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Pragmatism and Power in Saudi Arabia*

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King Abdullah's Judicial Reforms
Pragmatism and Power in Saudi Arabia

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Islam and Politics in the Contemporary Middle East
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In March 2006, a Saudi Arabian judge sentenced a 19-year-old woman to 90 lashes after seven men violently raped her in the eastern town of Qatif. When she reported the decision to the media, the Justice Ministry increased her punishment to 200 lashes and a prison sentence, and stripped her outspoken lawyer, a well-known human rights advocate, of his license to practice.

The “Qatif girl’s” harrowing experience exploded in international media and placed a spotlight on Saudi Arabia’s repressive judicial system. Farida Deif, a Middle East expert at Human Rights Watch (HRW), accused the Saudi judiciary of launching a “deliberate campaign of defamation” against the girl after criminalizing her for “mingling” and downplaying her attackers’ responsibility.¹ This attention consequentially shed light on Saudi society’s conflicted social fabric, defined by tension between its religious conservatism and political opening to the West. Although Saudi Arabian society is hardly reclaimed for its human rights record, particularly concerning women, the verdict was particularly contemptible. Even former President George W. Bush—typically hard-pressed to openly criticize the Saudi royal family—described the verdict as “outrageous,”² and domestic and international calls for reform mounted. Faced with harsh pressure, Saudi Arabian King Abdullah, whom many consider to be a reformer, interfered in the judicial process, bypassed the verdict, and pardoned the woman. Rather than ebbing criticism, however, the King’s decision only emboldened activists, who considered the pardon to be in isolation, made only to appease Western allies, and not reflective of a greater agenda for judicial overhaul.

The legal process surrounding the Qatif girl’s plight is fundamentally linked to Saudi Arabia’s peculiar state structure, defined by a delicate overlap between politics and religion. This hybrid apparatus dates back to the kingdom’s founding. Unlike other countries in the region, whose states are modeled after European colonial influence, Saudi Arabia evolved organically as the result of an alliance between Prince Muhammad bin Saud and Cleric Muhammad abd al-Wahab. This merger laid the groundwork for a bicameral system, divided between princes and clerics, or ulama, whom Nabil Mouline refers to as the monarchy’s “intellectual instrument, *par excellence*, of political domination.” Religious actors serve as

¹ Howden, D (2007, November 29). In the name of God: the Saudi rape victim’s tale. *The Independent*. Retrieved from www.independent.co.uk.

² Lyons, P (2007, December 17). Relief and Dismay in Saudi Rape-Victim Case. *The New York Times*. Retrieved from www.thelede.blogs.nytimes.com.

the monarchy's symbolic resource for exerting social control. In the early 1970s, oil revenues enabled the monarchy to institutionalize the Saudi religious establishment, creating administrative and educational structures that aimed to modernize the clerical apparatus, the most prominent of which is the Council of Grand Ulemas, established in 1971. The Council quickly became a critical legislative body alongside the Council of Ministers—the monarchy's "ideological shield."³ This stratified structure maintains the monarchy's grasp over religious actors, preemptively hedging against their "insubordination."⁴

With the Qatif case as a point of departure, this paper studies King Abdullah's judicial reforms, launched in 2007, in order to better understand the power dynamics between Saudi religious and political arenas. Assessing the King's reform project helps clarify what remains an evolving, cloudy relationship between what seem to be clearly defined spheres of authority. A brief discussion of Saudi law's fundamental tenets sets the tone for a deeper analysis of the reform package's content, religious resistance to certain amendments, and the project's implications for human rights and regime strategy in the 21st century.

Siyasa Shar'iyya and the Saudi Dual State

On paper, Saudi princes are responsible for politics—foreign policy, national defense, business, and international affairs. The *ulama* govern social issues like family life, education, and, most importantly for this paper's analysis, the justice system. The princes' control of the political sphere, however, does not imply their immunity from Islamic law; shari'a implicates all levels of political, legal, and social life in Saudi Arabia.⁵ Accordingly, *siyasa shar'iyya*, or "governance in accordance with shari'a," underscores the kingdom's complementary legal system, divided between *fiqh*, Islamic jurisprudence, and *siyasa*, law exercised within the bounds of the political establishment. The state's two heads are meant to be interdependent but never in opposition with one another: theoretically, princes' decisions must comply with shari'a law, creating a framework to limit politics. In reality, political leaders' consultation with religious doctrine tends to occur "after-the-fact,"⁶ the

³ Mouline, (2010). 229.

⁴ Mouline, N. (2010). Les oulémas du palais. *Archives de sciences sociales des religions*, (1), 229.

