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Legal systems in the Gulf States

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During this century, three distinct legal systems have been administered within the Gulf region. They are (a) English law or Anglo-Mohammedan law, (b) Shariah or Islamic law, and (c) the National Legal Systems of each individual Gulf State, e.g. Iranian Legal System.

I. ENGLISH LAW

The British predominance in the Gulf was formally established in 1820 under the terms of the "General Treaty with the Arab States for the Cessation of Plunder and Piracy by Land and by Sea". Bahrain Order in Council 1913 and subsequent Orders enforced British Indian laws in the Gulf Protectorates. This was allegedly necessitated by the lack of "satisfactory legal and judicial systems" in Bahrain and other British Protectorate States. This was not true as far as the Muslims were concerned. The nationals of the Gulf States were satisfied with the operation of the Islamic system assimilating different degrees of local customs. The introduction of English law into the Muslim world, particularly British India and the Gulf area, produced a mixed legal system known as "Anglo-Mohammedan law". Although the influence of English law is still vividly present in both Indian and Pakistani legal systems, all Gulf States have developed their own codified legal systems since attaining independence.

Bahrain, Qatar, and the seven Trucial States were commonly known as the British Protected States because of their treaty relations with the United Kingdom (1820-1971). However, the Gulf States did not enjoy the status of *standard* protectorates in which the protecting Power acts merely as agent for the protected Power in conducting international affairs. On the contrary, the U.K. was solely responsible for the international affairs of the Gulf Protectorates in the sense that the Protectorates themselves lacked the legal capacity to conclude directly any international engagements. Furthermore, the internal affairs of these Protectorates were generally, if not strictly, controlled by the U.K. The British Protectorates attained independence in the following order: Kuwait on June 19, 1961, Bahrain on Aug. 15, 1971, Qatar on Sept. 3, 1971, and the UAE on Dec. 1, 1971.

Furthermore, English common law has been adopted as the inspiring source of "modern" or "imported" law in many parts of the Islamic world including Pakistan, Malaya, Northern Nigeria and the Sudan. Only Indonesia has been influenced by the Dutch model, whereas the majority of the Islamic States (e.g. Anglo-phone African States, Arab States and Iran) have been influenced by the French system.

Prior to British withdrawal from the Gulf in 1971, there were two distinct legal systems in operation in the lower Gulf States—the British courts exercising imported law and the local courts administering the Shari-ah/Islamic law.

2. SHARI-AH/ISLAMIC LAW

Islamic law or as it is known in Arabic *Shari-ah* ("path" or "the right path") is a world major system distinct from both civil and common law systems. Unlike other major legal systems, Islamic law is not an independent branch of scholarship, but only one of the facets of the Islamic faith itself. It is on the basis of divine revelations that the Muslim jurists and theologians have pronounced the rules of behaviour for the believers governing the relations among men and between man and God. The science of Islamic law, called *fiqh*, is divided into two major parts: usul (roots) and furu (branches). The "roots" establishes the methodology and the procedures upon which the legal solutions should be based. The other is the doctrine of the "branches" (furu), containing the systematic elaboration of basic solutions of Islamic law.

There are four primary sources of Islamic law: (a) the *Quran*, (b) the *Sunna* (the Prophet's traditions), (c) Consensus of Muslim Jurists (Ijma), and (d) Analogy (Qiyas) or reasoning (aql). Only about 80 verses (out of a total 6,000 and odd Quranic verses) are concerned with law. The *Sunnah* includes the Prophet's hadith (speech), deeds or tacit approval.

The primary sources of Islamic law (i.e. the Quran, the Sunnah, the Ijma, and the Qiyas) should be distinguished in the sense that during the lifetime of Mohammed only Quran was recognised as binding. The Sunnah derived its authority from clear injunctions of the Quran. The Quran and Sunnah should be disinguished from other subordinated sources of Islamic law that is the Ijma (the consensus of opinion) and the Qiyas (judgment upon juristic analogy). Besides these four primary sources, the supplementary sources of Islamic law include:

(a) Al-Istihsan, or the deviation, on a certain issue, from the rule of a precedent to another rule for a more relevant legal reason that requires such deviation.

(b) Al-Istislah, or the unprecedented judgment motivated by public interest to which neither the Quran nor the Sunnah explicitly refer.

(c) Al-Urf, or the custom and the usage of a particular society, both in speech and in deeds.

