Chapter-3, Judicial System in Saudi Arabia
Judiciary System of Saudi Arabia

Law, in classical Islamic theory, is the revealed will of God, a divinely ordained system. The typical form of Islamic law is the Shari’a law as expounded by the classical jurists and administered by the courts. The classical theory of Shari’a law was the outcome of a complex historical process spanning a period of some three centuries. Further development of this thesis by Western scholarship has shown how closely the growth of Islamic law is linked to current social, political and economic conditions.

The Saudi Judicial System

Islamic law as applied in Saudi Arabia, the courts and by the judges who apply it, i.e. the Islamic legal system of Saudi Arabia, is little known or understood outside the Kingdom. Even within the Kingdom, little information about the system is available except to the officials and practitioners who work within it. At the same time, as everyone recognizes, the Kingdom’s claim to uphold Islamic law is central to its constitution, law, religion, history, and society.¹

Saudi Arabia is the most traditionalist Islamic legal system in the World today.² Islamic law is constitutionally the law of the
land, and the general jurisdiction is held by traditionally trained judges who exclusively apply the Islamic law. Traditional Islamic legal learning is still good professional training for practice. The majority of the Saudi people highly values their religion and intends to preserve its force in their legal and social life. Most Saudis consider Islamic law their indigenous law, natural and inevitable. Chief among the justifications for the present regime and the cause to which it commonly ascribes its historical successes is its zeal in upholding the legal code of God. Saudi Arabia does broadly and effectively apply the rules of the old Islamic law, probably to a degree greater than many Islamic states of the past.

This is not to claim that Saudi Arabia's legal system is the ideal Islamic law or legal system. Saudi Arabia no doubt does not perfectly apply Islamic law. It is indisputable, however, that it does apply at least a traditionalist Islamic law in many spheres. It does this, again, with certain notable successes relative to Islamic antecedents. Even the most forward-looking Muslim cannot disown entirely the past to which Saudi Arabia is heir.

This is also not to deny that Saudi Arabia's Islamic legal system is in many ways unique. Unanimously Muslim, and overwhelmingly Sunni, Saudi Arabia is religiously homogeneous.
In public life at least, it strenuously adheres to one trend of Sunni thought and practice, deriving from the teachings of Muhammad bin 'Abd al-Wahhab (d. 1206 AH/1791 CE), and before him Ibn Taymiyya (d. 728/1328), whose teachings figure prominently in what follows. The political and religious movement founded by Ibn 'Abd al-Wahhab has dominated the history of the Arabian Peninsula for almost a quarter of a millennium. It is well known and treated in many works.

The religious ideas of Wahhabism are perfectly orthodox, even centrist, but at the same time so strenuous as never to claim more than a minority following. The Wahhabis strove to regain the pure practice of the salaf, the pious forebeares, and shake off the cultural accretions of intervening centuries. They were not content with pious wishes or memories of an idealized past but insisted on making Islam a living reality. They sought this by means of a rigorous legalist approach to the revealed scriptures, the material texts of the revelation through the Prophet Muhammad. Their religiosity is uniquely founded on purist, even puritanical, adherence to Islamic law. For example, customary law, which elsewhere in the Muslim world often overrules Islamic law, have harshly been suppressed wherever it contends with Islamic legal tenets. In religion the Wahhabis
banished any trace of the theosophical or mystical. These characteristics, and many more like them, distinguish observations in Saudi Arabia from those that might be made elsewhere.

**Ijtihad as Law**

Sovereignty (al-hukm) rests with God alone, and He has ordained that you should worship naught but Him. . . .

*The Qur'an* [12:40]

Article 1. The religion (of Saudi Arabia) is Islam, its constitution is the Book of God Most High and the Sunna of His Prophet; may God bless him and give him peace.

Article 7. Rule in the Kingdom of Saudi Arabia draws its authority from the Book of God Most High and the Sunna of His prophet. These two are sovereign (hakiman) over this regulation and all regulations (nizam) of the state.

Article 48. The courts shall apply in cases brought before them the rules (ahkam) of the Islamic shari'a in agreement with the indications [or proofs] in the Book and the Sunna and the regulations issued by the ruler (wali al-amr) that do not contradict the Book or the Sunna.
—Basic Regulation of the Kingdom of Saudi Arabia, J992

Here we make judgments only for this world. In the Hereafter all those whom we judged here will confront us and demand an accounting or reckoning.

—Shaykh Sulayman al-Musa, Saudi commercial court judge.

The law of Saudi Arabia is the Islamic shari'a, meaning divine law. To the Saudis and to believing Muslims everywhere, God revealed His final law to govern all aspects of human life to the Prophet Muhammad between 610 and 632 CE. The revelation took form as the Qur'an.

Because the Qur'an also commands mankind to obey the Prophet, the example of the Prophet's lifetime—both his words and his exemplary actions—become a secondary revelation, known as the Sunnah. The Sunnah is known by the transmission from generation to generation of reports about the Prophet. Each report, accompanied by a list of the persons who narrated it, one to the other down through history, is called a hadith. Together the hadith become a scripture alongside the Qur'an, although of lesser status, since they do not represent the literal words of God, nor are they taken as unquestionably
authentic. From these two scriptures—the Qur'an and the Sunnah—mankind may learn all that God intended to reveal of the Shari'a.

The Qur'an announces that it lays down a law for mankind. Unto every [community] of you have We appointed a law (Shari'a) and way of life.... [5:48]7.

O David! Behold We have made thee a prophet and thus Our vicegerent on earth; judge (uhkum 10), then, between men with the truth (al-haqq), and do not follow vain desire (hawa) lest it lead thee astray from the path of God..[ 38:26 ]

But for people [of] certainty, who could be a better law-giver than God (ahsanu min allahi hukman)? [5:50]

Today have I perfected your religious law (din 11) for you, and have bestowed upon you the full measure of My blessings, and willed that self-surrender (al-Islam) unto Me shall be your religion (din). [5:3]

The law is perfect, but humans are not. Mankind struggles to learn the Shari'a from the Qur'an and Sunnah. The process by which scholars find law by interpretation of the revealed texts is ijtihad, literally "striving." The human understanding of the divine law is termed fiqh, literally "understanding." Fiqh consists
of the opinions of scholars who by their piety and learning have become qualified to interpret the scriptural sources and derive laws. So to learn the law of Saudi Arabia, one turns first to the fiqh. In other words, one turns not to state legislation or court precedents but to the opinions, the ijtihad, of religious-legal scholars of the past and the present, whom we shall call ‘ulama’, literally the possessors of knowledge (‘ilm).

In practice, a lay Muslim, seeking to act in harmony with God’s law in some difficult or perplexing situation, approaches a scholar of the law whom he or she respects, summarizes the situation faced, and asks for his views of the shari’a ruling for that situation. In this function the scholar is called a mufti, and his opinion is called a fatwa. Hearing the mufti’s advice, the questioner is free to choose whether or not to follow it and apply the answer to his or her situation. Any sufficiently learned and pious individual is entitled to be a mufti, and his authority requires no official appointment or status. A scholar's influence has always derived more from his following among ordinary people, based on reputation for scholarly attainments, status among peers, and personal devotion and integrity, than from possessing official positions. Since at least the time of the Ottoman empire, however, governments may lend an official
status such as "Grand Mufti" to a single mufti.\textsuperscript{12} Saudi Arabia as a formal matter adopted this practice only recently, in 1993, conferring the title on Shaykh Abd al-Aziz bin Abd Allah Bin Baz (d. 1999), who had already held informal first rank among Saudi muftis for a considerable period.