⁵ Vogel, F. E. (2012). Shari 'a in the Politics of Saudi Arabia. *The Review of Faith & International Affairs*, 10(4), 18.

⁶ Boucek, B. (2010). Saudi Fatwa Restrictions and the State-Clerical Relationship. *Carnegie Endowment*, October 27. Retrieved at <http://carnegieendowment.org/2010/10/27/saudi-fatwa-restrictions-and-state-clerical-relationship/6b81>.

Saudi nation's "intertwined discourses of legitimization"⁷ prove far more antagonistic than their blueprint implies. The regime uses this "sectorization" to enhance its social control, and, in the 21st century, has sought to institutionalize these contiguous spheres, creating professional associations and encouraging national dialogue in order to tighten its grasp over both political and religious apparatuses.⁸

Shari'a law in Saudi Arabia must be contextualized within the Wahhabi tradition, an orthodox Salafi tradition in Sunni Islam. While, in former colonial states, shari'a law is necessarily grafted onto foreign systems of governance, it holds a unique status in Saudi society. This religious basis informs the country's 1992 Basic Law of Government, which establishes the functionality of the *fiqh-siyasa* dual system. Scholars administer *fiqh*, an uncoded body of law derived from the Hanbali school of Sunni law and the opinion of royally appointed scholars—a monarchal prerogative that, "due to strong group loyalty and solidarity among scholars, does not translate into control over the substance of the law."⁹ Scholars issue non-binding opinions (*fatwas*) which, in contemporary Saudi society, are highly visible online and in the media, engaging the public in religious law. Because this "divinely indicated"¹⁰ law encompasses business and investment, it often finds itself in tension with Saudi foreign economic arrangements. The Wahhabi religious establishment fully controls the Justice Ministry. *Siyasa*, administered by the king in consultation with his Council of Ministers and Consultative Council, supplements the *fiqh* by producing statutes, or *nizams*, which bear lower constitutional standing and only effectuated under the ulama's oversight. It is important to note that the ulama and princes are not monolithic entities, and nuances, power struggles, and different ideological waves punctuate each body.

In Wahhabi political thought, Islam underscores a system of governance that transcends theology; religion and politics are interdependent and overlapping. In the aftermath of September 11th, Wahhabism became increasingly associated with violence and extremism in the West. Accordingly, the Saudi regime took measures to mitigate this depiction, supporting publications in both English and French. Wahhabism in the 21st century should be considered a "contested intellectual, religious and political field"¹¹ that has served the

⁷ Lacroix, S. (2011). Is Saudi Arabia Immune?. *Journal of Democracy*, 22(4), 53.

⁸ Lacroix, S. (2011). *Awakening Islam*. Harvard University Press. 23.

⁹ Vogel (2012), 19.

¹⁰ Vogel (2012), 19.

¹¹ Al-Rasheed, M. (2007). *Contesting the Saudi State*. Cambridge University Press. 12.

regime's political agenda internationally and domestically. Since the establishment of the modern Saudi state, the regime has allowed Wahhabism to dominate religious discourse, building the "appearance of an Islamicised social sphere that was mistakenly taken to represent an Islamic polity;"¹² in so doing, the monarchy relegated the *ulama* to the religious sphere, reinforcing its own power and excluding religion from political life. Throughout the 20th century, the state tightened its grasp over religious institutions, using its wealth to cater the social sphere to its interests, strategies that compel Al-Rasheed (2007) to describe Wahhabism as a "religious discourse that evolved in response to the concerns of political authority."¹³ Religious interpretations, regardless of their real social relevance in Saudi Arabia, were ultimately subservient to national goals.

Although shari'a structures the Saudi Arabian judiciary, Islamic norms function in parallel with a modern state system, both administratively and institutionally, that includes a written constitution and entails a certain degree of adherence to international treaties and organizations. These adjacent structures do not coexist harmoniously, and their evident tension has informed conflict between the regime and the *ulama*. Each force's legitimacy hinges upon a certain degree of cooperation that, over the last two decades, has become increasingly fragile. This challenge is not unique to contemporary Saudi Arabia; the Al-Saud regime has engaged in a variety of tactics to preserve its legitimacy in the face of Arab nationalism, revolutionary Islam, and the Gulf War, all of which constituted real threats to the Saudi state's identity.¹⁴ In this regard, the Saudi state has come under fire from a number of angles, both regarding its foreign posturing and its domestic policy. During the Gulf War, young dissidents from the *Sahwa* (awakening) movement increased their visibility in opposition to the regime's support—backed by the *ulama*'s fatwas—of the American invasion of Iraq. In reaction, the regime strengthened the *ulama*'s authority over numerous bodies, notably the judiciary, in order to quell what it saw as potentially destabilizing religious dissent. This response serves as an early example of the regime's willingness to manipulate the religious field in the name of political strategy.