The Shari-ah or Islamic law is the legal system of Islam which has dominated th lives of a large section of the world's population. Its basic principles, as contained i the Quran and the Sunnah (the Prophet's practice and the traditions of the earl Muslims), are pervasive—that is, they exist independently of man. The Shari-ah

the law of a vast area stretching from Northern Nigeria to Indonesia and from Afghanistan to Ceylon. As Islamic law has not been uniformly applied throughout the world, different schools of interpretation have emerged. The main division is between *Sunni* schools on the one hand and the *Shi'a* schools on the other. The Orthodox Sunni schools of law are (a) Malik: (strict adherents to Sunnah and reluctant to rely on the role of opinion), (b) Hanbali (relying on reason and opinion, using analogy and equity as sources of law), (c) Shafi'i (the closest of Sunni schools to Shi's schools—with a balanced and reconciling attitude in law), and (d) Hanbali (strict adherence to the text of the Quran). Among the Shi'a schools, reference may be made to (a) Zaydiyah, (b) Ismaili and (c) more importantly Ja'fari, otherwise known as Imamiyyah or Twelvers.

Within the Gulf region there are six different Shari-ah schools of law, Iran's official State religion is *Shi'a* which has its *Ja'fari/Imamiyyah* school. Oman has her traditional school of Ebadi, (derived from Khawarij who fought against Ali, the Fourth Islamic Khalif). Other Gulf States of Iraq, Saudi Arabia, Kuwait, Qatar, Bahrain and the UAE follow to varying degrees different orthodox schools of Malik, Hanbali, and Shafi'i.

The term Islamic law should be used to mean Shari-ah law only. The term, therefore, does not apply to the present laws as applied and administered in the Islamic countries. In referring to the law of individual Islamic countries reference should be made to the State/Municipal law of the country in question. However, unless it is specified, the Islamic law or Shari'a should be taken as the Islamic law common to all schools. Islam, like Judaism, has the character of a jural order which regulates the life and thoughts of the believer according to an ideal set of revelations communicated to Prophet Mohammed. Thus Islam established its own order of right and wrong, embodying its own justice, as the correct and valid one.

In the Islamic legal theory only God, as the source of ultimate authority, has knowledge of the exact law. In the same way as natural law was regarded in the West as the ideal legal order consisting of the general maxims of right and justice, so Islamic law was in the eyes of the Muslims the ideal legal system. As a divine law it is regarded as the perfect, eternal and just law, designed for all time and characterised by universal application to all men.

It is disputed whether, like Roman law, the Islamic law of obligations was originally a law of *contracts*, not of contract; it has been observed that Islamic law did not have a general concept of contract but only rules governing a number of individual kinds of contracts. This view, however, was later rejected and all mutually agreed contracts were enforceable whether or not formulated under one of the individual kinds of contractual legal frameworks called *oqud*. Furthermore,

the law of some Islamic countries (such as Art. 10 of the Iranian Civil Code) formally sanctioned all private contracts regardless of their formal specifications. The traditional view is no longer upheld in the contemporary Muslim world. Agreements which do not conform to one of these legal frameworks are nowadays considered as binding in Shari'ah. Indeed, to suit the realities of the commercial and private situations of the changing social-economic orders various frameworks or *oqud* have been modified and varied considerably from their simple genesis originated in early Islamic eras. Furthermore, the legal framework of Solh, namely agreement, originally designed for the particular purpose of the settlement of disputes, has served in later times as a method to accommodate almost any sort of private contracts.

By way of example the legal concepts of "contract of service" and "contract for services", as currently used in advanced legal systems, are clearly understood and distinguished in Shari-ah. However, the terms themselves are non-existent in Shari-ah and even quite new to the contemporary students of law in vast parts of the Muslim world. There is certainly a need for comparative legal studies in such fields. One may use the term "service contract" in Islamic law to include both the contract of service and the contract for services in Sharia-ah as well as the contemporary Islamic States' laws.

Although a study of the Shari-ah is called for, a study of the development of the contemporary laws of the Islamic States is much more important. Such studies will demonstrate how the Islamic States import, adopt and modify foreign laws, whereas at the same time they Islamise the alien concepts. Thus the traditional "*models*" should be kept in focus, compared and contrasted. This "reformative" approach would interpret the existing provisions of Islamic laws in a way which is more suitable to the modern world.

A glance at the obvious difference of the political, social, economic and industrial scenes in the Islamic countries on the one hand, and the Western world on the other, justifies any difference in the laws compared. However, despite all differences in terminology and legal structure in Islamic and Western jurisdictions, there is not much contrast in essence as both systems are, broadly speaking, based upon the same foundation, i.e. fairness and common sense.

