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Shari'a Arbitration Courts and Constitutional Democracy: A 21<sup>st</sup> Century Dilemma

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## **Executive Summary**

This project examines the impact of the growing Islamic public in Western democracies, namely in the context of third-party arbitration courts based on Shari'a law. The project examines the controversies surrounding the introduction of Shari'a law into Western legal systems through the non-territorial federalism of arbitration courts.

The research also analyzes reactions to Shari'a in Canada, the United Kingdom, and the United States, and local backlash against the presence of Shari'a in Western legal systems within the arbitrational context. To this end, the research takes into consideration political attitudes towards the Shari'a arbitration systems in each of the three countries, organized opposition to their presence, legislative attempts to limit or regulate their operation in the three countries, and the impact, if any, this has on the continued operation of Shari'a arbitration courts in Western democratic traditions in general. In determining the long-term prospects of the limited role of Shari'a law in Western legal traditions, the case study of each other three Western nations takes into account attempted regulatory measures, successful bans of Shari'a arbitration where they exist, key legislation related to arbitration rights in the countries concerned, court cases and caselaw impacting the right of Shari'a courts to operate in these legal contexts.

Likewise, in order to offer an in-depth examination of the practice of Shari'a law and its interaction with democratic conceptions of law, it is necessary to understand the linguistic and etymological background of key terms pertaining to the Shari'a tradition. This will aid in providing a basis for understanding the fundamental philosophical substructure underlying

the widely varied conceptions of Shari'a thought. This project will also review literature relevant to the question of Shari'a law's relationship to liberal culture, including the commentary of contemporary academic experts on religious freedom, contemporary Muslim thinkers, and liberal Islamic thinkers from history, both to examine reactions, attitudes, and analysis of Shari'a as a philosophical tradition, and to offer examples of liberal Islamic thought to contrast the dogmatic and dictatorial stereotypes surrounding the practice of Shari'a law.

The project will also examine the practice of Shari'a law in modern and historical contexts to emphasize the importance of the prevailing political context that the tradition exists within, and will make the case that it is the prevailing political culture that determines whether or not the religious practice will take a moderate or fundamentalist form. This is a crucial question in the debate over whether or not Shari'a arbitration courts are compatible with democratic principles of justice. It will advance the argument that, in a liberal democratic society free of the influence of a radical political context, the practice of Shari'a will likewise reflect those liberal values.

The project will examine the relationship between Shari'a and arbitration courts in the Western democracies where they exist, taking into consideration caselaw, key legislative acts pertaining to arbitration, and the current state of political affairs in those societies. Due to the current dynamics of arbitration-court legislation, Supreme Court rulings, and related political considerations, this project will advance the case that Shari'a arbitration courts present no contradiction to democratic values or conceptions of justice.

## Key Terms Pertaining to Shari'a

In order to more comprehensively understand the basis of the Shari'a tradition, it is necessary to understand key terms pertaining to Shari'a. The word Shari'a itself is laden with a wealth of meaning, and conveys the concept of a path to water, with the idea of a path representing the right and pure direction for a member of the Muslim faith to follow, and denotes the idea of cleanliness in religion and personal conduct, evoking the cleansing properties of water.<sup>1</sup> Terms also fundamental to understanding Shari'a are the sources from which it is chiefly derived, namely the Holy Qur'an, and the Sunnah. The Holy Qur'an is the central sacred text of Islam, and its etymological meaning conveys the idea of a "recitation," emphasizing that the Prophet was reciting the words of God. The Sunnah which means "habitual practice" details the life, teachings, and sayings of the Prophet Muhammad. Another key term is fiqh, which means "comprehension" or "understanding," and is used to describe the rulings of Islamic scholars (mufti) on a given question regarding the Holy Qur'an or Sunnah. It is these rulings which offer the basis for local understandings of Shari'a. Critical debate between mufti on the best understating of Islamic law to be derived from these sources is responsible for producing the wide variety of forms that Shari'a can take, and is known as ijihad ("effort"). These debates can become contentious, and even lead one mufti to accuse another of takfir (heresy or apostasy), though the tradition of ijihad, when not impacted by prevailing political forces, tends to offer a certain latitude of thought within Islamic scholarship. Finally, siyasa ("governance") forms the political side of any Shari'a legal

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<sup>1</sup> *Shari'a* . Encyclopedia Britannica .

system, and is meant to offer Muslims a just and moral system in which to live. However, the definition of this term, in many contexts, is flexible enough to be true in many different kinds of government.

## **Introduction**

In recent decades, increased communication technologies and improved transportation infrastructure have united different regions of the globe to a degree never previously seen. With these advances have come new opportunities in international commerce, diplomacy, and intellectual discourse. Likewise, increased interchange between different areas of the world in the form of immigration has led to the commingling of cultural spheres that were previously separated by geography. One of the most significant impacts of this new interconnectivity in Europe and North America is the introduction of a significant number of new residents of Islamic background, who possess cultural perspectives that are in some way unique from those of the majority of the populace in those countries. Western legal systems developed during the Enlightenment, which have traditionally separated religious doctrine from law and public policy, are faced with a new set of circumstances whereby some residents of Islamic background elect to solve civil disputes according to the principles of their faith rather than the conventional procedures of civil law. While some members of the Islamic communities of Western nations such as the United States and United Kingdom have resorted to informal Shari'a religious courts for some time, some Western nations have taken steps to formalize supervised Shari'a councils as recognized legal arbitration courts whose rulings may be

enforced by the standard justice system.<sup>2</sup> Predictably, this has caused controversy in some circles, as some members of the public have raised concerns about the implications of faith-based arbitration systems being integrated into standard legal practice.