¹² Al-Rasheed (2007), 25.

¹³ Al-Rasheed (2007), 26.

¹⁴ Nolan, L. (2011). *Managing Reform?: Saudi Arabia and the King's Dilemma*. Brookings Doha Center, 1-2.

A number of 20th century members of the ulama accommodated this structural arrangement, accepting their role as the “guardians of public morality”¹⁵ and providing religious legitimacy to controversial political decisions. Sheikh Abd al-Aziz Ibn Baz was a particularly prominent member of this cohort, and, in issuing the fatwa that authorized foreign troops during the Gulf War and another that legitimized peace with Israel, resigned Wahhabism to a “state religion” and the ulama to a “subservient clergy.”¹⁶ The monarchy’s politics, then, however “un-Islamic,” were—at least officially—grounded in Islamic interpretation. Within this power dynamic, the ulama accepted manipulation in exchange for its guaranteed monopoly over religion, embracing a political pragmatism that facilitated—and continues to explain—Saudi Arabia’s seemingly incongruous radically conservative social policy and relatively open, pro-Western economic and geopolitical posturing. The religious class’ silence over foreign policy has become even more apparent since 9/11, as the regime attempted to compensate for its tarnished international standing in the aftermath of the attacks.¹⁷ The ulama acknowledged that their very survival would reside in accepting a strong state. Political expediency alone, however, does not explain the religious establishment’s leniency with otherwise contestable decisions; Wahhabi doctrine emphasizes total obedience to both the ulama and the *umara*, or the political authority, within the scope of shari’a law.¹⁸

Wahhabi scholars also recognize that their isolated influence secures their ability to promote and police a religiously moral society. Their conservative tendencies, then, which have at times provoked internal and external criticism, reflect their attempt to conserve their *raison d’être* within the bounds of structural marginalization and the monarchy’s imposed modernization. This resignation, however, should not be confused with helpless acquiescence. Wahhabi religious leaders denounce domestic policies they believe threaten Saudi identity and culture or reflect the monarchy’s desire to emulate the West. And while politics remain outside the ulama’s control, the monarchy has, in some instances, allowed religious leaders to directly benefit from its reformist policies in order to diffuse resistance. For example, the ulama initially opposed satellite television in Saudi Arabia, but quickly became more accepting once they realized that technological advances could facilitate more

¹⁵ Al-Rasheed (2007), 32.

¹⁶ Al-Rasheed (2007), 32.

¹⁷ Al-Rasheed (2007), 36.

¹⁸ Al-Rasheed (2007), 52-53.

widely diffused religious education.¹⁹ Ultimately, the ulama's embrace of their social position permitted the "consolidation of a state that is politically secular and socially religious"²⁰ within which religion is inferior to political will but still socially significant. Religious leaders have expressed far more reticence to imposed modernity when they find themselves unable to manage its implementation. The monarchy's judicial reforms, which constitute a usurpation, rather than concession, of authority, crystallize this dynamic.

Reconciling theology and governance: Clashes between Saudi Arabia's heads

While the ulama tolerate or simply ignore many political decisions, prominent Salafi clerics often denounce what they see as the monarchy's agenda to separate religion and politics without respect for Islamic law, and regime members' public interventions over the last decade have only confounded their fears. During a speech at the 2013 monarchy-sponsored Jenadriyah Heritage and Cultural Festival, the influential Prince Mutaib bin Abdullah—the King's son and the head of the National Guard—publicly asserted that religion should "not enter into politics." In 2002, Prince Turki al-Faisal evoked a similar sentiment in a 2002 op-ed for the pan-Arab daily *Asharq Al-Awsat* in which he offered a controversial interpretation of a Quranic verse pertaining to legitimacy of leadership. Prince Turki contended that *wali al-amr*—"those in authority"—exclusively pertained to rulers, contradicting the prominent religious interpretation, which argues that the phrase encompasses both rulers and the ulama. Religious figures reacted on Twitter, arguing that Turki's assertion was synonymous with expressing allegiance to two Gods.²¹

Tensions over Saudi state identity also play out in clashes between the princes' National Guard and the ulama's Committee for the Promotion of Virtue and the Prevention of Vice (CPVPV), known colloquially as the *mutawwa'*, responsible for enforcing Islamic values and sharia law. While the CPVPV's jurisdiction is technically limited to the religious and social affairs, its repressive tactics and "roving jurisdiction" have increasingly come under fire from the West and the Muslim world alike.²² At the Jenadriyah Festival, the National Guard had to forcibly remove a *mutawwa'* member, who, in alleged compliance with the

¹⁹ Al-Rasheed (2007), 55-57.