3. NATIONAL LEGAL SYSTEMS

Iran, since 1906, Iraq, since the 1920s, Saudi Arabia, since the 1930s, Kuwait, since 1961, Oman, since 1967, Bahrain, Qatar and the UAE, since 1971, have developed a modern codified system of municipal law. These jurisdictions are distinct from each other and from the previously common traditional Islamic law. The trend in all Gulf States was to adopt new codes of law comparable to the European and American

legislation. In particular, Bahrain adopted several British codes as her municipal law simply by translating the English texts into Arabic. In general, only laws relating to marriage, divorce and succession remained under total influence of the Shari-ah whereas all major areas of Public and Private law (and particularly commercial and company law) were imported from the West. However, since the Islamic Revolution in Iran (1979) there has been a tendency to revive the Islamic legal traditions in most Gulf States.

3.1. Iran

The majority of Iranians are Shi'a as opposed to the majority of the Muslims who are Sunni. The Shi'as differ from the Sunnis in their concept of constitutional law (called caliphate in Sunni school and imamate in Shi'a school). The Shi'as believe in the imamate doctrine. The doctrine is relevant to the issue of "succession" of the Prophet Mohammed. The Sunnis believe that the Muslim community could elect the Khalif/leader. The Shi'as, who seem to perpetuate the previous monarchical tradition of Persia, disagree. Whereas the Sunnis acknowledge that Mohammed recommended his son-in-law (Ali) to assume leadership after his own death, the Shi'as believe that Mohammed duly appointed Ali as his successor. They regard the first three Khalifs (Abu Bakr, Omar and Othoman) as usurpers of Ali's seat. After Ali, the Shi'as believe his own sons succeeded him as Imam, but the 12th Imam, who was the last of the line of succession, disappeared in 873 A.D. and has since remained "in occultation".

In the absence of the 12th Imam, the Shi'as considered themselves not subject to the authority of the Islamic States (usually dominated by Sunnis). In the course of history, the Shi'as have indiscriminately considered the authority of secular sovereigns over Ummat as "illegal" on the ground of the doctrine of Imamat. Since the leadership of Ummat is an exclusive right bestowed by Allah upon the 12th Imam, all other rulers in power can be described only as usurpers of the divine right of Imamat.

The illegality of secular sovereignty has never been disputed by Imamiyah jurists. Such has been the strength of the Imamat doctrine that none of the rulers of the Shi'a community has ever claimed to be the leader of Ummah or to derive his authority from the Imam. The only exception is the claim by the Fatemite Khalifs who were, of course, Ismaelite not Twelvers. Among the Twelvers, when the Safavit dynasty came to power, they nominally acquired their authority from grand jurists who were acknowledged to represent the Imam in his, it seems eternal, absence. In real terms, however, the authority was vested in the Safavit Shahs who would appoint jurists both nationally and locally. It is, therefore, the very first time in the course of history that an Imamiyah jurist (in the person of Ayatollah R. Khomeini) has actually become the sovereign of the Shi'a community. This the ayatollah calls "the authority of the jurist".

The establishment of the Islamic Republic in Iran (1979) has profoundly affected all aspects of Iranian life, not the least the legal system. It is interesting to note that the well established Principle of Imamat is absolutely irreconcilable with the notion of Republicanism. Republicanism is an open contradiction to the Imamat doctrine based on succession by descent from the Prophet.

The jurisdiction of the Shi'a jurist had been steadily declining since the First Iranian Constitution (1906). The independence of the Mullas, especially in legal terms, was practically stopped by the rise of Reza Shah Pahlavi in 1924. Secular judicial machinery has now been established in Iran for more than 60 years. The judiciary under the jurisdiction of a Ministry of Justice was until 1979 headed and staffed by secular educated lawyers and jurists.

After the Ottomans, Iran was the first Islamic country which accepted the codification of its laws by promulgating the Iranian Civil Code 1927-35. Certain aspects of law such as those concerned with marriage, divorce, succession and inheritance are directly influenced by Islamic law. In some areas, such as the law of contract, the code is a cross-breed between Islamic tradition and the French Civil Code. In many areas, such as Iranian Business Law, the system is basically Western.

Since the Revolution of 1979, and on the grounds of the Imamat doctrine, the present Iranian authorities *prima facie* regard the bulk of the existing secular legislation and legal precedents as *ipso facto* invalid so far as they contradict the Imamiyah law. This position is evident in all legal developments occurring in Iran at the present time. By way of example, reference may be made to the establishment of independent revolutionary courts under the jurisdiction of Shi'a jurists, the virtual abolition of the no-longer functioning Iranian judicial machinery, the strict enforcement of Imamiyah law in criminal areas (such as the penalty of death for homosexuality, flogging for drinking alcohol, stoning to death for prostitution and amputation of hands for theft). Fortunately or unfortunately, there is no uniform pattern of law enforcement throughout the country. The Kerman Islamic Tribunal is particularly known for its rigid application of the Islamic penal code. For instance, as reported by the Agence France Presse, two thieves had the four fingers of their right hands cut off in Kerman on July 27, 1981. All aspects of family law and women's rights have also been affected (the "*temporary marriage*" is now "*legal*"; the female age limit for marriage has been reduced from 18 to 13).