This project examines the growth of Islamic faith-based arbitration courts, the debate over their formalization, and the reaction of the public towards those Shari'a arbitration courts, in an effort to determine whether or not the issue has contributed to a broadly negative backlash against the Islamic communities residing within the Western countries where this debate is currently occurring, namely Britain, Canada, and the United States. This project also attempts to determine whether or not Shari'a law and courts are in fact compatible with the traditional conventional legal practices in these countries, which tend to eschew spirituality from their deliberations in favor of established law or precedent. In order to understand all facets of the complex relationship between Islam and democratic-constitutional law, both in the context of domestic Shari'a arbitration courts and in the arena of international politics, it will be necessary to examine not only the activities of the Shari'a arbitration courts in Western nations, but the historical factors impacting the development of, and attitudes towards liberal thought in the Islamic world. Finally, it will be necessary to analyze the relationship between perspectives of Islamic theology and liberal values such as freedom of speech, freedom of religion, and equal protection of the law. Through these means it will be determined that while Islamic third-party arbitration courts may present an

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<sup>2</sup> William, Arsani *An Unjust Doctrine of Civil Arbitration: Sharia Courts in Canada and England*. Stanford Journal of International Relations

intimidating problem for some observers in the West, and their future is for that reason uncertain, there is nothing necessarily contradictory between democratic principles and the practice of government-monitored third-party religious arbitration courts based on certain understandings of Shari'a law.

The relationship between law and religious tradition in the traditionally-defined Western world, has, since at least the time of the Enlightenment, been one of mutual wariness, as jurists have fiercely debated the definition and limits of religious freedom, and viewed with skepticism the interactions between religion and government, particularly when that interaction involves the encroachment of religious ideology within secular law and the interference of secular law with religious liberties. Since the social and legal upheavals of the Enlightenment, the question of whether religion should play an explicit role in legal procedures has been largely regarded as settled, as most Western nations have adopted either formal or informal concepts of the separation between church and state. This separation ranges from Thomas Jefferson's "wall of separation" enshrined in American political thought, to the principle of *Laïcité* (government secularism and religious neutrality)<sup>3</sup> considered integral to French law.

Given this longstanding legacy in Western democracies of mutually exclusive coexistence between religious doctrine and public laws of the state, the impact that modern transportation and communications technologies have had on the resurgence of the debate over the appropriate limits of interaction between religion and law arguably represents one of

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<sup>3</sup> *The deep roots of French secularism.* Henri Astier BBC News Online

the most unexpected developments of the 21<sup>st</sup> century, as hitherto the general trend has seen religion taking an increasingly less significant role in society and civil governance, let alone legal procedure. However, the increased interaction between the traditionally-defined West and the Islamic World has led to precisely that circumstance.

Likewise, the influx of immigrants from traditionally Islamic nations devoid of the overriding cultural heritage of secular legal thought has led specifically to demands that citizens of Islamic background be allowed to rely on Islamic law and customs rather than the secular laws and customs of their adopted countries. While other religious groups within these nations, such as Catholics and Jews, have long-standing arbitration courts of a similar nature, some observers and activists feel that the unique aspects of Shari'a law merit increased regulations on all such religious tribunals; in short, the Shari'a courts having typically been the focal point of activist campaigns against such faith-based arbitration courts.

## **I: Shari'a and Democratic Thought**

### **(i.) Literature Review**

In the face of timely debates denouncing and defending Islamic legal traditions, Islamic affairs specialist Eric Chaumont of France's National Center for Scientific Research notes that, in regards to what Shari'a law actually is, "There are a lot of misunderstandings right now...Sharia is literally the way, that is, the law, that God revealed in the Koran and which is binding on all Muslims. The ambiguity is that Sharia has never been implemented anywhere in the world. What is implemented are different interpretations of Sharia – what are called

Muslim laws, el-Fiqh – interpretations of the law which are strict to varying degrees.”<sup>4</sup>

Chaumont furthermore notes that because of the highly subjective and contextual nature of Shari'a law, a legal system claiming to use Shari'a law as a source or inspiration need not adhere to any existing models or prior religious interpretations of it. In contrast to certain heavily theocratic-leaning states which claim to derive legal legitimacy from Shari'a law, other interpretations allow for the full interpretation of Western forms of law, which some Muslim scholars interpret as legitimate approximations of Shari'a. In such situations, secular forms of law are granted religious legitimacy under more liberal interpretations of Shari'a law, demonstrating that certain forms of Shari'a could arguably coexist with a democratic constitutional system of law. Chaumont cites the example of Egypt, which, since President Anwar Sadat's regime of the 1970s, has claimed Shari'a as an important inspiration for its policies, with Sadat's regime later escalating the claim by asserting that it was the regime's only source of law. But, as Chaumont notes, “In reality, statutory law itself was not affected and the law implemented in Egypt today remains a law that is inspired by the French civil code, established under Napoleon.”<sup>5</sup> Based on this dynamic, Caumont demonstrates that Shari'a law need not be held as mutually exclusive with more conventionally “secular” forms of civil law, given the highly elastic nature of what constitutes Shari'a law in the first place.

Michael Curtis of the Gatestone International Policy Institute, a non-profit political think-tank based in New York, raises fears that the faith-based courts in Western Democracies

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<sup>4</sup> ^Ibid.

<sup>5</sup> ^Ibid.

will increase the influence of "Islamic extremists," and asserts that these courts present "a challenge" to legal practice, by "the influence of religion in society, by differences over social issues such as women's rights, marriage, and divorce, and by the trend towards a legal system for Muslims, separate from the rest of the population."<sup>6</sup> In contrast, religious freedom and arbitration expert Dr. Michael Hefland, in an interview with Russia Today, argues that these fears are misplaced, noting that alternate forms of arbitration have worked "quite well" in the United States. at resolving excess disputes, alleviating stress on the court systems. Likewise, Hefland notes that Islamic arbitration systems have existed "for quite some time" informally along with many other forms of arbitration, without the projected problems or significant controversy. Furthermore, he notes that religious arbitration courts in the United States are required to abide by the standards set by U.S. law, and that in general such courts have cooperated with those standards. "In order to have your awards enforced you have to satisfy our minimum standards for certain types of well-being, conduct, and a variety of other things, and that means religious tribunals of all different types know what the ground rules are. And they embrace the ground rules and in turn what you get is arbitral awards that work quite well in the American legal system." Like Chaumont, Hefland predicts that such systems will typically conform to the larger court system of their host nation rather than influence it in a meaningful way.