²⁰ Al-Rasheed (2007), 57.

²¹ Hatlani, I. (2013). Of Identities and Institutions. *Carnegie Endowment for International Peace*, May 21. Retrieved at <http://carnegieendowment.org/sada/2013/05/21/of-identities-and-institutions/g46f>.

²² Vogel, F. E. (2003). The public and private in Saudi Arabia: restrictions on the powers of committees for ordering the good and forbidding the evil. *Social Research: An International Quarterly*, 70(3), 749-768.

ulama's orders, aggressively interfered with a musical performance, arguing that music and gender mixing were illegal.²³ In September 2013, the religious police pushed two brothers, Saud and Nasser al-Qaws, off a bridge in Riyadh while they were driving in their car. The CPVPV contended that the brothers were illegally listening to "patriotic songs" and proceeded to charge into the their vehicle multiple times prior to pushing it off the bridge. Cellphone footage exposed the incident and exposed on the police's repressive conservatism. In 2002, the *mutaween* prevented 15 girls from evacuating a burning building because they were "inappropriately covered."²⁴ The multiplication of these incidents unravels against a backdrop of regime-launched reform initiatives; statements like Prince Mutaib's attest to a growing rift between Saudi Arabia's allegedly contiguous political and religious spheres. That being said, these scandals resulted in few changes, attesting to the religious establishment's enduring weight on national affairs.²⁵

The 9/11 terrorist attacks magnified the "push-pull dynamic"²⁶ that underscores the relationship between Saudi religious and political authorities. The event strained US-Saudi relations—15 of the 19 hijackers were Saudi nationals—and sparked a wave of domestic terrorism and extremism that the American invasions in Iraq and Afghanistan only galvanized. Simultaneously, liberal and Islamist intellectuals more audibly called for reform, notably in the 2003 "Vision for the Present and the Future of the Nation," a petition demanding a series of measures to expand rights and strengthen institutional independence. Then-Crown Prince Abdullah welcomed these demands, moving closer towards what Stéphane Lacroix describes as the "Islam-liberal" movement, whose supporters argued that political change would hinge upon a review of Wahhabi orthodoxy. Religious minorities and women became increasingly vocal during this period as well.²⁷

While some members of the regime were receptive to these dissident voices, other reactions ranged from reticence to outright opposition, with the Interior Ministry threatening reform advocates with arrest. In June 2003, the Prince convened a national dialogue, creating space for divergent social factions and religious sects to discuss contentious issues from religious

²³ Hatlani (2013).

²⁴ Al-Sharif, M (2014, February 10). Rein in the Saudi Religious Police. *The New York Times*. Retrieved at www.nytimes.com.

²⁵ Vogel (2003), 759.

²⁶ Nolan (2011), 2.

²⁷ Lacroix, S. (2004). Between Islamists and liberals: Saudi Arabia's new "Islam-liberal" reformists. *The Middle East Journal*, 345-365.

diversity to women's rights. The dialogue produced a charter stressing the importance of institutional reform, and the announcement of partial municipal elections later that year hinted that progress was underway. Perhaps most controversially, the charter embraces confessional diversity within Islam and pushes for a moderate interpretation of Wahhabism's judicial doctrine, constituting an affront to the ideology's major tenets. While other members of the monarchy were less willing to accommodate Islamo-liberals, Abdullah's momentary leniency should not be conflated with complete toleration.²⁸ By paying heed to some Islamo-liberal demands, the former Prince contained a potential threat, leveraging Islamo-liberalism's criticism of the Wahhabi establishment to dilute Wahhabiya's control of the religious sphere. As King, Abdullah would continue this strategic balancing act, accommodating and restricting the Saudi religious establishment to assert the monarchy's power and facilitate his foreign agenda.