Almost all rules applied today in Saudi Arabian courts can be found in books of fiqh written by medieval 'ulama'. These books record the opinions of scholars issued over a period of nearly fourteen centuries, making fiqh a highly complex and diverse body of law. Much, however, is simplified by the early invention of the institution of the school of law (\textit{madhhab}), a loose organization of scholars who agree to follow and contribute to a consistent stream of interpretation and decision descending from a certain revered scholar of the past. Sunni Islam, although it once knew reportedly hundreds of schools, settled down after the 7th/13th century to having only four, the Hanafi, Maliki, Shafi'i, and Hanbali.\textsuperscript{13} These schools have been discussed in chapter one.

Since the Wahhabi movement (from which Saudi Arabia arises) acknowledged the Hanbali School, most Saudis now follow this school. Saudi judges ordinarily adhere to Hanbali legal positions, but, as we shall see below, they are free to adopt
views from other schools, or even from outside the four schools altogether, as long as they base their views, following proper interpretive procedures, on the Qur'an and sunnah.

To explore the internal construction of judging and fatwagiving, let us begin by studying the office of the judge, called qadi, relying (as Saudis do) on the medieval texts. As Saudi 'ulama' confirm, the best introduction to understanding the office of qadi, and an authoritative source of laws governing the qadi, is a famous letter purported to be from the second Caliph, 'Umar bin al-Khattab (d. 644), to Abu Musa al-Ash'ari, deputing him as governor to Basra. In part the letter reads:

The judicial function is an unequivocal obligation (farida) and a Sunnah, which is as followed.....

Do not let a judgment (qada) which you judged yesterday and then reconsidered, and about which you were guided to a wiser opinion (li-rushdika), prevent you from returning to the truth (al-haqq), for verily truth is not voided (la-yubtiluhu) by anything. Know that [reconsidering and] returning to the truth is better than persistence in error.

Use your understanding in matters that cause hesitation and perplexity in your heart on which there is no Qur'an [-ic verse] or Sunna. Learn the similarities and the analogies (al-ashbah wa-al-amthal), then compare (qis) matters after that. Then adopt the most
pleasing of them to God, and the one closest to the truth in your view
(t’imad li-ahbbiha ila allahi wa-ashbahiha bi-al-haqqi fima tara) ......

God has taken responsibility in your stead for the secret [inner states
of men] (inna allaha tawalla ’ankum al-sara’ir) and averted
[responsibility] from you by [means of] the explicit [evidence or proofs]
(dara’ ankum bi-al-bayyinat).^15

Several fundamental points about judging (qada) emerge in
these few sentences. The first paragraph shows that even
judging needs its own religious-legal evaluation; it is declared
not only permissible but a religious obligation. The second
paragraph establishes that the qadi must strive for the divine
truth for each case that confronts him, without being bound by
past opinions, even his own. Truth is the ultimate precedent, to
which one must return once it is revealed. 'Umar himself is
reported to have said, "I adjudged in the matter of the
grandfather [a much vexed issue of inheritance law] various
judgments (qadaya), in each of which I did not desist from
[seeking] the better."^16 There is no rule of precedent, stare
decisis, in Islamic law. The third paragraph establishes that,
just as an individual must do when he decides on his own
actions, the judge must follow God's law, seeking to know it from
the revelation, the Qur'an and sunna. Therefore he must be
knowledgeable about the texts, a scholar. In perplexity, where
there is no clear verse of the Qur'an or report from the Prophet, the judge is to use his understanding.

According to the fourth paragraph, his understanding may be guided by similarities and analogies to cases he finds in the revelation. The outcome being sought is God's own ruling for the case, the judgment that is most pleasing to God, found either from an explicit text of revelation or through the seeker's efforts to determine what is closest to the revelation. Any one attempt at that truth may be in error, and so the qadi must strive to come ever closer to God's truth, according to his best judgment. In the fifth paragraph, the qadi learns that he is not responsible for attaining the perfection of the omniscient divine judge, who knows what occurred and knows the inner merit of the parties and witnesses. Rather, he may take the facts in the form proven and is relieved of responsibility to attain a correct judgment of men's secret inner states, but by this language, again, the letter holds out as the judge's objective to attain the true divine judgment of the cause.

So far little would seem to distinguish the qadi from the mufti. The mufti also seeks to determine God's law for others, and in that sense he also is one of the instruments by which the legal system applies its law. What are the differences between
the two roles? The following statement by the Hanbali\textsuperscript{\textsuperscript{\textsuperscript{1}}} Ibn Qayyim al-Jawziyya (d. 751/1350) (known as Ibn al-Qayyim), Ibn Taymiyya’s pupil and successor, introduces some of them:

[The mufti’s] fatwa states a general divine law (\textit{Shari’a Amma}) concerning both the requestor and others. As for the judge (\textit{hakim}), his ruling (\textit{bukm}) is particular and specific (\textit{juz’i khass}), not extending to anyone but the two parties. The mufti opines in a ruling that is generally worded and generally applicable (\textit{hukm amm kulli}), that to one who does so-and-so is applicable such-and-such, or one who says so-and-so is obliged to do such-and-such. The qadi makes a particular judgment (\textit{qadi muayyan}) upon a particular person, and his judgment is specific in terms and obligatory, while the fatwa of the scholar is general in terms and not obligatory.\textsuperscript{17}

Let us explore these differences in greater depth, supplementing them in a few respects. First, the giving of fatwas (\textit{ifta}) involves neither enforcement nor compulsion, even where a mufti is appointed or supported by the state; it is purely advice to the conscience, and compliance remains the responsibility of the requestor, not of the mufti\textsuperscript{\textsuperscript{\textsuperscript{1}}} or the state.\textsuperscript{18} The function of adjudicating, on the other hand, leads to the compulsion of a specific act; beyond that, it takes from one individual and gives
to another. The court is simultaneously a religious body constituted by Shari'a to enforce its law and an arm of secular power wielded to resolve disputes. Obedience to it is compulsory in both religious and secular terms. Even though an act may have had uncertain valuation before the qadi's judgment, in that various ulama' opined in contradictory ways on it, once the qadi has ruled, the act's valuation is fixed. One scholar declared that the qadi's judgment has the same force as if God himself had adjudged that unique case.\textsuperscript{19} He states, "The qadi's judgment removes difference of opinion (\textit{khilaj})."\textsuperscript{20} The judgment is not thereby made religiously true. It may still be in God's eyes a wrong interpretation, but it provides the religious justification for compelling a particular action.