Legal expert Dr. Almas Khan, writing for the *Chicago Journal of International Law*, notes that a formalized Shari'a arbitration system would offer certain benefits for new citizens of

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<sup>6</sup> Curtis, Michael. The Problem of Sharia Law in Britain. Gatestone Institute.org

Islamic background, namely a familiar form of law for recent Muslim immigrants “not acclimated to the secular court system and thus wary of it... formalized shariah tribunals would offer the best of both worlds---Islamic law with limited state monitoring. Muslim newcomers would also be more readily integrated...if they believed that their voice was represented in the formulation of laws.”<sup>7</sup> In the arena of American political discourse, too, the issue of Shari'a court systems, and more generally the perceived influence of “Islamists” upon local laws, has inspired fiery rhetoric as some observers frame the issue as one of religious freedom and equality, while others regard any legitimization of Islamic law as fundamentally polemical to American values. Republican Senate hopeful Sharron Angle epitomized one extreme end of this spectrum, asserting that certain towns in the United States with a high density of Muslim citizens were in danger of becoming theocratic---and that “Frankford, Texas, and Dearborn, Michigan, were both subject to a sharia regime, as a result of the 'militant terrorist situation' that existed in those places.”<sup>8</sup> In the United Kingdom, public protests against the perceived imposition of Shari'a law on British soil have garnered the support of both nationalists groups such as the English Defense League, and self-described “moderate” Muslims under the banner of the One Law for All organization.<sup>9</sup> Other British Muslim organizations have publicly demonstrated in favor of the Shari'a arbitration courts, contending that there is nothing inherently immoderate about the forms of Shari'a practiced in the West.<sup>10</sup> Proponents of the

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<sup>7</sup> Khan, Almas *The Interaction between Shariah and International Law in Arbitration*. Chicago Journal of International Law Volume 6 | Number 2 Article 16

<sup>8</sup> *Whose law counts most?* The Economist. October 2010.

<sup>9</sup> *Muslims rally for Sharia law in UK, prompting nationalist protests*. Russian Times. June 2010.

<sup>10</sup> Ibid.

Shari'a courts in the United Kingdom point out that under the Arbitration Act of 1996, alternative forms of dispute resolution are both legal and enforceable under higher law---and that there is no precedent for excluding Shari'a courts so long as all aggrieved parties agree to abide by its rulings, and the rulings do not violate British law.<sup>11</sup>

While scholarly theories of Islamic law prevailing within repressive autocratic regimes tend to prop up the political status quo, those interpretations originating from outside the sphere of influence of such regimes are extremely varied in terms of their political leanings and implications. In the context of Western constitutional democracies, scholarly interpretations of Islamic law display a greater variety than is common in many areas of the Islamic world, with some heavily right wing scholars endorsing militaristic and repressive versions of Islamic teaching commonly seen in repressive regimes, and others favoring a more moderate and liberal approach that seeks to reconcile democratic principles with those of the Islamic faith. The former view is epitomized in the person of British Imam Abu Hamza al-Masri, an Islamic activist and *mufti* notorious for endorsing the extremist position of Shari'a scholarship. Al-masri leads the extremist Muslim activist organization Supporters of Shari'a,<sup>12</sup> and has repeatedly stretched the limits of freedom of speech by preaching that true Shari'a must incorporate antisemitism. His supportive statements towards terrorist attacks led to calls for his deportation from the UK, and he was ultimately arrested for soliciting the murders of

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<sup>11</sup> Matthew Hickley, *Islamic Shari'a Courts in Britain are now "Legally Binding."* Daily Mail. September 2008

<sup>12</sup> Philip Sherwell. *Abu Hamza verdict: The hate preacher of Finsbury Park who tried to plead he was a friend of the West.*

non-Muslims, and passing information to a suspected terrorist operative to aid in a planned attack. Subsequently, after evidence emerged the Al-Masri had been involved in a number of terrorist activities on American soil, including attempted recruitment and training, he was extradited to the United States, convicted, and is currently serving a life sentence in a New York correctional facility.<sup>13</sup>

On the other end of the spectrum of Shari'a law interpretation is Turkish-born American *mufti* Fethulah Gülen, who offers an alternative interpretation of Shari'a, based on more moderate readings of Islamic religious texts. Drawing on Quranic passages speaking of the absolute necessity of permitting individuals to have freedom from compulsion to follow a given religion, Gülen argues that Shari'a binds Muslims to respect the concept of religious freedom.<sup>14</sup> In stark contrast to the more narrow and dogmatic readings offered by fundamentalists like al-Masri, Gülen and his fellow moderates argue that the majority of Islamic principles can in fact be reconciled with democratic principles and Western law. In fact, Gülen states that "95% percent of Islamic teachings" can be reconciled with Western principles, and that the "remaining 5% are not worth fighting for," being nonessential to the practice of the Islamic faith.<sup>15</sup> Indeed, the comparison between different ideological camps of *mufti* as regards the proper interpretation and execution of Shari'a in the context of Western nations reveals a divide on many fundamental issues, including women's rights, political secularism, and attitudes towards armed religious warfare, with the views endorsed by

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<sup>13</sup> Ibid.

<sup>14</sup> Questions and Answers about Islam (Vol.1) M. Fethullah Gulen Published: 2000

<sup>15</sup> Ibid.

mainstream and moderate *mufti* more frequently resembling the views of the wider public of the country in which they reside in. In contrast, fundamentalist *mufti* such as al-Masr typically make no argument that their conception of Shari'a is reconcilable with, or should be reconciled with, the democratic principles prevailing in the West.

Another significant aspect of Shari'a practice in the West is the fact that the ideological conflict between moderate and fundamentalist *mufti* is even taking place. The greater freedom afforded by liberal principles of free speech has rekindled a long-dormant legalistic debate within the Muslim community over the fundamental nature of what role Shari'a should play in the civic lives of Muslims, in a manner that has been all but stifled in many regions of the traditionally-defined Islamic world. Unlike many of their counterparts living under monarchies and autocracies in the traditional Islamic world, *mufti* residing in Western democracies do not feel obliged to adhere to a specific religious narrative tailored to bolster the legitimacy of a regime.