The foregoing leaves no doubt that the Iranian legal system is undergoing a very substantial change of structure. An investigation into this legal development is, therefore, necessary not only for all its academic merits, but also for clarifying the legal position in various uncertain areas for the benefit of those lawyers and practitioners in Iran and abroad who are engaged in the legal profession dealing with Iranian law.

The sources for such research as far as the Imamiyah law is concerned is voluminous. However, the future Iranian-Islamic legal system as it is now being developed is far from clear.

3.2. Iraq

Iraq owes its legal system to the Ottoman Empire. The Iraqi system is in this way similar to that of Libya, Syria, Lebanon, Jordan and Egypt. The Turks began with reorganisation of the judicial system in the 1830s and the first judicial reform that affected foreign trade was the creation in 1840 of a new *ad hoc* commercial tribunal within the Ministry of Commerce. This tribunal had a limited jurisdiction to deal with disputes arising between European and local merchants. From then on the Ottomans imported the European codes of law as part of their legal reform. Of the codes adopted from European systems, the first and most important was Commercial Code in Land and Sea of 1849 (enacted on 18 Ramazan 1266 Hijrah). Maritime law was, however, not dealt with at this stage and thus any problem arising from disputes in maritime business was solved by consulting a foreign law. The British Consul in Varna, writing to the British Ambassador in Istanbul in November, 1859, to report on trade, reported that "The Code Napoleon" was generally consulted in all commercial and maritime matters by both Muslims and Greeks.

The Ottoman Empire codified the existing laws in the Empire and reformed the jurisdiction. The Ottoman Civil Code (called *al Majellah*) was based on *Hanafi* school of law. Although Islamic influence was very substantial, the subsequent Ottoman legislation introduced other concepts which contained some differences with the Majellah. For instance, the Ottoman Family Law had material differences with the old Majellah provisions. The Ottomans also promulgated several European-styled codes, such as the Ottoman Commercial Code 1849, the Penal Code 1858, Maritime Code 1863 and the Civil Procedure Code 1879. The Civil Procedure Code and original Ottoman Commercial Code were based on French law. As part of the Ottoman Empire, the inhabitants of Iraq were subject to these codes.

After the First World War and the collapse of the Turks, Iraq became a British mandate territory. Upon its formal independence in 1922, Iraq signed a Treaty of Alliance with the U.K. This Treaty recognised the elected ruler of British-dominated Iraq as the constitutional King of the country. Although the U.K. had always formally acknowledged Iraq's "national" sovereignty, the legal status of Iraq was until 1922 an "A" class mandate. Significantly, capitulations were regarded as suspended within the terms of Art. 9 of the Iraq-U.K. Treaty of 1922.

Between 1914 and 1921, during direct British administration, no change was made in the commercial, civil and maritime codes which had been promulgated by the Turks;

and all these codes remained in effect after the national administration was established in 1922-32.

From the 1930s onwards Iraq began to develop its own national legal system and in doing so was much influenced by the Egyptian legal system. Many Iraqi law students would go to Egypt to study law, particularly for higher degrees and research. Many more would consult Egyptian legal literature in Iraq both for academic and professional purposes. Egyptian legislation and Egyptian professors were (and still are to some lesser extent) cited by their disciples in the Iraqi law schools and in Iraqi legal works and to a lesser degree in the Iraqi courts and tribunals. So far as substantive laws were concerned, Iraq in 1936 revised the Ottoman Commercial Code to adopt the similar amendments made by Turkey in the Ottoman Code. Again in 1951, the Iraqi Civil Code repealed the former Ottoman legislation. The 1951 Code which is still in force consists of 1383 Articles. The main Iraqi legislation development since then occurred in 1970 when Iraq redrafted and enacted its new Commercial Code (Law No. 1490/1970). So far as the procedural law is concerned, Iraq first continued to enforce the Ottoman law of procedure and evidence of 1879. However, certain aspects of the Iraq law of procedure and evidence were reformed in 1951 partially by the Civil Procedure Code of 1951 (Law No. 28/1951) and the Civil Law Code 1951 (Law No. 40/1951). It was, however, only in 1953 that the Iraqi Ministry of Justice started the preparation and drafting of a new civil procedure law. These deliberations resulted in the Civil and Commercial Procedure Code 1956 (Law No. 88/1956) which contained a total of 255 Articles. Later in 1969, however, the 1956 code was replaced by a new Civil Procedure Code 1969 which contains 325 Articles.