A second difference between the mufti and the qadi is that while the mufti is concerned with facts in the internal forum of conscience, the qadi is only concerned with facts in the external forum of the court.\textsuperscript{21} The mufti offers advice to the requestor so that the latter, in her internal forum, may make a righteous decision. The internal forum is called in Arabic the \textit{batin}, meaning what is inward, secret, implicit, subtle, or true. Judging, because it deals in outer proofs and compels outer actions, can claim to be true only in the external forum, called
the zahir, meaning what is outer, observed, explicit, gross, or apparent. The qadi's judgment cannot lay claim to necessary truth in the batin, even where the legal rule applied is certitude, because the secret reality of the event and the truthfulness or dishonesty of the parties involved may be unknown to the qadi. As 'Umar's letter pronounced, the qadi is not responsible for what only God can know, and may justifiably rely on the zahir evidences admitted by the law. That the qadi is thus relieved of responsibility does not relieve anyone else involved; each remains subject to the verdict of his own conscience. For that reason, if a participant is aware that on the facts the judgment is certainly false, he must not carry it out. As quoted from the Prophet:

You bring me lawsuits to decide, and perhaps one of you is more skilled in [presenting] his plea than another, and so I judge in his favor according to what I hear. He to whom I give in judgment something that is his brother's right, let him not take it-for I but give him a piece of the Fire.22

Third, the mufti gets the facts from the requestor in brief, abstract form, and assumes them to be true.23 Thus, despite its specialization as advice to conscience, the fatwa remains aloof from the uniqueness of circumstance where moral decisions
must be made. The judge, on the other hand, must find and construct the legally relevant concrete facts.

Fourth, a fatwa is usually privately requested and given to a single individual, while adjudication (qada') involves the opposing parties, witnesses, and others, as well as the judge. Therefore, the fatwa is private and individual, both as to the mufti and as to the requestor, but the Judgment is public and multiple.

Fifth, as remarked by Ibn al-Qayyim, the “fatwa states a general divine law concerning both the requestor and others,” and is “generally worded and generally applicable,” while the qadi’s decision is “a particular judgment upon a particular person” and does not extend “to anyone but the two parties.”

Sixth, scholars discuss the relative moral weightiness of the qadi’s and the mufti’s positions, the risks each position entails of committing moral wrongs punishable in the hereafter. On the balance, the qadi’s position incurs far greater moral risk because his decisions are binding on others.

King’s Law as Complement and Competitor to Fiqh

Article 44. The authorities of the state shall consist of the judicial power, the executive power, and the regulatory (al-
tanzimiyya, nazam making) power. These powers shall cooperate to fulfill the tasks [of the state] in accordance with this and other laws. The King shall be the final resort (marja’) of these authorities.

Article 49. The courts shall have jurisdiction to decide all disputes and crimes.

Article 55. The King shall undertake the governing (siyasa) of the nation in accordance with siyasa shar’iyya in fulfillment (tibqan) of the rules (ahkam) of Islam...

Article 67. The regulatory authority shall have jurisdiction to enact regulations (nizams) and bylaws (lawaih) in order to attain welfare and avoid harm in the affairs of the state, in accordance with the general rules (qawa'id) of the Islamic shari’a...

—Basic Regulation of the Kingdom of Saudi Arabia”

So far we have considered the law of the religious-legal scholars, the 'ulama', as legislated and applied by their muftis and qadis, but 'ulama' are not the only law-makers or even adjudicators in the Saudi kingdom. The fiqh, known from their ijtihad, is not the only law. Their world, apparently self-contained, actually can exist only in symbiosis with another source or authority for law and its application, the king or ruler.
A community has the religious-legal obligation to select a Muslim ruler to uphold Shari'a. If this is impossible, the community must attempt to install its own qadi. As we see below, Islamic public law imposes on the ruler the responsibility to ensure that Shari'a is upheld in his realm, even to the point of declaring all other state functionaries, including qadis, his delegates for that purpose. Today and throughout history the most visible of the instrumentalities that enforce the shari'a is the ruler.

In Saudi Arabia the ruler is the king (malik). In other Islamic legal systems the ruler’s appellation might be khalifa (successor, vicegerent), imam (leader), amir al-mu'minin (commander of the faithful), sultan (power), amir (commander, prince), wali (governor), or wali al-amr (person in authority). Saudi Arabia has constitutionally defined legislative and executive branches. At the present stage of Saudi constitutional development, they are still understood as extensions of the king’s power; however, they have become indispensable and institutionalized. There are, however, two most-important influences on the formal legal system of Saudi Arabia, the king and the 'ulama'.
For our purposes we assume that Shari'a can be grasped and essentials by looking only at the two perspectives of ruler' and 'ulama', without any other actors. This is to ignore valid claims that can be made for other actors and laws, such as the activities of bureaucrats, laws of religious minorities, the tenets of religious trends like Sufism, or the customary laws of groups such as tribes, urban populations, professional guilds, or social classes. The justification for this is only that our focus is on understanding the formal legal system of legislation.

The Saudi 'ulama' willingly recognize that the ruler possesses an extensive authority to make laws. They do so as part of the fundamental fiqih doctrine forged by 'ulama' to represent and control the ruler's constitutional powers under a constitution of shari'a. The doctrine is siyasa shar'iyya, meaning siyasa in accordance with the shari'a. This doctrine is a characteristic position of Wahhabi jurists, since it is strongly associated with Ibn Taymiyya and Ibn al-Qayyiam, who played the major part in crystallizing the doctrine of siyasa shar'iyya from ancient precedents. Modern scholars, including Saudi 'ulama', draw from their writings a (seemingly) simple doctrine of siyasa shar'iyya. This declares that the ruler may take any acts, including legislating to supplement the shari'a and creating
new courts, that are needed for the public good (*maslaha 'amma*), provided that the shari'a is not infringed.

Under all these formulations, *siyasa shar'iyya* permits the ruler to act directly, inspired by the public good, with no concern for texts except as a limit. It offers him an extremely wide scope of action. It excuses him of any obligation, such as those scholars labor under, to come to a rule solely by interpretation of the texts, following several methods, of which utility is one of the least important. In *fiqh* derivations by ulama, utility (*maslaha*) is employed as a make-weight when textual arguments are balanced or attenuated, and even then it is controversial as a source of law. This makes *siyasa shar'iyya* the virtual inverse of *fiqh* as a law-making method. Notice how *siyasa shar'iyya* is well designed, with its macrocosmic focus on the utility of the actual society, to meet the deficiencies of an exclusively textualist, atomistic *fiqh*. Note also, however, that the role it assigns the ruler is hardly magnificent, resonant with the grandeur of caliphs of old. It invokes no grander legitimacy and law-making function than the securing of public good.

Let us now see what Saudi kings have done with this doctrine in the legislative field. When the conquest of the Hijaz in 1925 thrust his government into the *modern* legal world, King
Abd al-Aziz began to issue decree-laws or regulations (singular, *nizam*). The decree-laws came in two waves, the first just after the conquest of the Hijaz, with laws that applied only to the Hijaz, and the second in the 1960s and 1970s after the kingdom was administratively unified, with a number of modern and extensive laws that applied to the whole kingdom. *Nizams* tend to address modern legal problems new to the kingdom, such as laws for firearms, nationality, social insurance, and motor vehicles. For all such purposes, the king had no recourse other than to legislate on his own. He needed to create new legal institutions rapidly, and could not wait for them, or alternatives to them, to be developed by the ulama through meticulous *ijtihad*.