While debating the nature of Shari'a and the proper interpretation of religious texts with respect to political and social rights can result in a literal death sentence for religious scholars within nations such as Saudi Arabia, the principles of government religious neutrality and free expression prevailing in many Western nations have resulted in something of a Renaissance for the tradition of political dialogue and debate within Islam. This tradition, known as *ijtihad*, holds that religious and legal principles such as Shari'a must be subject to independent critical reasoning, and the religious and legal theories there derived must

likewise be subject to debate within the Islamic community.<sup>16</sup> Because theological debate and dispute could threaten the theologically-derived legitimacy that many Islamic regimes seek to establish through the rulings of government-backed *mufti*, this tradition has long been absent from the practical day-to-day religious life of many modern Muslims. Regimes such as Saudi Arabia, as was seen in the mass-execution of early 2016, do not tolerate either political or religious principals out of line with those set by the regime, with “heresy” and “religious unorthodoxy” being grounds for prosecution if a religious leader is deemed to pose a significant threat to the ideology of the government.

Speaking for the moderate ideological wing of the community of Western *mufti*, Fethulah Gülen argues that democratic societies do indeed offer Islam more protections than even an allegedly Islamic autocracy, and that Islam, in turn, presents no fundamental contradiction or threat to the principles of those democracies.

In fact in a democratic society, the source of law is colorblind and free from ethnic prejudice. It promotes the...participation of individuals and society in decision making institutions ... Everybody should be allowed to express themselves... Also, members of minority communities should be allowed to live according to their beliefs. If these sorts of legislations are made within the norms of international law and international agreements, Islam will have no objection to any of these. No one can ignore the universal values that the Qur’an and the Sunnah have presented with regard to the rights mentioned above. Therefore, it is impossible to prove in any way that Islam opposes democracy.<sup>17</sup>

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<sup>16</sup> Nader Hashemi. *Islam, Secularism, and Liberal Democracy*. Oxford University Press, 2009.

<sup>17</sup> Ibid.

Paradoxically, therefore, some aspects and traditions of Islamic faith are more freely practiced outside the sphere of influence of self-described Islamic governments. For Islamic thinkers such as Gülen, democratic nations where religious rights are protected under the auspices of constitutionally-assured religious freedom offer the opportunity for a more free and personal practice of Islam than is possible in many autocracies claiming to represent Islamic principles.

In some countries, notably the United Kingdom, there has been an increasing reliance in the Muslim community on a relatively extensive system of alternate arbitration courts operating under the standards of Shari'a law; under the Arbitration Act of 1996, the rulings of these courts can be enforced by the standard court system, including the High Court of Justice, the United Kingdom's equivalent of the United States Supreme Court.<sup>18</sup> This has led, understandably, to mixed reactions within Western nations with growing populations of Muslim citizens. In the debate over the government formalization of Shari'a law, the Islamic community has been subject to frequent accusations that it is attempting to illegitimately import foreign cultural customs into the framework of Western law. Some observers have raised fears about the practice of polygamy among some members of the Islamic community, arguing that these marriages<sup>19</sup> are not recognized by legal authorities and may leave women without full legal rights in the event of a divorce.<sup>20</sup> Shari'a courts, and Shari'a customs in general, these commentators argue, are components of this culture of inequality, and must

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<sup>18</sup> Taher, Abul (2008-09-14). "Revealed: UK's first official sharia courts". London: Times Online. Retrieved 2010-01-04.

<sup>19</sup> Harley, Nicola. *Rise in Sharia marriages prompts polygamy fears*. The Telegraph. July 2015.

<sup>20</sup> Ibid.

therefore not be permitted equal status under the laws of Western countries. However, on the issue of polygamy, some Muslim commentators retort that the prevalence of illicit polygamous unions within the Western Islamic community is overstated, arguing instead that the prevalence of unregistered marriages among the Muslim community stems from unequal treatment regarding matrimonial registration. Writing for The Telegraph newspaper, journalist Myriam Francois-Cerrah notes this discrepancy: "While Christian couples who marry in a church, or Jewish couples who marry in a synagogue find their marriages automatically recognized under UK law, Muslims, Sikhs, Hindus and other religious groups are not afforded the same recognition, requiring them to undertake a separate, civil ceremony."<sup>21</sup>

Another particularly contentious aspect of the debate is the fact that Shari'a courts have decided sensitive issues such as domestic disputes and domestic abuse cases. Such observers argue that arbitration tribunals based on the principles of Shari'a law are inherently weighed against women; they point to specific cases where Shari'a law arbitration courts have addressed domestic abuse by obliging the offending party to take anger management courses.<sup>22</sup> Muslim Lawyer Sheikh Faiz-ul-Aqtab Siddiqi, a chief proponent and organizer of Shari'a Courts in Britain, counters that such Shari'a rulings, far from disenfranchising women, are designed to repair dysfunctional marriages and oblige abusive husbands to amend their behavior without dissolving the family.<sup>23</sup> Inayat Bunglawala of Muslim Council of Britain notes

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<sup>21</sup> Francois-Cerrah, Myriam *Sharia marriage in the UK is not toxic - polygamous men are*. The Telegraph. July 2015

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

that the movement against the implementation of Shari'a arbitration courts on these grounds is relatively unique; Jewish arbitration tribunals, known as Beth Din Courts, have operated in the United Kingdom for over a century, rendering decisions on family law and other forms of civil dispute according to the principals of Jewish theology.<sup>24</sup> All such courts, Bunglawala concludes, are further protected in Britain under the Arbitration Act of 1996. This rationale could likewise be extended to the practice of Shari'a law arbitration in other Western nations, notably the United States, which also enforces the rulings of arbitration courts under the Federal Arbitration Act of 1925.<sup>25</sup> Within the United States, both Christian and Jewish arbitration courts have been a long-term part of the legal landscape.

While the United States and other Western nations are, due to government-sanctioned arbitration courts, seeing a rise in non-territorial entities, it is worth noting that Shari'a law itself is in fact designed to operate within a partially non-territorial federal system, where a pluralistic arrangement of the secular national government and non-territorial religious schools of thought offer two parallel forms of legal guidance. From the perspective of traditional Islamic modes of governance, a kind of non-territorial federalism between secular and religious law is fundamental to a well-functioning society. This form of legal pluralism divides law into two distinct realms, that of secular law, known as *Siyasa*, and religious rulings, known as *fiqh*. Islamic legal scholar Asifa Quraishi-Landes of the University of Wisconsin describes the system in detail: "*Fiqh* sets out rules and guidelines for living a good Muslim life,

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<sup>24</sup> Ibid.