The Iraqi Judicial System consists of (a) courts of first instance, (b) courts of appeal and (c) the Court of Cassation for ultimate appeal. The Court of First Instance is of two types; the Court of First Instance with Limited Jurisdiction which deals mainly with civil and commercial cases, the value of which does not exceed 500 Iraqi dinars (equivalent to £900 approximately), and the Court of First Instance with Unlimited Jurisdiction, which can handle all civil and commercial cases irrespective of their value. Courts of Appeal hear appeals against the decisions of the Courts of First Instance. In every province or as it is called "District of Appeal" there is a Court of Sessions which consists of three judges under the Presidency of the President of the Court of Appeal or one of his Vice-Presidents. The Court of Cassation is the highest judicial tribunal in the land. It sits in Baghdad, and consists of a President and a number of Vice-Presidents and not less than 15 permanent judges, substitute judges and reporters as necessity requires. A technical Bureau has been established in the Court of Cassation to carry out the work of abstracting and classifying the legal principles which are contained in its judgments.

In addition to the courts mentioned above, there are other judicial forums in Iraq which exercise exclusive jurisdiction in certain specific areas. By far the most powerful of these is the Revolutionary Court, which deals with cases affecting the security of the State in political, financial, economic and other spheres. On the other hand, a Penal Court, established within the jurisdictional district of each Court of First Instance, tries the bulk of crimes and offences. Again, with its traditional Islamic background, the Shari'a court hears all cases related to personal status, family law and succession.

3.3. Saudi Arabia

Saudi Arabia is geographically the largest country among the Gulf States. Historically, Saudi Arabia was the centre of the Islamic Faith since the Prophet Mohammed was born there in 570 A.D. Following Mohammed's death, the country was ruled by the Four Khalifs, Umayyads, Abbasides, and the Ottoman Empire. The present Kingdom of Saudi Arabia was established by King Abdal-Aziz ibn Saud (1880-1953) who captured Al-Hasa from the Ottoman Empire. He was supported and protected by the U.K. during 1915-27 under a "*special treaty relationship*".

Saudi Arabia is one of the very few countries in the world where Islamic law really prevails. Saudi Arabia adopted no formal constitution other than the Quran and the other sources of classical Islamic law. This provided the Kingdom with both religious credentials as well as a flexible informal system of government. Nevertheless, under the Saudi Arabian constitution of 1926 the King, as the Protector of the Faith (Imam), was established as the ultimate source of authority in respect of all legislative, administrative and judicial issues. Later, in 1954, the Kingdom established a Council of Ministers presided over by the King. Accordingly the King in Council, i.e. the King and the Council of Ministers, is the ultimate source of legislative, executive and judicial power in Saudi Arabia. Further regulations were made in 1958 to consolidate the authority of the Council of Ministers. The Council comprises ministers heading all the ministries. It was, however, in March, 1980, that a Constitutional Committee was entrusted to draft a formal Constitution.

The official law of the land in Saudi Arabia is the Shari-ah, with particular reference to the Hanbali-Vahhãb school of law. In the mid-18th century, Mohammed ibn Abd al-Vahhãb, a Hanbali jurist, set out to purify the Islamic Faith from the innovations prevailing in Hijaz (now part of Saudi Arabia). Mohammed ibn Sa'ud, the father of the ruling family in Saudi Arabia, joined the Vahhãbi rigid orthodoxy. This joint religious political campaign resulted in centralisation of authority in the figure of a Saudi *Shaykh*. King Abd al-Aziz, the founder of Saudi Arabia, ruled in 1929 that the main Hanbali texts should be considered as the basis of Saudi Arabia's judicial system. It is most significant that the modern Hanbali jurists recognise *ijtihad* or independent

reasoning (previously unique in Imamiyah school and *precluded* in Sunni schools). This enables the Islamic law to change with differing circumstances. Hence, if there is no adequate guidance in the Hanbali school, the Saudi jurists may first refer to other schools and secondly exercise their own *ijtihad* or reasoning.

The *Shari-ah* governs all, even the King. *Shari-ah* courts in Saudi Arabia have jurisdiction in all civil, criminal, and family cases. Despite the establishment of an appellant court and a supreme judicial body in recent years final decisions still remain, both in law and practice, with the King whether directly or indirectly. There is now a three-tiered judicial system providing for appeal above the ordinary *Shari-ah* courts. In respect of extra-*Shari-ah* areas, in 1955 the administrative tribunal of *diwan al-mazalim* (or Board of Grievances) was established to arbitrate any questions arising out of certain specified situations.