The result is that today hundreds of *nizams* operate alongside the *fiqh* as a sort of subordinate system of law, supplementing the *fiqh* so that the law may confront modern conditions. They meet the most pressing needs of the society for macrocosmic law-making, such as defining unlawful narcotics, fixing rules for government procurement, setting up traffic laws, and organizing government entities. Their bulk on a shelf measures in inches rather than feet. They attempt always to avoid insult to *fiqh*. When they are being drafted, the ulama are
usually extensively consulted and often enjoy a veto power. Decree-laws have a clear subordinate status, in that, unlike statutes in an Anglo-American legal system, they are considered inferior to the common law, not superior to it. As to many of its rules, fiqh is more analogous to a constitution, overruling conflicting statute. Fiqh is also the residual law, filling gaps in the quite rudimentary nizams. Fiqh continues to govern the great bulk of cases, covering personal status, civil contract, tort, property, agency, and nearly all crimes apart from those that specifically enforce the nizams.

In view of all this, when we pass to consider the reaction of the 'ulama' to royal law-making, one certainly would expect the Saudi 'ulama' to favor the practice and lend the king their full support, yet it is a striking fact that the shari'a courts of the kingdom generally refuse to enforce the nizams. When confronted with a case arising under a nizam, the shari'a court judge will do as he himself thinks right. If he thinks that the case is governed by fiqh, he proceeds to decide it according to the fiqh without reference to the nizam. He thinks it a proper exercise of siyasa law-making. He usually dismisses the case, leaving it for some administrative entity to enforce. The thinking behind this emerges from comments by Shaykh al-Lahaydan,
president of the Supreme Judicial Council, who characterized all nizams as concerned with one or both of two things: the determination of certain criminal penalties (tazir) or purely administrative (idari) matters. In either event, in his view, it concerns matters of the executive branch and has nothing to do with the courts. If they venture beyond this, the courts properly should ignore them and apply the fiqh. He gave the example of traffic regulations: if a case concerns the misdemeanor of driving on the wrong side of the road, a siyasa authority may use a nizam to fix a penalty once guilt is established, but if the issue is determining retribution, compensation, or criminal guilt, then the shari'a courts must take charge. Shaykh al-Muhanna, judge of the Great Shari'a Court of Riyadh, stated that the shari'a courts apply only the Qur'an and the Sunnah, not nizams. Nizams are the concern of the various ministries of the government.

This opposition has faced the nizams from the beginning, forcing King 'Abd al- 'Aziz to accompany nizams with provision for non-qadi tribunals to enforce them, starting with a commercial court established in 1931. Since then, several of the major nizams established new tribunals to take jurisdiction of disputes and enforce actions arising under them. (These courts,
usually denominated board (hay'a) or committee (lajna), we shall call siyasa tribunals.) Although the classical siyasa shar'iyya authority clearly grants the king the exclusive authority to define jurisdictions and to create tribunals, yet the 'ulama' have opposed the creation of these tribunals and the attendant reduction of their own jurisdiction. They frequently call for the reincorporation of the siyasa jurisdictions into the shari'a courts. They say, if these other tribunals do not apply shari'a, they should not exist; if they do apply shari'a, then why not abolish them and unify the courts of the country? Shaykh al-Lahaydan declared that when siyasa tribunals apply nizams, they are dealing only with executive and not judicial matters and so are not truly courts (qada'). When they do decide other issues, such as commercial law, they are courts and must apply the fiqh, not nizams.

Some 'ulama' came to acknowledge that the scholars' constitutional positions had outlived their usefulness, that the fiqh and its public law theory were too narrow and unrealistic, and that the ruler and siyasa principles had to be accommodated. Siyasa shar'iyya was the heading under which such thoughts were advanced. This theory recognized that
Chapter-3 Judiciary System of Saudi Arabia

Muslim society needs, alongside fiqh, *siyasa* power, and even *siyasa* laws and tribunals.

Ibn Taymiyya (d. 728/1328) is perhaps the most famous exponent of *siyasa* theory, and for him it served as a vital part of a much larger attempt to revitalize the fiqh. He strenuously worked to reorient the relationship of 'ulama' and rulers. He renounced the idea that the 'ulama' should withdraw from the practical domain of the shari'a because of disdain for the state of the world, leaving the rulers in charge.

According to Ibn Taymiyya: 30

“If the sultan is isolated from the religion or the religion from the sultan, then the state of the people is corrupted. . . . Many of the people conclude that positions of command are incompatible with true faith and the perfection of religion. Some of them then become overcome by religion, and turn from even those uses of power needed to complete the religion. Others of them perceive [religion’s] need for such functions, and undertake them, abandoning the religion because of their conviction that it is incompatible with these duties. . . . Verily, the establishment of religion is by the Book of Guidance and by victorious iron, as God has mentioned: “Everyone must exercise *ijtihad* to unite the Qur’an and iron for God’s sake and to seek what is within his power, asking therein the aid of God. Then the world will serve the religion.”
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He argued that the dry textualism and the overscrupulous method of the fiqh had led to its stultification and its removal from reality, forcing events into the hands of corrupt rulers, whose practice would thereby never be redeemed.

In contrast to the 'ulama' who had sought to advance shari'a by reducing rulers' legitimacy in the people's eyes, Ibn Taymiyya argued that rulers needed legitimacy for renewal and that 'ulama' needed greater access to power to do good. The only real criterion for the legitimacy of a ruler is whether he upholds the divine law, whether he orders the good and forbids the evil. To Ibn Taymiyya, ignoring the various prerequisites for the legitimate ruler set by classical theory was not a grudging concession, but the correct fiqh rule. Since the period of the Righteous Caliphs, the imamate itself had never meant more than rulership de facto. There was no point in demanding more exacting qualifications in the imam than the good character of a witness. He asserted that there can be more than one true imam in an age. He denied that a single umma must have a single political leadership; upholding shari'a provides that unity.

Ibn Taymiyya proposed a different means to check rulers. He proposed a condominium of power, a cooperation (ta'awun) between rulers and 'ulama'. Interpreting the Qur'anic verse
enjoining obedience to God, the Prophet, and "those in authority" (uli al-amr), he declared, “Those in command (ulu al-amr) are of two types: the scholars ('ulama') and the rulers (umara'). If they are sound, the people are sound, but if they are corrupt, the people are corrupt.” Al-Mawardi, for example, had interpreted the term ulu al-amr as meaning either the 'ulama' or the rulers, but not both. He chided as neglectful of their duty 'ulama' too fastidious to risk their piety among the temptations of power. In fact, he advocated that the principle of cooperation be applied broadly. The Muslim community can fulfill its obligations to God only by combining the complementary strengths of its members. In appointing an army commander, for instance, one who is evil-living but strong should be chosen over one who is pious but weak; the reverse rule should he followed in choosing a clerk. All have the obligation to give advice (nasiha) to rulers. Reducing evil is a good, and drawing difficult balances between evil (mafsada) and good (maslaha), and between degrees of evil and degrees of good, is an indispensable part of enforcing the shari'a requiring one at times even to do something forbidden by the shari'a in order to avoid a greater evil. God does not demand more than mankind is capable of.
Ibn Taymiyya, at least as interpreted by Ibn al-Qayyim, his student, advocated a reunification, in the spirit of the earliest Muslims, of fiqh and siyasa. Siyasa, too, and not fiqh alone, was part of the divine shari'a. According to his definition, shari'a includes "the [tenets of theology,] the siyasa of rulers and treasurers, the judgment of the judge, the chieftainship of the shaykhs, the hisba authority [a market inspector and upholder of public morals], etc., for all of these persons are obliged to rule by the revealed shari'a." Ibn Taymiyya sought to advance the utility or welfare of the Muslims as a vigorous component of ijtihad. He asserted as a fundamental principle that utility could never fail to agree with ijtihad from texts, unless some error in appreciation either of utility or of the texts had occurred.