Institutionalizing Tension: King Abdullah's Judicial Reforms

Since assuming power in 2005, King Abdullah has aggressively, albeit selectively, pursued economic and social reforms, most of which religious leaders have found unpalatable. He developed the initiatives he launched as Prince to expand tolerance to sects outside the Wahhabi establishment, particularly enraging religious leaders. In 2008, he convened a series of pan-Islamic and interfaith conferences in Saudi Arabia, Europe, and the United States. He responded to international criticism of Saudi Arabia's education system, watering down religious rhetoric and amending curricula and textbooks that discriminate or incite violence against non-Muslims. Abdullah has also taken concrete measures to improve women's access to education—a particularly contentious point for religious scholars—appointing a woman as deputy minister responsible for girls' education. In yet another move to distance education from Wahhabiya, the King established the King Abdullah University for Science and Technology (KAUST), which boasts a large scientific research endowment and co-ed classes. These striking reform efforts have earned the King substantial international praise and domestic popularity. King Abdullah has also enacted particularly far-reaching judicial reforms, boldly challenging a domain over which the ulama have traditionally exercised full sovereignty. The judiciary is an excellent case study for understanding schisms in the Saudi state and the extent to which, throughout his rule, King

²⁸ Lacroix, (2004). 362-365.

Abdullah has used legal reform to expand the monarchy's authority into the religious sphere.

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The judiciary's conservatism directly conflicts with Saudi Arabia's foreign posturing and King Abdullah's clear interest in gaining a reputation as a credible player in the global economy.³⁰ The negotiations over Saudi Arabia's membership in the World Trade Organization (WTO) that took place between 1995 and 2005 drew attention to this incompatibility, as other member-states criticized the country's opaque commercial laws. WTO adhesion is, in itself, a contentious subject between the regime and the clerics, who reject foreign involvement in domestic affairs and, accordingly, find judicial reform geared towards accommodating trade agreements particularly offensive. During negotiations, WTO members argued that, as a member, Saudi Arabia would not only have to improve its legal framework over commercial issues but strengthen its human rights guarantees and overall accountability.³¹ The Kingdom's catering to WTO member states reveals the extent to which its political economy responds to external demands; Abdullah recognized and honored the member-states' conditions. For example, American demands that trade-relevant legislation be translated and published influenced the monarch's determination in pushing for reform.³² In 2007, Prince Turki al-Faisal gave a speech at George Washington University in Washington, DC, emphasizing the importance of the kingdom's financial ties with the US. This type of rhetoric against a backdrop of WTO accession underscored a shift towards reformist politics, particularly in the legal domain.

In 2007, the King launched sweeping judicial reform measures—"practical steps towards judicial independence"³³—transferring the Justice Ministry's prerogatives to the Supreme Judicial Council (SJC), whose directors he had recently reappointed. The \$1.9 billion project overhauled the 1975 Regulation of the Judiciary, essentially confiscating the Justice Ministry's decision-making responsibilities within the Supreme Court. Areas previously under the Ministry's discretion, like the Court of Cassation, were bestowed with new

²⁹ Vogel (2012), 21-22.

³⁰ Hertog, S. (2008). Two-level negotiations in a fragmented system: Saudi Arabia's WTO accession. *Review of international political economy*, 15(4), 657.

³¹ Vogel (2012), 22.

³² Hertog, S. (2011). *Princes, Brokers, and Bureaucrats: Oil and the State in Saudi Arabia*. Cornell University Press, 240-243.

³³ Ansary, A.F. (2009). Saudi Judicial Reform and the Principle of Independence. *Carnegie Endowment for International Peace*. May 5.

autonomy; the new law stipulates that the Court of Cassation rules by majority decision. Similarly, the SJC is empowered to create courts of first instance, to appoint members of appeals courts, and to determine when a court convenes and the scope within which it can rule. In addition to this drastic expansion in the SJC's prerogatives and limitation on the Ministry's, the 2007 law requires judges to have received their degree from a Saudi law school, or, in exceptional cases, conditions eligibility on an SJC-administered exam.³⁴

Perhaps the most controversial of Abdullah's reforms was a project to codify the *fiqh*. While in other Arab states, shari'a governs some areas of law, many legal processes typically occur within European-style court systems, drawing from legislated texts and codes. In Saudi Arabia, shari'a courts' general jurisdiction replaces this hybrid structure, creating a legal climate in which judges' interpretations of Islamic law—rather than a written corpus—inform judicial decisions. This distinction is evident in the Saudi use of the word *nizam*—system—rather than *qanun*—law—to avoid implying that “human words rather than divine ones lay at the basis of legal order.”³⁵ Saudi judges, all of whom are educated at universities specializing in Islamic law, exclude state-issued laws they deem in contradiction with shari'a, rather than integrate them into Islamic teaching. Accordingly, scholars have persistently refused codify Saudi Arabia's laws, despite a shift towards codification throughout the region, even in societies that closely adhere to shari'a. And despite King Abdullah's decision to create a body of legal experts devoted to codification as well to designate the prestigious Board of Senior Scholars (*hay'at kibar al-'ulama*) the arbiter of codification, no progress has been made.³⁶

