals. The huge American military presence is unlikely to escape resentment from even within the Saudi military establishment itself.
Involvement of the military within Saudi polities (inspired by religious establishment or even by a faction within the royal family) may jeopardize the unity essential to the constitutional process.

In addition, internal strife among the members of the royal family themselves may drastically change the course of constitutional development. The criteria of selecting a King from among the five hundred or more princes will, undoubtedly, involve many factors, of which the existing institutions, i.e., Council of Ministers and the yet to be established Consultative Council would contribute to, and may influence, the choice of the future King by ratifying his inauguration as well as confirming the selection of his successor. It is likely that the next King would determine the distribution of power more forcefully by strengthening the role of some institutions. The indigenous conflict within the ruling family might arise. So far the royal family has demonstrated its capacity for unity and solidarity. This mutual interest of the royal family has been realized among all its members; however, the explicitly stated monopoly of the throne by only two percent of the members of the royal family (the sons of the late King Abd al-Aziz and their grandsons) may end the capacity of the royal family to unify.
The Legal Implications of the Reform

While the reform does not abruptly alter the long established legal traditions and customs of the Kingdom, it carries with it the seeds of more and broader legal change. The introduction of new institutions within the government structure, together with the reformation of the state's judicial councils, i.e., the Council of Higher Justice, and the Board of Grievances, will certainly affect the traditional long-established legal system by its categorization of the state's authority.

The contest between the authority of the executive and the authority of the judiciary in many basic and essential issues such as human rights would promote the evolution of legal norms within Saudi Arabia. It is likely to encourage the judiciary to play an active role in defining applicable legal norms such as human rights in the shari'a. Furthermore, the Basic System of Rules indicates in Articles 45 and 51, the law will define the composition or the Council of Higher Justice, including the methods of deliverance of fatwas and their functions. Presently the fatwa is issued by the religious institution of the Council of Higher Justice.51

The establishment of a legislative institution with its predicted impact on the legal norms, as denoted in constant
repetition of the term *Nizam* (meaning non-religious law) in the Basic System of Rules, will have an obvious contribution to providing legal framework of the judiciary. The Council's legislation will gradually guide and direct the legal process of Saudi civil society. With this in mind, the Consultative Council will certainly plan a prominent role in promoting the role of, and respect for, the law, and direct the political process into legal channels. The opportunity for the people to be directly involved within the working of the government for the resolution of the existing economic, political and legal problems will undoubtedly influence the legal development of Saudi Arabia.

Moreover, the establishment of the Consultative Council implies the transfer of legislative power from the Council of Minister to the Consultative Council (Article 56). A delicate balance between the Council of Ministers and the Consultative Council, therefore, will have to be maintained. The division of function, though vaguely defined, would provide the framework in which power is physically symbolized. The visibility of division may prove to be a useful tool in restraining the arbitrary exercise of power by the state and in limiting the administrative power in relation to the citizens' rights.
The transference of legislative power to the Consultative Council together with the process of reforming the Supreme Judicial Council will certainly cause an institutional tension, but may well clarify the power division lines. The process is risky, but if handled cautiously, it may generate a mechanism of checks and balances of political administration. The prospective legislative body will, indeed, prove to be the starting point in widening the juridical basis of authority beyond the shari'a, which has been hitherto solely administered by the religious Ulama.

The general analysis indicates that it is apparent that the government of the royal family no longer has the uncontested legitimacy that it used to enjoy. The constitutional reform of 1992 was thus enacted and the political development is proceeding. The pace, however, is yet to be determined.52
References


4. Ibid, p. 165


8. A.K. Pasha, Aspects of Political Participation in the Gulf States (Delhi, 1999), p.22.


15. Ibid., p.302.


21. Bansidhar Pradhan, note 13, p.24:


23. Ibid., Article, 62.

24. Ibid., Article, 55.

25. Ibid., Article, 56.


27. Article 15, of the Constitution of Consultative Council, in Geoff Simons, note 22, pp.354-358. Also Appendix II


29. Ibid., p. 66.

30. Article 36, Basic System of Rules, note 22, p. 348. Also Appendix II

31. Ibid., Article 40,


35. Ibid., p. 268.
37. F. Gregory, Gause III, note 6, p. 223.
38. Ibid., p. 269.
39. Ibid., p. 223.
42. Rahshe Aba-Namay, note 1, P. 82.
43. Ibid., p. 82.
44. Ibid., p. 83.
46. *Al-Hayat* newspaper (Lebanon, October 1-1965.)
48. Rahshe Aba-Namay, note 1, P. 84.
49. Ibid., p. 85.
50. Ibid., p. 86.
51. Ibid., p. 87.
52. Ibid., pp. 87-88.