Ibn al-Qayyim criticizes those who would hold that "there is no siyasa but what the shari'a enunciates," as rendering the shari'a:

"deficient, ineffective to meet the Interests (masalih) of mankind. . . . This is a... deficiency in their knowledge of the reality of the shari'a, and of the harmonization between it and the world of fact. When those in authority see this, and that the people's affairs will not be, put right without something added to what [a] group understands of the shari'a, then they create for themselves siyasa laws (qawanin siyasiyya) by which the interests of men are ordered...."
Ibn Taymiyya and Ibn al-Qayyim hold that, if shari'a is duly observed, the siyasa of rulers cannot come into conflict with scholarly fiqh. Against the views of al-Mawardi and others that rulers have a right to deviate from fiqh to achieve effective siyasa, they protest that such deviations are imaginary. Due siyasa and due fiqh must agree; if conflict between them appears, it is either because the fiqh is understood too narrowly or because rulers disregard the divine will and act unjustly (siyasa zalima). True siyasa (siyasa adila) is but part of the shari'a.46

Ibn Taymiyya is willing to concede validity to any action of a ruler that met the conditions of siyasa shar'iyya, which he formulates as two: that the action not offends revealed text or ijma', and that on a balance it advances the general welfare.

Ibn Taymiyya's constitutional ideas appear to have exerted a large but intangible influence on public affairs for centuries after him, easing the emergence, for example, of the wedded fiqh-siyasa regime of the Ottomans, but their full-scale, explicit implementation awaited the emergence of a Wahhabi regime in Arabia in the 12th/18th century.

The Wahhabi states of Arabia made the first full-fledged attempt to enact Ibn Taymiyya's program, in both politics and
law. Ibn Taymiyya was a major influence on the ideas of Shaykh Ibn 'Abd al-Wahhab who set about reforming Islam, beginning in his homeland of Najd. After studying in Mecca, Medina, Basra, and elsewhere, Ibn 'Abd al-Wahhab, in a dramatic realization of Ibn Taymiyya's theory, returned to Najd to find a ruler willing to make a compact with him and mount a jihad for Islamic reform in return for worldly suzerainty. He found that ruler in the person of Ibn Sa'ud (1159-1179/1746-1765), the leader of al-Diriyya, a small town in Arabia. This compact, drawn up in 1158/1745, is still the basis for Saudi Arabian legitimacy.

The first two Saudi rulers were referred to as *Amir*, meaning commander, prince. After them, the term *imam* came into use for the ruler, and it is applied retrospectively to the first two rulers. Use of the title *imam*, implying as it does that the holder of the office is legitimate under the fiqh theory of the imamate, was properly given Wahhabi endorsement of Ibn Taymiyya's lenient positions as to religious suitability for that office. Early in the twentieth century, the imam 'Abd al-'Aziz began to use the term far less frequently, replacing it in 1926, by *malik*, king, for the Hijaz and then in 1932, for the entire country. The replacement is puzzling in some ways, since the term *malik* is religiously a pejorative for rulers who seize or
inherit power. The Qur'an, quoting the Queen of Sheba, castigates kings: "Verily, whenever kings (muluk) enter a country they corrupt it, and turn the noblest of its people into the most abject. And this is the way they (always) behave" [27:34].

It seems that 'Abd al-'Aziz chose 'malik as his title for several reasons: one being that, outside the Wahhabi environment, to call oneself imam was to be seen as claiming a near-caliphal legitimacy; second, that malik translated to the western "king"; and third, that he succeeded the Sharif Husayn in the Hijaz, who had already used the title.

The alliance begun by the Shaykh and the Amir continued informally after their deaths in connections between their families, the Al al-Shaykh (the "family of the Shaykh") and the Al Sa'ud. 'Ulama' who did not belong to the family of the Shaykh could, however, rise to the highest ranks.49

Ibn Taymiyya's principle of a condominium of power between 'ulama' and ruler was deliberately put into practice by the Wahhabis from the beginning. For example, on hearing that Ibn Sa'ud had been criticized publicly for irreligious acts, Shaykh Ibn 'Abd al-Wahhab wrote a letter of rebuke to the complainants: 50
The men of religion have a duty to join people to their ruler (amir) and to overlook his error. . . . We have heard reports that there has occurred between the men of the religion and the Amir a certain roughness. This is something that makes religion incorrect. Religion is love for God's sake, and anger for God's sake. If the ruler does not make his retinue men of religion, then his retinue will be men of evil. The men of religion have a duty to join people to their ruler, and to overlook his error. This is required of the men of religion, who overlook the failings of their ruler, just as the ruler overlooks their failings, and makes them his advisers and those of his council. There shall not be heard concerning them any talk of enmity. You will not see either--the men of religion or the ruler--worshiping God unless with his partner.

The Wahhabis accepted in its entirety Ibn Taymiyya's principle of the cooperation of all toward upholding shari'a: rulers and ruled owe each other mutual correction. The ruler is obliged to seek, and his subjects to offer, religious advice (nasiha). The egalitarianism of these principles is mitigated, however, by another basic norm, equally emphasized by both Ibn Taymiyya and the Wahhabis as essential to the moral order: strict adherence to the classical principle of obedience to the ruler, even if he is a sinner, as long as he does not issue an order that would entail disobedience to the shari'a. This duty must moderate the exercise of nasiha. A treatise by several Wahhabi 'ulama' states:
As for those sins and deviations of the leadership that do not entail disbelief or departure from Islam, it is obligatory to offer leaders advice (nasiha) in the manner provided for by shari'a, with gentleness and following the example of the pious forebears, and without, pillorying them in meetings and gatherings of the people. Belief that [such criticism] is the repudiation of evil-doing of a type and degree that requires repudiation in public is a glaring error and a manifest of ignorance. One who holds such a view does not know the corruption in religion and in this world that results from it.

Henri Laoust has written that, "Of the neo-Hanbalism of Ibn Taymiyya, Wahhabism seems always to have retained the principles most favorable to the power of the imam." The Wahhabis emphasized the principle of obedience to the imam, the validity of the imamate gained through force, the lawfulness of multiplicity of imams, and the imam's power, in furtherance of public welfare to impose discretionary criminal penalties (ta'zir) to the degree of death. These positions of the 'ulama' corresponded to a political order in which they themselves possessed extraordinary powers compared with earlier Islamic regimes. The breadth of authority accorded the ruler reflected
their own security in the system, which ensured that their own functions would influence, and benefit from, the ruler's powers.\textsuperscript{58}

As we have seen, the Wahhabi fiqh spirit inspired by Ibn Taymiyya advocated ijtihad by qadis, as well as by muftis and other 'ulama', and rejected any submission of the independent fiqh conscience to the opinion of any man "whosoever he may be."\textsuperscript{59} The political and constitutional significance of this stance is now clear, in that it preserves for the 'ulama' a vital constitutional role in a system otherwise characterized by a strong and legitimate ruler. Vigorously microcosmic positions defend a vigorous and independent role for the 'ulama', but these give rise, as their inevitable concomitant or complement, to a vital role for the ruler in macrocosmic dimensions. Ibn 'Taymiyya's characteristic combination of a stringently transcendental vision of fiqh with a pragmatic acknowledgment of the divine law's dependence on crude force and its bearers, indelibly marks Wahhabi-Saudi thinking.