The religious authority justifies its reticence by arguing that the very notion of codifying shari'a would be sacrilegious. Saudi scholars argue that *taqnin al-shari'a*—“rendering God's law into man-made legislation”—is empirically absent in Muslim societies, and view the King's project as part and parcel of his pro-West posturing. For the ulama, codification would be tantamount to acquiescing to the European domination that Saudi Arabia never experienced. The reform project's proponents, however, contend that, precisely because of Saudi Arabia's independent heritage, legal codification would not reflect subordination to Europeanization but would simply enable it to improve its international standing. Still,

³⁴ Ansary, (2009).

³⁵ Brown, N. (2012). Why Won't Saudi Arabia write down its laws? *Foreign Policy*. January 23. Retrieved at http://mideastafrica.foreignpolicy.com/posts/2012/01/23/why_wont_saudi_arabia_write_down_its_laws.

³⁶ Vogel (2012), 23.

religious scholars argue that, once codified, Islamic legal principles would bind judges to code, whereas judges traditionally rule in accordance with their individual understanding of jurisprudence in Saudi shari'a courts. Scholarship, elucidated in *fatwas*, and not precedent, informs legal processes. Subjecting judicial interpretation to a binding, pre-established precedent would be to render God's legal authority inferior to political leadership.³⁷ Conservative cleric Saleh Lahidan—dismissed in 2009—argued that codification would “separate [Saudi Arabia] from [its] culture” by imitating the West.³⁸

Codification is key to future judicial reforms; absent a clearly defined legal code, judges can continue to rule without precedent, and justice will remain conditional upon arbitrary interpretation. This flexibility underscores conservative decisions like the Qatif case, and will continue to interfere with King Abdullah's attempt to further integrate internationally and maintain his image as a reformer. Instead of disengaging from his project, however, the King has progressively sought alternative mechanisms to usurp legal authority from the ulama. A 2010 royal edict forbade anyone other than “officially approved religious scholars”—those associated with the Senior Council of Ulama and “other permitted people”—from issuing fatwas. The decree law reflects the King's desire to “bureaucratize and institutionalize state control”³⁹ in order to bypass the religious authority's resistance. Abdullah crafted his agenda strategically, arguing that empowering unqualified individuals to issue fatwas would be inconsistent with Islamic law. By couching his policy in religious terms—a “bizarre compromise”⁴⁰ between the regime and the religious establishment—the King attempted to preemptively insulate himself from critics who might denounce the decree as evidence of his pro-Western lean.

In reality, Abdullah's decision to concentrate power in the Senior Council of Ulama, the members of which *he* appoints, hardly reflects his desire to uphold Islamic principles. While the Senior Council is the Kingdom's highest religious body, its decisions tend to reflect state policy and defend the regime. During protests in early March 2011, for example, the Council issued a *fatwa* against demonstrations, which it qualified out of line with the “Islamic way of

³⁷ Brown (2012).

³⁸ Law of God versus law of man. *The Economist*. October 11, 2007. Retrieved at <http://www.economist.com/node/9954500>.

³⁹ Boucek, (2010).

⁴⁰ Yamani, M. (2008). The two faces of Saudi Arabia. *Survival*, 50(1), 143-156.

realizing common interest...by offering advice.”⁴¹ The King’s attempts to reshape the religious sphere in his interest have multiplied since he launched his judicial reform project. In May 2012, Abdullah fired Sheikh Abdel Mohsen Obeikan, a popular Islamic leader and advisor to the royal court who, prior to his dismissal, made a series of controversial statements on his radio show, “Fatawakum” (Your Fatwas). Obeikan criticized judicial reforms and castigated what he described as the King’s pro-Western agenda, referring to his push for codification and allegedly relaxed policy towards gender mixing in the classroom, likely making a tacit reference to the monarchy’s prized KAUST (another senior cleric made a similar remark in 2009 and was met with the same fate). Obeikan’s plight resonated with religious activists, who expressed their solidarity on his Facebook with messages like “yes, it is urgent that the ulama take a firm stand to stop the corruption and destruction that are eating away at the unification of our country.”⁴²