In parallel with the judiciary, several other administrative tribunals have also jurisdiction to dispose of specific issues. A Commission, known as the Board for the Settlement of Commercial Companies' Disputes, composed of three specialist members, is the competent authority in Saudi Arabia to settle disputes arising from the application of companies' regulations and to impose the penalties prescribed therein. This very important Board consists of three judges and it follows a procedure of its own and is usually very time-consuming. Of significance also is the Regulation for the Investment of Foreign Capital, according to which a special committee is set up to review all applications for investment by foreign nationals and companies in Saudi Arabia. Another tribunal is the Committee for the Settlement of Labour Disputes, set up in 1969.

According to Art. 177 (para. Second (b)) of the Royal Decree on Labour and Workers Regulations 1969 all "disputes pertaining to labour accidents of whatever amount" shall be subject in the first instance exclusively to the jurisdiction of the Preliminary Committee on Labour and Settlement of Disputes Committees. The decisions of the Preliminary Committee are subject to appeal by the Supreme Committee. Under the terms of Art. 180 suits shall be brought before the Preliminary Committee.

Article 128 of the Royal Decree on Labour and Workers Regulations of 1389 (corresponding to Nov. 15, 1969) states: "Every employer shall take the necessary precautions to protect workers against the dangers and diseases resulting from the work and the machines used and to secure work safety". Article 132 extends this duty to non-employees by providing: "the employer shall be liable for accidents and incidents sustained by anyone".

Saudi Arabian law does not prevent a non-government organisation or a Saudi private corporation or natural person from agreeing to international arbitration, or

from choosing a law other than Saudi law as the governing law of the contract or submitting to a jurisdiction other than Saudi courts and tribunals. However, under Regulations of 1963 by the Council of Ministers, government agencies may not conclude a contract which contains a clause subjecting the agency to foreign jurisdiction (whether foreign law or foreign courts) or international arbitration. This means that all disputes to which the Saudi Arabian government is a party are subject to Saudi laws and Saudi courts. In some cases it may not be easy to decide whether a party to a contract is a "government agency" or not.

The Islamic penal code (*hudud*) is formally, if not restrictly, enforced in Saudi Arabia. The Saudi Arabians, as well as Muslims in other parts of the world, defend this practice as essential to maintaining an Islamic society and a low crime rate. It is also very significant that the Islamic criminal code is enforceable against non-Muslim aliens much to the surprise of Western (mostly American and British) workers in Saudi Arabia, who find themselves subject to flogging for selling alcohol to Muslims. Even members of the Royal family are not spared from the harsh traditional punishment. In 1978, for instance, a woman of the Royal blood was beheaded for committing adultery.

criminal code

Whereas the traditional spheres of law (e.g. personal status such as marriage, divorce, legitimacy, etc., as well as criminal law) are governed by *Shari-ah*, the new aspects of law (such as corporation law, tax, oil and gas, and immigration) are subject to the provisions contained in Royal decrees and delegated orders, codes, and by-laws. The formal procedure for legislation, or regulation as it is called, can be outlined as follows: When there is a need for regulating on a particular field, the issue is identified by a committee of experts in the Council of Ministers who are entrusted to prepare the text of an appropriate draft regulation. The draft regulation is then submitted to the Council of Ministers for consideration. If the Council approves the proposed regulation, it then submits the draft regulation to the King upon whose approval a Royal Decree containing the approved regulation will be issued and published in *Um al-Qura*, the Official Gazette. To date, the government has promulgated the Regulation on Commerce (1954), the Regulation for Nationality (1954), the Forgery Law (1961), the Bribery Law (1962), the Mining Code (1963), the Labour and Workmen Law (1969), the Social Insurance Law (1970), and the Civil Service Law (1971) among others. Nevertheless, jurists usually invoke a convenient legal fiction to avoid any appearance of encroaching upon Islamic law.

In Islam the lawgiver is God. Hence, the law in Saudi Arabia, unlike all other Arab States, is not called *qanun* (legislation, enactment, or law) but similar to the Ottoman era is labelled as *nazam* (rule or regulation). The purpose of the existing legislation is not to detract from the traditions but to supplement them.

The basis for the legal development of the Kingdom can be traced to legal reforms in 1927, 1931, 1936 and 1952. Furthermore, the late King Faysal established a Judicial Council which was entrusted to reconcile the conflict between the present-day socio-economic requirements and the Islamic traditions. Notwithstanding the Islamic traditions, at present the Ministry of Justice is in process of developing a legal system comparable to those prevalent in the other parts of the world. The Commercial Code of 1931 was borrowed from the Egyptian Commercial Code (in turn based on the Ottoman Code, imported from France). The Companies Law of 1965 envisages eight different forms of business entities, most of which enjoy the corporate personality and limited liability aspects.