How does this conception of 'ulama'-ruler cooperation compare with the Ottoman legal system? In some respects the Ottoman and the Wahhabi legal systems are similar. Both endorse a condominium of power between the 'ulama' and the ruler, frankly acknowledge a broad scope for legitimate action by
the ruler, and allocate to the 'ulama' important, central functions within the system. Other lines of comparison, however, show equally great differences. Ibn 'Abd al-Wahhab vehemently opposed blind taqlid and the closing of the door of ijtihad. He called for a return to shari'a as the core of religious life and piety, coupling this with a vehement attack on Sufism, the prevailing chief channel elsewhere for popular religiosity. These Wahhabi positions were intended, and understood by contemporaries, as stark rejections of the prevailing Ottoman-sponsored legal theory and practice (many anti-Wahhabi polemics focused on just this point).

Against this background Saudi Arabia stands out as a redoubt of the first of these three models, the bi-polar fiqh and siyasa system, since it, never colonized at its core, claims a unique degree of continuity with shari'a systems of late medieval times.

As a backdrop of historical memory against which Saudi rulers and 'ulama' interact within their legal system, the ruler-'ulama' relationship, we now undertake detailed case studies of that relationship within the contemporary Saudi Arabian legal system.
There are four main arguments from traditional fiqh in favor of the power of a ruler to fix the laws applied by qadis. We spend somewhat more time on these than on the views of opponents, since they are less familiar.

The first argument is that the ruler is the supreme qadi. As we have seen, the public law of Islam concentrates state functions, including adjudication, in the ijtihad-guided conscience of the imam. If he is qualified to act as judge and if practical circumstances permit it, he can if he chooses be the sole qadi. He can delegate that authority to such persons and for such jurisdictions as he wishes and can also remove his delegates. Several modern scholars argue that this proves a ruler may codify. 'Abd al-Rahman al-Qasim, a Saudi author of a book advocating codification, considers that even the traditional freedom of the judge to interpret the shari'a is itself a delegation from the ruler, who now may prefer to delegate that authority to others, such as a legislative body. The late Shaykh 'Ali al-Khafif, an Egyptian Azharite and law professor at the University of Cairo, states that the caliph always had the right to decide the law he would apply; he could consult the learned, but he was never bound by their opinion, even a majority opinion. Therefore, he adds:
it is the right of the ruler that he choose from among the schools whatever he in conscience feels is best, and which, in his opinion and by his estimation, serves welfare (maslaha). [This is] because the responsibility of giving judgment (al-hukm) is his ab initio (ibtida’ari), qadis are his delegates and he has the right to bind them to what he chooses and considers best. They have no right to differ with him in this matter, even if their opinion is other than that he imposes on them, because their jurisdiction is drawn from the ruler. If their judgment differs with what he commanded, it is void. Jurisdiction may be limited by time, place event or legal school. Obedience to the ruler is obligatory in all that is not clear sin (ma’siya).

In carrying out this responsibility, he adds, the ruler is obliged neither to qualify himself as a mujtahid himself nor consult those who do.62

The difficulty with this argument is that – speaking, as al-Khafif does, solely within fiqh theory – rulers in Islamic history have not possessed the powers here invoked. First, anyone, whether the ruler or his delegate, who is to apply the shari’a does so, not by consulting the ruler’s command, but by either ijtihad or taqlid within fiqh. Even the Righteous Caliphs are not accorded papal powers allowing them to declare what shari’a is, and even they chose not to overrule or constrain the ijtihad of others. Only in legal matters that fiqh does not cover, whether
from lack of revealed texts or from lack of 'ulama' interest, power, or opportunity, and that are not at issue here, was the ruler permitted to impose legislation of his own making. Second, if his power is instead understood as choosing one fiqh opinion among others and making it binding on judges, all schools would deny him this power. Fiqh is clear that the qadi is dependent on the ruler, not for the substance of the law applied, but only for appointment to office, and with it a defined jurisdiction and official status, salary, the police to enforce his judgments, and so forth. Therefore, considered in traditional terms, this argument carries little weight.

The second argument is that the shari'a itself holds that all Muslims owe obedience and loyalty to their ruler, as long as he does not command them to perform a clear sin (ma'siya), meaning an act categorically prohibited by the shari'a. If a ruler commands his qadi, even a mujtahid one, to apply a particular fiqh rule not in conflict with the shari'a, should not the qadi obey? In any case, should the qadi in practicing his ijtihad not consider the command of the ruler as a weighty factor in his consideration, ordinarily outweighing any other proof? A qadi, even a mujtahid, who neglects that to which his ijtihad leads to follow a code "would not be judging by other than the truth,"
because what is ordered by the ruler is a truth also, it being a shari'a ruling. . .. [The ruler] knows where utility (maslaha) lies because of his continual practice (tamar-rus) of siyasa shar'iyya and ordering affairs under it”.

Opponents answer this by pointing to the fiqh doctrine, claimed as ijma' as mentioned above, that prohibits a ruler from binding a qadi to a particular school. If the argument employed here were valid, it would have been discussed, indeed enjoyed pride of place, in the medieval debate on that doctrine.

The final two arguments based respectively on siyasa shar'iyya and maslaha or utility are closely related and are the core of the case for codification.

Siyasa shar'iyya is the general criterion for the legitimacy of any action by the ruler not otherwise dictated by the shari'a. Proponents of codification argue that the king may order any action as long as it offers no conflict with an indisputable provision (nass) of the shari'a. By employing this particular version of the siyasa shar'iyya constraint on a ruler's power, they put forward the most permissive notion of law-making possible. This broader notion, moreover, permits going further, toward replacing usul fiqh altogether as the determinant of laws or
adjudication, even in areas that traditionally were covered by fiqh. In other words, on its face it could permit legislation that not merely "complements" fiqh rules (as nizams are said to do in Saudi Arabia), but supplants them with something new.

Opponents respond, in essence if not in so many words, that siyasa shar'iyya by definition may make laws only in areas where it complements, or supplements, fiqh and its methods, not where it would compete with them. We saw how Saudi 'ulama' acknowledge nizams as valid only if they are administrative or penal in nature, and consider even such nizams ill-suited for (or beneath the dignity of) the shari'a courts, to enforce. In other words, opponents of codification, as to the issue of qadi court application of nizams, apply the most restrictive test for siyasa shar'iyya legislation: that of no conflict with any fiqh provision at all, or in, other words, no trifling at all with matters already governed by fiqh rules. Their position reflects Saudi Arabia's highly fiqh-oriented approach to the fiqh/ siyasa hierarchy.