In order to structure and institutionalize its expanded control, the monarchy has created specialized tribunals so that labor and investment disputes occupy an administrative status, distancing the foreign business community from the ulama’s judicial authority. While, in theory, this would insulate foreign businessmen from being tried under Islamic law, few changes have been made. “I have not seen any progress,” Bandar al-Nogaithan, owner of the al-Nogaithan law firm explained in a 2013 interview with the *Financial Times*. “The same judge presides over a murder trial one day, also deals with contract disputes, and cheque [sic] fraud. They simply do not have the training or the capacity to deal with such complex issues.” In 2012, a new arbitration law passed to limit court intervention in judicial processes and insulate business transactions from religious interpretation. But many contend that piecemeal reforms will continuously fall victim to a biased system. “I have to keep lawyers with thick beards in the front line just to make sure I may get a fair verdict,” a Saudi businessman told *Financial Times* in 2013.⁴³ While the new arbitration law is based on the United Nations Commission on International Trade Law (UNCITRAL) Model law, the Kingdom still emphasizes that the arbitration process must occur in compliance with shari’a law.⁴⁴

⁴¹ Saudi clerics slam protest calls. (2011, March 7). Agence France Presse.

⁴² Coleman, I. (2012). Saudi Arabia, Women, and Judicial Reform. *Council on Foreign Relations Blogs*, May 17. Retrieved at <http://blogs.cfr.org/coleman/2012/05/17/saudi-arabia-women-and-judicial-reform/>

⁴³ Allam, Abeer. (2013, January 16). Slow pace of Saudi law reforms under fire. *Financial Times*.

⁴⁴ Saleem, Mamdoh Abdulrahman (2012). A Critical Study on How the Saudi Arbitration Code Could Be Improved. *CEPMLP Annual Review*, May.

Selective Reform and Dissent's Demise

The apparent discrepancy between the King's aggressive reform push and the project's implementation, while initially puzzling, once again resides in the monarchy's political strategy and interest in projecting and protecting its image. While, at first, his reforms indicate progress, a brief glance at the kingdom's human rights record over the last seven years dashes hopes of a sincere embrace of democratic values. In 2009, for example, 331 terrorism suspects were ruled guilty in 179 cases. The trials occurred in complete opacity and journalists argued that defendants were subjected to deplorable conditions including torture, flogging, and execution, and deprived of basic legal rights and standards of judicial fairness.⁴⁵ Many contend that Abdullah pays lip service to international pressure by rhetorically and selectively embracing reform, in order to "generate a stream of positive headlines that tend to mask the all-out assault the authorities having been waging against activists,"⁴⁶ particularly in the context of the country's justice system. The blatant disconnect between his expensive reform package and real advances in human rights reveal that for the Saudi monarchy, progress remains a mechanism to strengthen international financial ties and control yet appease the religious establishment. The fact that, even amidst sweeping reforms, the monarchy has given the judiciary carte blanche to arbitrarily detain and execute journalists and activists⁴⁷ in the name of Islam is in complete continuity with the regime's strategic grasp over the religious establishment.

While King Abdullah has undeniably pushed to enact changes to the judiciary's jurisdiction and authority, he simultaneously takes measures to insulate the monarchy's authority with little regard for international pressure. In January 2013, a 17-year-old Sri Lankan maid, Rizana Nafeek, was beheaded following the death of a baby under her care. Ms. Nafeek was denied access to proper counsel before receiving the death penalty.⁴⁸ Her death—five years after the King's flaunted judicial reforms—reveals the extent to which King Abdullah's seemingly progressive agenda bears little relevance to the country's dire human rights situation. A spate of 2014 royal decrees authorizes a severe crackdown on popular dissent and free expression. Joe Stork, deputy Middle East and North Africa director at Human

⁴⁵ Hancock, Tim. (2009, 22 July). Saudi Arabia's war on human rights. *The Guardian*.

⁴⁶ Coogle, Adam. (2013, 13 October). The Limits of Reform in Saudi Arabia. *The Cairo Review of Global Affairs*.

⁴⁷ Saudia Arabia: Writer Faces Apostasy Trial. (2012, February 13). *Human Rights Watch*. Retrieved at: <http://www.hrw.org/news/2012/02/13/saudi-arabia-writer-faces-apostasy-trial>.

⁴⁸ Allam, Abeer. (2013, January 16). Slow pace of Saudi law reforms under fire. *Financial Times*.