<sup>25</sup> The Economist. *Whose law counts most?* October 2010.

based on interpretations of Muslim scripture (the Quran and the life of the Prophet Muhammad) by religious legal scholars...*Siyasa* is a very different animal. It is not about directing Muslim lives. Rather, *siyasa* laws are created by the rulers of a society in order to organize that society efficiently and safely.”<sup>26</sup>

Additionally, in recognition of the fact that the religious aspects of Shari'a law are debated and interpreted differently by various schools of thought within Islam, Quraishi-Landes states that under proper Islamic governance, no religious ruling in a dispute is legally binding unless the parties involved agree to take their complaint to the secular government.<sup>27</sup> “...A married couple following the Hanafi school would get a different answer about their legal grounds for divorce than a couple who went to a Maliki legal scholar... the answer from the Maliki or Hanafi legal scholar (called a fatwa) is not binding in itself...And this is done entirely in the private realm. The only time a *fiqh* rule is imposed by the state is when the parties cannot resolve their conflict with just a fatwa, and they seek out state-enforced resolution.”<sup>28</sup> The secular government of Islamic countries under this dual system, while otherwise barred from interfering in religious rulings (and vice versa) nonetheless must rely ultimately upon Islam's holy text to form the basis of law. In a certain sense, the Qur'an, hadiths, and other holy texts of the Islamic faith are to Quraishi-Landes' traditional Muslim government what the Constitution is to the United States legal system; the writ basis on which legislation of every

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<sup>26</sup> Quraishi-Landes, Asifa. *How to create an Islamic government – not an Islamic state*. Middle East Eye. Friday 17 February 2017

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

kind must reference and respect as the ultimate authority in lawmaking. As with the United States Constitution, the Muslim holy texts referenced by Shari'a law are interpreted and understood in many different ways, generating rival schools of thought that are as fundamentally contentious as Originalists and Living Constitutionalists are in the realm of American legal scholarship.

As quasi-legal actors in the extended civil justice system Shari'a courts and other arbitration courts occupy a unique niche in political theory. While Federalism is generally characterized by a sharing of power between state and local government entities, authorized sources of third-party legal arbitration share a small part of that authority, and use it to serve the legal disputes of a population that is not specifically linked to any kind of official geographic jurisdiction. This has led to a novel paradigm whereby third-party arbitration courts and religious tribunals, practically speaking, share in the larger equation of federalism, with their rulings (if legal) being enforceable by the government, by virtue of the Arbitration Act. While state and local courts serve a designated locality, and federal courts serve the national government, arbitration courts are not bound to any specific political-geographic or administrative locale, but rather serve individuals on a voluntary, contractual basis, sometimes related to a belief system as in the case of Shari'a and other religious arbitration courts. As government-sanctioned non-governmental players in the civil justice system, arbitration courts, particularly religious arbitration courts, raise distinct questions about the role such third-party authorities should play in American political-judicial procedure.

## **(ii.) Shari'a and Theories of Federalism.**

While advocates of such non-territorial systems can point to the well-established benefits to the official court system in the detouring of official cases to third-party entities, there is a predictable uneasiness in some quarters regarding the implicit sharing of authority with non-territorial entities, particular those associated with a system as distrusted and poorly understood as Shari'a law, as demonstrated in the campaigns against Shari'a courts. On the state government level, fear of Shari'a law's influence on judicial systems is reflected in the fact that fears of state judges "consulting" Shari'a law in their decisions has resulted in thirty-four states considering "foreign law" bans, with two dozen states having actually passed such laws.<sup>29</sup> This legislation serves as useful barometer of how many state governments may feel about the sharing of legal authority with an alternate system of semi-legalistic values like Shari'a law. Indeed, in the official state and federal courts, such legislation would appear redundant, given the Establishment Clause's preexisting prohibition of religious teaching being established as American law---a constitutional requirement which was applied to the states under the Incorporation Doctrine in the twentieth century, rendering additional legislative bans more of a symbolic gesture than an impactful law. However, while this expression of displeasure is one that can be enacted within the context of the official system, non-territorial third-party entities that have been introduced into the equation of American federalism by the Arbitration Act are, for the time being, largely exempted from these

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<sup>29</sup> Farmer, Liz (4 November 2014). "Alabama Joins Wave of States Banning Foreign Laws". *governing.com*. Retrieved 27 August 2015.

legislative countermeasures. So long as the parties resorting to the third-party tribunals are doing so of their own free will, and the rulings of the non-territorial tribunals are not themselves in violation of federal or state law, their determinations stand with legal force.

## **II. Shari'a Law and Nation Case Studies**

### **(i.) The United States.**

Despite the precept of freedom of religion enshrined within Federal Law, and longstanding acceptance of various kinds of religious arbitration courts, the issue has been no less contentious in the United States than in the United Kingdom and other countries. In some quarters, notably on the American political right, Islamic arbitration courts represent a special case. While such observers regard longstanding Christian and Jewish arbitration courts as permissible components of the fabric of the nation's traditional religious culture, they view the introduction of Shari'a arbitration courts catering to the growing American Muslim community as tantamount to intrusion by an alien religious presence. Such sentiments have led sixteen U.S. States to ban judges from considering the precepts of Shari'a law in their rulings, in what critics have called at best a pointless remedy to a non-existent threat, and at worst a discriminatory exception to religious freedom.<sup>30</sup> Legal expert Michael Hefland states that, ironically, the attempts at curbing the influence of Shari'a law in the U.S. are more often worrying than the rulings of nearly any Islamic arbitration court. He points to the specific example of *Soleimani v. Soleimani*, which saw an American Muslim woman bring her husband to a Kansas state court in an attempt to extract a *mahr* (dowery) fee of \$677,000 he had

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<sup>30</sup> Gebreyes, Rahel. *The Unfortunate Consequences Of Banning Sharia Law*. Huffington Post. May 2015

agreed to pay upon their marriage.

However, despite the fact that the husband's signature was presented on a written contract agreeing to pay the dowry, the court ruled that the contract was invalid, citing a state law which forbade the consideration of "foreign law" in court, effectively pronouncing Islam a "foreign religion" and any contractual agreement signed according to the customs of Shari'a null and void.<sup>31</sup> Interestingly enough, though the plaintiff did not appeal the decision, she could have arguably made a case that the Kansas state court had violated the Federal Arbitration Act in its decision, since the Supreme Court established in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co* (1967) and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp* (1983) that the protections to arbitration agreements instituted under the Federal Arbitration Act is applicable in state and as Federal courts and the act does not, as Justice Black had stated in his dissent in *Prima*, solely apply to arbitration agreements pertaining to inter-state commerce, but to a wide variety of arbitration agreements.