3.4. Bahrain

Bahrain was the headquarters for the British Political Resident covering the whole Gulf and a base for the Royal Navy, Royal Air Force and British troops. As a result, Bahrain has been influenced by the English legal system more than any other Arab State. (Jordan was also influenced by English legal heritage, but to a lesser degree.) Overwhelmed by the superior British naval power, the Arab Sheikhs signed in 1820 a General Treaty with the U.K. for the cessation of plunder and piracy within their territories. This resulted in their becoming British Protectorates. In particular, Isa bin Ali Al-Khalifah, the Sheikh of Bahrain, signed a treaty with the U.K. binding himself and his successors to abstain from entering into negotiations with the outside world without British consent. The British Foreign Jurisdiction Act 1890 extended British jurisdiction to countries outside the U.K. Thence the British jurisdiction was enforced in Bahrain for some 150 years.

In 1960, in *Abdul Rahman Baker* v. *Robert Edmund Alford and another*, the Judicial Committee of the Privy Council considered the meaning of s. 4 of the Foreign Jurisdiction Act 1890. The Committee accepted that the *Colonial* Prisoners Removal Act 1869 (italics added) should extend to Bahrain although it had never been conceived as a "*colony*". This decision virtually assimilated Bahrain to the status of colony.

From the mid-1960s onwards, the British gradually handed over the jurisdiction to Bahraini courts and tribunals until they withdrew completely in 1971. The Government of Bahrain, prior to 1971, adopted certain English laws by translation of the applicable British Indian texts from English into Arabic (such as the Penal Code 1860, the Criminal Procedure Code 1861, and the Contract Act 1872). After 1971, the State of Bahrain set up a Legislative Committee, under Cambridge-educated Husain al-Baharna, to develop an "*independent*" legal system.

The status of Islamic law in Bahrain merits special consideration. At least half of the population of Bahrain are Shi'as. The Ruling Family of Bahrain are Sunni. Shi'as

follow the *Ja'fari/Imamiyyah* school of law which was originated by the teachings of Imam Ja'far al-Sadeq (the sixth Imam of the Twelvers Sect). The Bahraini High Courts apply the Ja'fari version of the Islamic law when both parties to a civil case are Shi'as. However, the judges are, almost exclusively, Sunni, and generally apply the two Sunni schools of *Maliki* and *Shafi'i*. This has created tension among the Shi'a population. Particularly after the Islamic Revolution in Iran (1979), the sectarian difference was highlighted and there were several demonstrations in Bahrain in support of Iran and against Bahrain's Ruling Class. The Government of Bahrain's decision to expel a special envoy of Ayatollah R. Khomeini in 1979 caused further dissatisfaction among the Shi'as. Since the National Assembly was dissolved in August, 1975, the Emir rules by decree. This has also been a source of dissatisfaction among Bahrainis at large and the Shi'as community in particular.

3.5. Qatar

The British extra-territorial jurisdiction was enforced in Qatar until 1971. Since then, Qatar, following the example of Kuwait, has been reorganising her judicial system. Qatar has enacted a large body of legislation, introducing new codes. Despite all English legal traditions, the Qatari legal system is based on the European system in both style and content. By virtue of codification, all commercial transactions, as well as areas of public law, are governed by various statutes and decrees.

A dual-court system exists for civil and Shari-ah jurisdiction in Qatar. Whereas the Civil Courts' jurisdiction prevails in all areas of Private law, the scope of the Shari-ah is increasingly becoming confined to traditional and personal matters such as marriage, divorce, will and succession. Since 1960 the Shari-ah Courts' jurisdiction has become restricted to personal status. The law applicable in the Shari-ah Courts in Qatar is dominated by the *Hanbali* school.

Qatar's provisional constitution declares that foreign policy will aim at strengthening ties of friendship with all Islamic States and peoples. Shaikh Khalifa bin Hamad al-Thani, the ruler of Qatar, expressed his special concern in February, 1972, for the exertion of every possible effort towards the maintenance of best neighbourhood and co-operation within the Gulf region.

3.6. Kuwait

In July, 1961, the 1896 Treaty of Protection between Kuwait and the U.K. was replaced by a Treaty of Friendship. In December, 1961, Kuwait applied to join the United Nations but this was vetoed by the USSR. Finally, the UN General Assembly unanimously admitted Kuwait on May 14, 1963.