Rights Watch (HRW), argued that the new regulations would “dash any hope that King Abdullah intends to open a space for peaceful dissent or independent groups” by rendering “almost any critical expression or independent association into crimes of terrorism.” Abdullah al-Hamid and Mohammed al-Qahtani, two prominent human rights activists, are currently serving 11 and 10-year prison sentences, respectively, for criticizing Saudi authorities. Commenting on the regulation, one activist told HRW that he could be “prosecuted as a terrorist for this conversation.”⁴⁹

In October 2013, the judiciary sentenced a prominent human rights lawyer, Waleed Abu al-Khair, to prison for offending the Saudi judiciary. Al-Khair had previously signed a petition calling for reform and labeling the judiciary as arbitrary after its disproportionate treatment of 16 activists in 2011. He was among a number of others tried in 2011, as Saudi activists were inspired by the uprisings that swept the region. And while activists’ continue to call for the right to peaceful assembly and an end to arbitrary detention, their demands are unlikely to be met. Instead, authorities have cracked down further on public expression, especially speech against religious or political authorities.⁵⁰ The Kingdom also blocked Al-Khair’s Facebook group, “Monitor of Human Rights in Saudi Arabia.”⁵¹ His conviction and sentence shed light on the justice system’s maintained authority to quash dissent, even amidst Abdullah’s judicial reforms. The list of arbitrary charges and examples of judicial disregard for human rights goes on, and Abdullah expresses little initiative to honor activists’ demands to ease restrictions on public dissent. While some of his policies reflect democratic opening, authoritarian continuity in other regards exposes that a desire for control, not modernization, drives the monarchy’s reform agenda.

⁴⁹ Saudi Arabia: New Terrorism Regulations Assault Rights (2014, March 20), *Human Rights Watch*.

Retrieved at: <http://www.hrw.org/news/2014/03/20/saudi-arabia-new-terrorism-regulations-assault-rights>

⁵⁰ Saudi Arabian human rights lawyer sentenced to prison for demanding reforms (2013, October 29). *Amnesty International*. Retrieved at: <http://www.amnesty.org/en/for-media/press-releases/saudi-arabian-human-rights-lawyer-sentenced-prison-demanding-reforms-2013-1>.

⁵¹ Saudi Arabia: Free Prominent Rights Activist (2014, April 17). *Human Rights Watch*. Retrieved at: <http://www.hrw.org/news/2014/04/17/saudi-arabia-free-prominent-rights-activist>

Conclusion: Abdullah's strategic balance

King Abdullah's strategically motivated judicial reforms, against a backdrop of persistent tension between the princes and the ulama, reveal Saudi Arabia's fragile social blueprint. In an attempt to define its particular state structure, Muhammed Al-Atawneh (2009) disagrees with al-Rasheed's depiction of a politically secular, socially religious society, contending that, instead, Saudi Arabia is a "genuine monarchy that accommodates Islam."⁵² And while he acknowledges the ulama's "secondary role"⁵³ in politics and governance, he subsequently refers to an "ongoing compromise between the two major authorities, the existing religious institutions and Saudi monarchy."⁵⁴ This paper sought to reveal that this degree of cooperation between religious and political apparatuses is, in reality, difficult to locate.

Balance of power in Saudi Arabia lends itself to a society in which Wahhabi clerics denounce the "Westernizing stench of [the monarchy's] legal reforms"⁵⁵ and human rights groups simultaneously criticize the regime's blatant disregard for international treaties. In this regard, the regime's amicable "accommodation" that Al-Atawneh describes is, in fact, the monarchy's top-down manipulation of the Wahhabi religious establishment that reinforces its own power. King Abdullah strategically manages the ulama to successfully project Saudi Arabia as a delicately balanced Islamic society and important actor in the international economy. His selective reforms keep both the religious establishment and the West within arm's reach. Judicial reforms, then, are part and parcel of the King's political pragmatism that maintains a hybrid state formation that "subjects religion to political will."⁵⁶ It would be foolish to downplay Abdullah's strategic prowess in pursuing this arrangement. The King carefully encroaches on the ulama's judicial authority, acquiescing to international pressure—even granting some additional rights to women—in so far as these concessions suit national interest and maximize financial gain. In parallel, he maintains a tightly controlled civic space in which citizens are unable to criticize religious or political actors, juggling all politically and socially relevant entities to guarantee his authority.

⁵² Al-Atawneh, M. (2009). Is Saudi Arabia a theocracy? Religion and governance in contemporary Saudi Arabia. *Middle Eastern Studies*, 45(5), 732.

⁵³ Al-Atawneh (2009), 733.

⁵⁴ Al-Atawneh (2009), 733.

⁵⁵ McDowall, Angus. (November 6, 2012). Saudi sharia judges decry Westernizing "stench" of legal reforms. *Reuters*. Retrieved at: <http://www.reuters.com/article/2012/11/06/us-saudi-reform-law-idUSBRE8A511020121106>.

⁵⁶ Al-Rasheed (2007), 58.

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