Likewise, the Court's decision in *Southland Corporation v. Keating* (1984) determined that due to the Supremacy Clause, state laws which contradicted arbitration agreements protected by the Federal Arbitration Act would be superseded: "Looking to and interpreting legislative history, the court stated that it was Congress' intent to create a substantive rule under the Commerce Clause that would be applicable in state and federal courts, and would preclude state laws that attempted to 'undercut' enforcement of arbitration agreements."<sup>32</sup> In

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<sup>31</sup> Ryan H. Boyer "Unveiling" *Kansas's Ban on Application of Foreign Law*. *Kansas Law Review*.

<sup>32</sup> Hollis, Kearner, Pearson & Vacca. *Is State Law Looking for Trouble: The Federal Arbitration Act Flexes Its Preemptive Muscle*. *Journal of Dispute Resolution*, Volume 2003 | Issue 2

the context of American politics, these cases create a risky dynamic for state legislators and judges who oppose Shari'a arbitration courts in their rulings and policies. While the Shari'a courts are highly controversial, as arbitral courts, they are arguably protected by both federal legislation and case law.

Given the inherently religious nature of Shari'a arbitration courts, and their obvious interaction with the standard legal system, there are some inherent First Amendment concerns that would not be present in a secular arbitration court. Indeed, it could be argued that the legal system's enforcement of awards or penalties imposed by explicitly religious courts based on religious doctrines presents a violation of the Establishment Clause. The answer to this objection is complicated, given the unique relationship that has developed between religious tribunals, and the secular justice system. In practice, for example, United States courts have tended to enforce arbitration awards by religious tribunals, treating them like any other arbitration case, focusing on the contract made rather than the topic it concerns, and thus superficially avoiding the religious aspect of given cases altogether.<sup>33</sup> Writing in the Boston University Law Review, Michael Hefland notes, "when reviewing [religious] arbitration awards, courts are tasked simply with ensuring that the arbitrators' decision was issued pursuant to an arbitration agreement between the parties and that the arbitrators complied with the statutorily mandated procedural requirements."<sup>34</sup> This, as Hefland notes, creates a peculiar paradigm whereby United States courts, when faced with the case of an Imam who has been

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<sup>33</sup> Hefland, Michael A. *Litigating Religion*. 494 Boston University Law Review Vol. 93:493 . 2013.

<sup>34</sup> *Ibid.*

accused of preaching sermons that violated Islamic teaching, will refuse to hear the religious case on Establishment Clause grounds---but will readily enforce the decision of a religious arbitration court that imposes a financial penalty on the Imam for the same reason.<sup>35</sup>

Insulating First Amendment concerns by focusing only on whether an arbitration agreement was formed by the concerned parties, regardless of any religious content, has been the standard procedure for courts faced with religious tribunals' decisions. This basic standard, which is known as the Neutral Principles doctrine, was affirmed by the Supreme Court in *Jones vs. Wolf* (1979). In *Jones*, the Court noted that though it could not directly interfere with religious doctrines and practices due to the First Amendment, it was perfectly entitled to adjudicate in disputes where legally agreed-upon rules, contracts, or bylaws of an organization had been violated. "The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate nearly all structures of religious organization and administration.. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, administration, and practice."<sup>36</sup> Here again, the standard legal procedure for addressing the violation of agreements involving religion has typically adopted the tactic of focusing on whether an agreement was in fact made, and more or less ignoring the religious context it was made in. For this reason, Shari'a arbitration courts are fairly unlikely to run afoul

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<sup>35</sup> Ibid.

<sup>36</sup> *Jones v. Wolf*, 443 US 595 - Supreme Court 1979

of the First Amendment.

## ii.) Canada

In Canada, the debate over Shari'a arbitration courts is colored by a different understanding of religious freedom. As in the United States, Canada has not seen any overriding ban on Shari'a law on the national level, but has seen strong opposition and some regional bans on the application of Shari'a law, even if the manner in which Shari'a rulings are applied arguably conforms to Canadian law. The debate reached particular prominence in the Province of Ontario in 2004 when Toronto lawyer and Muslim community organizer Syed Mumtaz Ali announced that an organization dubbed the Islamic Institute of Civil Justice would begin dispensing arbitrational rulings on civil disputes and family law based on the principles of Shari'a law.

Over the next twenty months, the debate over the proper limits of religious freedom and secular neutrality within Canadian legal practice would continue unabated, with the supporters of the arbitration courts facing organized opposition by some women's groups,<sup>37</sup> who repeated the oft-cited argument alleging that Shari'a law stripped women of their rights, and that the families of some Muslim women might pressure them to use Islamic tribunals. The issue was eventually resolved by an all-encompassing ban on alternative arbitration tribunals that made decisions based on anything other than Ontario or national law, effectively outlawing religious tribunals of all varieties, including Christian and Jewish arbitration courts that had operated without controversy since 1991. While some other

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<sup>37</sup> McIlroy, Anne *One law to rule them all*. The Guardian. September 2005.

religious groups were upset by the bans, Islamic organizations had particular cause for consternation, as the bans, though universal to religious arbitration tribunals, came into being when the potential for Islamic arbitration courts in Ontario became a realistic possibility.

Indeed, the concern over the establishment of Shari'a arbitration courts in Ontario, and the ensuing controversy, ultimately superseded the original rationale for permitting the arbitration courts in the first place. The court system of Ontario, like many regional and national courts across the Western world, was suffering from a high degree of backlog as the justice and arbitration system struggled to serve the demands of an unprecedentedly large population.<sup>38</sup> The formalization of religious arbitration courts in 1991 was intended to redirect specific varieties of civil disputes away from the normal court system, thereby alleviating a portion of the justice system's case-load.<sup>39</sup> The elimination of all religious arbitration courts in the province, therefore, demonstrates that some Ontarians would prefer to forego the benefits that religious tribunals of all varieties provide for the larger court system than permit the establishment of Shari'a tribunals in their province. The comparative lack of controversy surrounding religious arbitration tribunals prior to the proposed establishment of Shari'a courts demonstrates that Shari'a itself is likely the point of controversy. As in the United Kingdom and the United States, the suppression of Shari'a law in Ontario raises the question of if, and to what degree, anti-Islamic sentiment influences the movement against Shari'a arbitration courts, and whether such opposition represents a reaction to the specific content

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<sup>38</sup> Sturcke, James. *Sharia in Canada, Almost*. The Guardian. February 2004.