The fourth and final argument, from maslaha, is the most fundamental argument for codification possible within classical fiqh doctrine. Utility is the basis for law making under siyasa shar'iyya, the previous heading, but is also seen as a source of law within fiqh.
Groups agree that the codification as a form of law-making occupies a lower order of legitimacy than ijtihād itself. This is a constant; 'ulama' throughout the ages, obliged to compromise with macrocosmic methods whether in fiqh or siyasa, have turned to relative de-legitimization as the key mechanism to preserve an ijtihād ideal, which might otherwise be swept away. The difference between the groups may be whether, in this particular occasion, compromise is needed, or whether it can be controlled once it is launched. Going further, proponents may even see in codification a way, like school taqlid, the chief-judgeship or other hierarchical control of qadis in the past, for 'ulama' elites to gain power over qadi judgments and the direction of fiqh.

In any event, supporters of codification seem to believe that, even if codification does mean sacrificing much of the higher legitimacy of law in shari'a courts and much of the piety of the qadi function, they ensure that elite 'ulama' dominate the drafting of codes. The result would be a net long-term gain for the 'ulama' and the fiqh. After all, it has always been the elite alone who enjoy the freedom of ijtihād and the responsibility to treat with the ruler.
The historical record does not support any optimism that codification would enhance, or even maintain, the legislative role of the 'ulama', collectively or individually. Since western influence began and the idea of codification spread, no similar accommodations on the part of the 'ulama' have realized such hopes.65

As part of their call for unification of the system, both groups of 'ulama' seem to expect greater involvement by 'ulama' in the future of Saudi Arabia's legal system than the 'ulama' enjoy even now.

Taken as a whole, will the 'ulama' responses to the challenge of codification be adequate to deflect the forces pushing for it? Their present stance, dominated by simple opposition, seems more likely to result in either codification on the dreaded civil-law model, assigning 'ulama' only an advisory role, or a stagnating status quo. Is there an alternative for a reconciliation acceptable even to opponents? There are in fact many, but all do impose costs in terms of change in 'ulama' habits of mind, if not their beliefs. All of them involve deploying a great deal of legal creativity, enriched by comparative legal knowledge, along the lines perceptively advocated by Dr. al-Nafisa.
To give one encompassing example, one can imagine a successful model evolving from the following elements:

- as to the judicial system: strong and independent judges, educated chiefly in fiqh but also in nizams and positive law, who, applying both nizams and fiqh, assert a broad delegation to interpret the law, and, by also asserting a discretion to do justice case-by-case, maintain live connections with the law's ultimate ethical, textual roots

- as to the substantive content of laws: continued reliance on both Hanbali fiqh and nizams, supplemented as to fiqh by fatwas emerging from a massive effort at group ijtihad, these fatwas circulated to judges as presumptively, but not conclusively, binding

- as to the legislative process: in siyasa matters, continuation of the present system, but disciplined now by post-hoc shari'a court review for conformity with constitutional siyasa shar'iyya limits; and in fiqh matters, new procedures for conducting ijtihad by direct collaboration between fatwa and judicial authorities, disciplined now by concern for fiqh's interaction with nizams and by new procedures for consultation with siyasa legislative bodies.

Such a system would demand little profound change in fiqh principles of legitimization. It has, however, the resulting drawback that, while it perhaps reconciles the two halves of the legal system, it does not integrate or unite them. Is there yet another way, which would accomplish integration? Again, there are many such ways —but all demanding not just changes of
habit of the 'ulama, but partial renunciation of the fiqh/siyasa dichotomy and much that goes with it. They demand radical shifts from traditional usul al-fiqh toward new sources of legitimacy, or more accurately, primordial legitimacies that at first sustained siyasa, but have long since been sidelined and diminished by fiqh.

These other legitimacies draw on the many relatively macrocosmic conceptions that spring, in their ultimate root, from the conception of the *umma* or the Muslim community. For example, ideals of justice and equality could be invoked to advocate codification as a means to advance due process and the equal protection of the laws, and to quell corruption and false privilege. Conceptions such as *nasiha* (advice toward doing good, including advice to the ruler), *bay'a* (a contract of loyalty between ruler and subject), and *ijma'* (in a scaled-down, relativized sense of consensus among authoritative persons, perhaps members of an institution), and most importantly, *shura* (consultation) could be combined to construct a more compelling, more highly legitimated, theory of codification than one relying merely on *maslaha*. Such theories, in passing the confines of medieval *usul al-fiqh*, emerge into constitutional and
political thought, or *usul al-hukm*. Indeed, they tend to combine the two *usul* together, in new constructs.

Such new constructs are gaining ground slowly throughout the Muslim world, and will become increasingly a part of the Saudi debate over codification. The petition of the 'ulama' to the king in 1991 reflects them to an extraordinary extent, in its demands not only for a Consultative Council (*majlis al-shura*), but for suppression of official corruption, favoritism, abuse of influence and incompetence, and its praise for equality, economic justice, defense of rights, freedom for restraint, and human dignity. The king's 1992 decision to create a Consultative Council gives institutional form to the most emphatic of these emerging ideals, consultation. Although many Saudis were disappointed with the concept of the new Council when unveiled, judging it against the legislatures of democratic states, its adoption indubitably plants a seed, and experience since its founding indicates that it is evolving and its power is slowly growing. If this Council continues to develop, or as other smaller-scale or even private experiments in governance gain strength, then demands for law-making may be aroused that the 'ulama' may find more difficult to reject and may wish to make common cause with. After all, the 'ulama' do wish to remain the
protectors of the ideal interests of their people. Then alone would the prospects for a real solution to the problem of codification drastically change.\textsuperscript{66}

On the Saudi legal system, the study shows how the system has achieved and maintains high degree of doctrinal consistency and justifiability, according to the fiqh conception endorsed by its 'ulama'. Many old habits and institutions have changed to suit modern conditions, without the 'ulama' yet losing their balance. Still, evolution in fiqh and 'ulama' conceptions and institutions has not kept pace with extremely rapid economic and material change and with attendant less rapid but still breath-taking economic, social, cultural, and political shifts. Even after these events, Saudi Arabia remains deeply patient and postpones any deliberate change that has not gained wide consensus, particularly among the elder generation in every sphere. As our study showed several times, the country is willing to pay a very high price in material terms for slowing even desperately needed reforms when these reforms implicate publicly or privately held values. Patience and consensus being such pervasive norms, it becomes difficult to discern where they are being unfairly exploited by elites to preserve their influence or privilege.
Establishment 'ulama' may not be aware, convinced of the eternal validity of their law, how much inadvertent social change has already undercut their influence and institutions, and reduced their share of social meaning. Merchants demand new commercial laws. World Trade Organization membership looms. Common religious thought and feeling also move (satellite dishes pose an even graver threat). On the fringes their attention is riveted on the West with ever more radical rejection or embrace. As a result of all this, if reforms are too long delayed because of the religious and political sensitivities surrounding official shari'a, when change comes it may come very suddenly.