In Kuwait, the British jurisdiction came to an end by Kuwait Repealing Order in Council of May 26, 1961. The State of Kuwait has since developed a national legal

system comparable to that of other "sunni" Arab States (such as Egypt, Jordan, Saudi Arabia, Syria and Iraq). The dominant school of law in Kuwait is the Maliki. Despite a sizeable Shi'a community, the Kuwait courts generally use the Maliki compendiums in the absence of "statutory" law. In particular, Kuwait imported many (French-styled) Egyptian legal codes (such as Egyptian Civil Code 1949), with minor modification. These alterations were made to bring the contents up to date in areas of commerce, banking, industry and insurance, where the Egyptian laws fell behind the European legislation. The Egyptian Civil Code had been drafted jointly by an Arab jurist (A. R. al-Sunhūri) and a French lawyer (E. Lambert). Therefore, the influence of the French legal system is obvious in Kuwait.

3.7. Oman

The Omani legal system is based on the Shari-ah law on the one hand and the State law of the country on the other. The traditional school of Shari-ah administered in Oman is *Ibadi* (or Abadi) which is also followed in M'zab'in Djerba on the eastern coast of Africa and in Zanzibar. *Ibadi* is the prevailing school of law derived from the views held by Khaverij (or Kharisites) who fought against Ali the Fourth Khalif. When in 657 A.D. Ali wiped out Iraq from the Khaverij, their adherents moved away to the remotest regions of the Islamic State. According to tradition, the main protagonist of Khavarij who arrived in Oman was Abdalla ibn Ibad who preached his faith in Oman and his adherents established a hold in the mountains of Oman. The Ibadi movement approved of the deposing and killing of Uthman the Third Khalif and accepted the will of the community to choose its leader, thus disapproving of Ali and his follower's claim to any form of dynastic rule by succession from the Prophet. Apart from Oman, Ibadies are scattered in certain areas in North Africa. In Taleqan, in Northern Iran, there are families called Ibadi. The Persians in Northern Iran (including Taleqan, Mazanderan, and Ghilan) resisted the Muslim invasion for a century or so. Thus, there is a possibility that some of the Khavarij might have influenced parts of Iran. However, in the absence of any evidence, this is only a speculation. The majority of the Iranians, including the peoples of Taleqan, are now Shi'a. There is also a Shi'a minority in Oman who are allowed to administer their own judicial school.

The Ibadi school adheres to a literal interpretation of the Shari-ah. This school of Shari-ah is administered in Oman by qadhis (Islamic judges) who are usually assigned to the wali (governor) of each province. They would hear all disputes civil or commercial as well as theoretical (and in practice only when the issue has no political significance) conducting criminal trial under Islamic law for all Muslims. The non-Muslims were subject to the British foreign jurisdiction. The British jurisdiction, however, ceased in Oman abruptly in 1967.

Compared with other Gulf States, Oman was late in developing its legal structure because until 1970 the former ruler kept his territory in absolute isolation of the modern world. Some abortive attempts were made in the first half of the 20th century to modernise the Omani legal system by introducing civil and commercial courts. The Commercial Court (set up in 1920) disappeared almost immediately and the Civil Court (set up at the same time) lasted until 1939, but was then abandoned when the Chief Justice was appointed Governor of Muttrah. Since 1970, when Sulta-Qabus came to power, Oman has adopted certain codes of law which provide internationally acceptable legal frameworks. Reference can be made to the Income Tax Decree 1971, the Foreign Business and Investment Law 1977, the Commercial Register Law 1974, the Commercial Companies Law 1974, and the Commercial Agencies Law 1977. However, there is not up to now an independent judiciary to enforce these laws. Only recently Oman established the Shari-ah courts. The Shari-ah courts were neither qualified nor willing to enforce the State law because of their own adherence to Quranic law.

3.8. The United Arab Emirates

The Emirates of Abu Dhabi, Ajman, Dubai, Fumairah, Ras al-Khaymah, Sharjah, and Umm al-Qaiwain established the Federal State of the United Arab Emirates (UAE) in 1971. The Provisional Constitution of 1971 carefully preserved the autonomy of each Emirate. The Constitution, however, provided the following Federal bodies: a supreme Council of Rulers in which Abu Dhabi and Dubai had the right of veto; a Federal Government; a Federal National Council with advisory powers; and a Supreme Federal Court.

The long-standing British policy in the Gulf fossilised the status of different Protected Arab States as separate, permanent entities. Against such a background, the Rulers of the Seven Emirates maintained the identity of their individual States within the federation of the UAE. Thus, each of these States exercises internal autonomy under its hereditary Ruler. This is why there is not a unified legal system operative in the UAE.

A glance at the recent UAE laws and legislation shows two distinct branches of municipal law: Federal laws and State laws. Although Civil Courts were projected to be established on a Federal basis throughout the UAE, the administration of justice still remains subject to the laws of individual Emirates.

Article 7 of the Constitution of 1971 provides that the Shari-ah/Islamic law is the principal source of law in the UAE. The Islamic courts, however, are relatively secularised in the UAE compared with the courts in Saudi Arabia.