<sup>39</sup> Ibid.

of Shari'a tribunal rulings, or if systemic societal bias against Islam is the chief motivating factor, given the general tolerance of and lack of opposition to other arbitration courts that lack religious influence.

### **III. The Source of Radicalism: Faith or Politics?**

#### **(i.) The Importance of Politics in Shaping Religious Practice**

Apart from the sentiments towards Shari'a prevailing within Western countries hosting significant Muslim immigrant populations, another front on the debate between Islamic thought and Western conceptions of law extends within the Islamic community itself. The Islamic community in the West presents a paradoxical dichotomy between fully acclimated and educated Muslim citizens who are highly accepting of the democratic legal thought prevailing in their country, and those immigrants who have arrived more recently, perhaps from a less rigorously educated background, who view Western conception of law with varying degrees of wariness, fearing bias or erasure of their own cultural identity.<sup>40</sup> Additionally, the rapid modernization of some Muslim immigrants' countries of origin has resulted in a contemporary paradigm where Muslim immigrants from these countries embrace far more traditional attitudes than their co-religionists from more developed areas of the Islamic world; Muslim immigrants hailing from post-colonialist nations where local application of democratic theory is in its infancy may be more suspicious of such political philosophies.

It would be remiss to overlook the practical status of the development democratic governments throughout much of the Islamic World. Historically, the Islamic world has been

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<sup>40</sup> Hashemi, Nader. *Islam, Secularism, and Liberal Democracy*.

comparatively slow to transition from pre-democratic forms of government, and the hegemony of militaristic autocrats and traditional monarchies remained largely unquestioned until the wave of Arab Spring Revolutions beginning in 2011. Of the six absolute monarchies extant in the modern era, (Vatican City, Brunei, Swaziland, Saudi Arabia, Oman and Qatar and the United Arab Emirates) five are Islamic majority nations.<sup>41</sup> It is also noteworthy that certain other Islamic states embrace variations of monarchical or stratocratic government systems which largely preclude the populace's participation in the legislative process. Iran, for instance, operates as a constitutional theocracy, where Islamic scholars oversee much of the legislative process.

Another symptom of the ways the Islamic world has trailed behind its peers in the West in terms of democratic development is the comparative prevalence of draconian and archaic laws in certain Islamic nations. In Indonesia, for instance, regional laws criminalize homosexuality and specify a penalty of one hundred lashes,<sup>42</sup> while in Yemen, Mauritania, Saudi Arabia, Qatar, Sudan, and some regions of Somalia, homosexual acts carry the death penalty. Qatar imposes the death penalty on heterosexual couples who engage in premarital sex, and in many conservative countries within the Islamic world, public displays of affection such as kissing and holding hands can result in fines, imprisonment, and other civil penalties. Indonesia specifies that "passionate" kissing in public can be punished with up to

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<sup>41</sup> The Times of India. *Learning with the Times: 7 nations still under absolute monarchy.*

<sup>42</sup> Gayatri Suroyo and Charlotte Greenfield (27 December 2014). "Strict sharia forces gays into hiding in Indonesia's Aceh"

five years in prison,<sup>43</sup> while the United Arab Emirates deports foreign expatriates guilty of lewd behavior.<sup>44</sup> Even some highly advanced and wealthy first-world nations within the Islamic world cling to severe legal standards that have been discarded in many other regions of the world. In Saudi Arabia, the death penalty can be inflicted for certain non-violent offenses such as the sale and smuggling of illegal narcotics, as well as for homosexuality. Indeed, the human rights organization Amnesty International recorded 151 instances where executions were sentenced and carried out in the Saudi justice system in 2015, compared to 35 instances in the United States in the same year.

Even more controversially, Amnesty International notes that certain ideological and religious offenses are theoretically punishable with the death penalty within the Saudi Kingdom, including blasphemy, apostasy, homosexuality, and adultery. In 2008, Saudi Arabian authorities made international headlines with their arrest of Ali Hussian Sibat, a popular Lebanese-born talk show host known for predicting the fortunes of listeners who called his program.<sup>45</sup> Sibat was convicted on charges of sorcery and sentenced to death by beheading in a trial unusual in the context of a first-world country in the 21<sup>st</sup> century. Under international pressure, the Saudi Supreme Court overturned the sentence and released Sibat in 2010.<sup>46</sup> Amnesty International notes that Saudi authorities continue to prosecute dozens of

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<sup>43</sup> Daily Mail UK. *Indonesia Bans Kissing in Public*. March 2004.

<sup>44</sup> Simpson, Colin. The National. UAE *The rules are clear, says lawyer: no kissing allowed in Dubai*. July 4<sup>th</sup> 2013

<sup>45</sup> "Muree bin Ali bin Issa al-Asiri, Saudi Arabian Man, Executed For 'Witchcraft And Sorcery'". 06/19/2012. Huffington Post.

<sup>46</sup> Bid.

individuals for sorcery every year, with the last reported execution for sorcery occurring in 2007, when Egyptian-born pharmacist Mustafa Ibrahim was convicted and beheaded for desecrating a Qur'an and allegedly practicing witchcraft.<sup>47</sup> For a variety of charges, capital punishment within Saudi Arabia is routinely performed through traditional and anachronistic methods, including firing squads and beheading, and occasionally stoning and crucifixion for certain religious and ideological offenses.<sup>48</sup>

The development of women's rights within much of the Islamic world varies from nation to nation, with highly conservative Muslim-majority states such as Saudi Arabia and Iran presenting a comparable deficit in women's rights, with required male guardianship in public, a strictly enforced Islamic dress code, inability to travel without the consent of male guardians, and comparatively limited rights to marry the partner of their choice, or obtain a divorce.<sup>49</sup> In contrast, more liberal Muslim-majority nations such as Turkey have historically afforded women with most of the legal rights enjoyed by their peers in the West.<sup>50</sup> In Iran, along with less developed Islamic nations such as Yemen, child marriages remain theoretically enshrined in the law, though in practice it is uncommon in Iran.