As always in Saudi Arabia, the vital sign to watch is the transition to the next generation, who inherit the country after its half-century of rapid transformation. As senior elite 'ulama' pass from the scene, will the next generation secure greater virtue in change or in remaining resolute?
References


3. Ibid., p.158.


10. This word, and other variants of the root [h-k-m], carry meanings related both to judging and to rule. The noun form hukm is constantly used in Islamic law, having many meanings: court judgment, doctrinal rule, legal-moral quality of an act, and rule or dominion. Hakam is a legal "arbitrator," such as those to whom pre-Islamic Arabs referred their disputes. The term hakim (maker of a hukm) is often used as a generic term for judges of various types; it can also mean ruler. Ibn Manzur, Abu al-Fadel Jamal al-Din Muhammad b. Makram, Lisan al-‘Arab. 15 Vol. 2nd Edition (Beirut, No Date), pp.140-145.

11. The root meaning of din seems to be obedience; thence submission, servitude; thence, religion (in both practical and doctrinal aspects) and religious or moral law. Muhammad Asad, The Message of the Qur’an (Gibraltar,1980), p.51.


21. The terms have been borrowed from canon law.


23. In the past, although not in Saudi Arabia today, it was a common practice to formulate fatwas anonymously, in terms of Zayd and 'Amr.


26. Many 'Ulama' understand this *siyasa* as having no necessary relation to the ruler, but exercisable by all. It then means merely the sum of sources of law where there is no text, regardless of who exercises it.

27. For a useful examination of the term, see al-Sayyid, Ridwan. *Al-Jawhar, al-Nafis fi Siyasat al-Ra'is* (Beirut, 1403 or 1404)/ 1983), 38-48.


31. Qur'an translated by the presidency of Islamic Researches (IFTA, 1413 H), 21: 92, "Verily, this community of yours is one single community."


36. Frank E. Vogel, note, 14 p. 203.

37. Ibn Taymiya, *Siyasa*, note, 30 pp. 17-19, quoting Ibn Hambal. He also spoke of appointing more than one person to a task, or linking functions, so that the inadequacies of one are made up by another's strengths.

38. Ibid., p. 16,

40. al-Sayyid Muhammad Badr al-Din Abu Firas al-Na'sani (Ed.) *Ibn Taymiyya, "Risalat al-Mazalim,"* in *Majmu'at al-rasa’il* (Cairo, 1323/1910), pp. 334-336. An example is paying one’s share of a tax unlawfully imposed on your community, since otherwise you are forcing others to pay more than their share.


42. Frank E. Vogel, note, 14 p. 204.

43. Ibid., p.204.


49. The importance of belonging to the Al al-Shaykh for a long time seemed on the decrease. The trend has recently reversed, with the appointment in 1992 of H.E. 'Abd Allah bin Muhammad Al al-Shaykh, a young Shari'a professor, as Minister of Justice, and in 1999 of Shaykh 'Abd Allah Al al-Shaykh, as the Grand Mufti. Membership in the Al Sa'ud, on the other hand, remains the sole determinant of ultimate political power.

50. Bin Qasim, *al-Durar al- saniyya fi al-Ajwiba al-Najdiyya* (Riyabh, 1385/1965) Vol. 7, p.239. This spirit remains axiomatic even much later. In 1928, 'Abd al- 'Aziz declared, in a speech to a convention of 'Ulama' and tribal leaders held during the Ikhwan rebellion against his rule: "Anything approved by the [Shari'a] I will accept and anything it forbids I will abandon. You ['Ulama',] explain the proper duties of the ruler to his people and those of the people to their ruler. . . , the things in which the ruler has to be obeyed and those in which he is to be disobeyed, . . . As regards that on which there might be a difference between you, ['Ulama',] I will follow in its case the way of the ancestors, that is to say, I will accept concerning it
what is nearer to the proof of the book of God, the tradition of the Prophet or the sayings of one of the more learned ['Ulama']." As quoted in Helms Christine Moss, *The Cohesion of Saudi Arabia* (Baltimore, 1981), pp. 254-255.


52. Ibid., p. 209.

53. Bin Qasim, *Durar*, note 50, Vol. 7, pp. 290. (the authors are Contemporaries (of King 'Abd al-Aziz). Another example is afforded in the 1345/1927 fatwa against King 'Abd al-'Aziz's practice of taking customs duties, which the 'Ulama' termed maks or non-fiqh-sanctioned taxes. The 'Ulama' announced: "As for maks taxes, if any of them exist, let them be abolished at once. If the king abandons them, then that is obligatory. If he refuses, the splitting of the staff of obedience of the Muslims, and departure from his obedience, would not be permitted on that ground."


55. Bin Qasim, *Durar*, note 50, Vol. 7 p. 239. (Shaykh Ibn 'Abd al-Wahhab relates that the leaders of all the legal schools are agreed on the principle that "whoever gains power by force over a city or country has the legal status of the [legitimate] imam in all things").

56. Ibid.

57. Frank E. Vogel, note 32, p. 210

58. Crawford Michael J. "Civil War Foreign Intervention and the Question of Political Legitimacy: A Nineteenth Century Sa'udi Qadi’s Dilemma" in *International Journal of Middle East Studies* (USA, 1982), Vol. 14 pp. 227-248. gives a vivid description of a Wahhabi scholar's intimate dealings with ultimate power in the Wahhabi state. He describes how Shaykh 'Abd al-Latif bin 'Abd al-Rahman (d. 1293/1876), a great-grandson of Shaykh Ibn 'Abd al-Wahhab, dealt with a bloody succession crisis in the Saudi imamate. Throughout the crisis the shaykh consciously guided himself by Ibn Taymiyya's political teachings. He showed himself far more concerned with the shari'a's implementation and the welfare of his flock than with the identity of the ruler, and in the end would support whoever
wielded power. A son of this scholar, 'Abd Allah, at one time even went over to support the Saudi family's arch-rivals, the Rashidis of Ha'il. King 'Abd al-‘Aziz forgave him and asked for his daughter in marriage; King Faisal was born of the union. As cited in Bligh Alexander, "the Saudi Religious Elite (Ulama) as participant in the political system of the Kingdom" In International Journal of Middle East Studies (U.S.A., 1985), Vol. 17, pp.37-50.


60. Al-Qasim, Islam, note 34, p. 299.

62. Ibid., p.24. (Al-Qasim collected fatwas from a number of prominent contemporary scholars and included them in his book.)

63. 'Atwa 'Abd al-'Al. "Taqnin al-Fiqh al-Islami" Riyadh mimeograph, Imam Muhammad University. In a discussion, Prof. Atwa noted that in earlier times the 'Ulama' were probably more knowledgeable than the ruler about the state of the people.

64. Other formulations of the test might include no conflict with strong implications or derivations from revealed texts, such as general principles arrived at by induction (qawaid or mabadi) or compelling qiyas (qiyas jali, etc.). For analysis in this light of the Egyptian Supreme Constitutional Court's adoption of this standard as the Shari'a test for constitutionality under the Egyptian constitution, see Frank E. Vogel, "Conformity with Islamic Shari'a and Constitutionality under Article 2. Some Issues of Theory, Practice, and Comparison" in Democracy and the Rule of Law (Boston, 1999), pp.525-544.

65. The most probative case is that of Muhammad 'Abduh, who, in support for codification, developed the fiqh
justifications still used for it, but at the same time made clear that he intended 'Ulama' to play key legislative and adjudicative roles. The former part of his program was eagerly adopted; the latter was ignored. See al-Qasim, Islam, note, 34 p. 301.