While the status of democratic rights within the traditionally-defined Islamic world may

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<sup>47</sup> ABC News. *Saudia execute Egyptian for practicing 'witchcraft'*. November 2, 2007.

<sup>48</sup> Amnesty International. *The death penalty in Saudi Arabia: Facts and Figures*. 25 August 2015

Dunn, James. "Protester due to be CRUCIFIED in Saudi Arabia was arrested and 'tortured into a confession when he was 17 to make his rebel cleric uncle stop talking.'" Daily Mail UK. February 6 2016.

<sup>49</sup> Katayoun Kishi, United States Institute of Peace., *Iran v Saudi Arabia: Women & Minorities*. January 4 2016

<sup>50</sup> Ali Çarkoğlu, Binnaz Toprak ; translated from Turkish by Çiğdem Aksoy (2007) .*Religion, society and politics in a changing Turkey* Karaköy, İstanbul: TESEV publications

offer some insight into the context from which many recent Islamic immigrants to Western democracies derive their cultural perspectives, it is not a perfect metric for determining the compatibility between Shari'a forms of legal thought and Western forms of law within the realm of arbitration, given that each state within the Islamic world has a historical and social-political context outside of Shari'a law that impacts the interpretations offered by religious scholars in the region. In this sense, it may be argued that those state within the Islamic world that support undemocratic or archaic policies have hijacked the legitimacy of Shari'a law within the Islamic world to prop up their own political customs and power structure. Indeed, states such as Saudi Arabia have been accused of assuming a mantle of religious piety for secular political ends, and persecuting the regime's political opponents with an interpretation of Shari'a law that permits it to condemn political enemies of the regime as violators of religious law. Vague charges of affronting Islam and "adopting a *takfiri* (heretical) approach to religion, contrary to the Sunnah and Qur'an" have been used as a justification to silence the ruling House of Saud's critics within both political and religious circles in the kingdom.

The rulings of *mufti* are, in this sense, often used to justify repressive policies, and maintain the political and religious status quo. Fundamentalist *mufti* arguably form symbiotic relationships with autocratic governments; government regimes grant legal force to the rulings of religious scholars, who in turn imbue a theological varnish to the policies of the regime. Due to this religious-political dynamic, opposition groups who represent a threat to the political legitimacy of the regime often face double charges of criminal misconduct and heresy. One of the most notorious examples of this trend occurred in January of 2016, when

forty-seven Saudi activists led by popular Islamic religious leader and liberal pro-democracy activist Sheikh Nimr al-Nimr were convicted on charges of terrorism and religious unorthodoxy and sentenced to death following a string of peaceful protests against the autocratic governments of Saudi Arabia, Bahrain, and Syria.<sup>51</sup> Al-Nimr and his followers advocated for a peaceful transition to more democratic systems of government in the Middle East, and an increase in human rights, and furthermore suggested that portions of the Saudi Kingdom should secede if these ideals were not respected. Citing al-Nimr's supposed violation of the kingdom's religious laws and denouncing his movement as terrorism, the Saudi regime argued that the mass-execution was justified under Islamic principles, while other observers criticized the move as a transparent hijacking of Shari'a law to dispose of the regime's political opponents.<sup>52</sup>

Similarly, Iran, Qatar, Yemen, Pakistan and other Islamic states arguably take full advantage of the highly elastic and subjective nature of Shari'a law in order to grant religious legitimacy to laws considered to fall below the standard of democratic human rights. It is arguable that the manner in which Shari'a is interpreted in certain Islamic nations most frequently falls into line with the political interests of the ruling regime, and is typically tailored to lend autocratic regimes an artificially inflated legitimacy in an age when such governmental structures are considered outmoded in much of the world. In this sense, the manner in which Shari'a is executed within the context of the Islamic world is arguably a poor test of whether it

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<sup>51</sup> B.C. "Who was the Shia cleric killed in Saudi Arabia?". *The Economist*. January 2016.

<sup>52</sup> Anne Keleny, *Nimr Baqir al-Nimr: Saudi Arabian Shia cleric who denounced the kingdom's rulers and called for religious freedom*. *The Independent*. January 2016.

is compatible with Western forms of law, or how Muslim scholars in the context of Western Shari'a arbitration courts might interpret religious texts when removed from the context of autocratic and monarchical regimes as exist in certain parts of the Islamic world.

Furthermore, analyzing the manner in which democracy has exhibited a comparatively slow level of growth in the Islamic world, it is likewise necessary to factor in the demise or upset of numerous longstanding autocratic governmental structures in the Arab Spring Revolutions beginning in 2011. Upheavals within much of Islamic society saw the end of autocratic regimes in Tunisia, Libya, Egypt, and threatened the survival of others, notably Syria, which has endured five years of civil war as opposition forces seek to dissolve the government of Bashar al-Assad. While it avoided outright revolution, Saudi Arabia likewise experienced a number of protests in 2011-2012, which saw the deaths of several activists at the hands of the authorities, but ultimately did not seriously damage the regime's authority.

While the waves of protests, revolts, and regime terminations prevailing over much of the Middle East and North Africa presented a profound reshaping of the political climate within certain Islamic countries, they also saw changes in the way Shari'a rulings were constructed and executed, as religious scholars supportive of fallen autocratic regimes increasingly lost influence. In Libya, the fall of Muamar Gaddafi's regime saw the rise of new interpretations of Sharia law comparatively more favorable towards democracy, clashing with the work of scholars of more conservative readings which had prevailed prior to the revolution of 2011.<sup>53</sup> After Gaddafi's regime was dissolved in 2011, the National Transitional Council led

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<sup>53</sup> EuroNews. *Sharia law and the Arab Spring*. 26/10/2011

by Mustafa Abdel Jalil announced that the new government would use Shari'a as a source for its constitution, leading to some concerns among Western observers about the fortunes of democracy in a post-Gaddafi Libya, with some pointing to repressive states such as Saudi Arabia as functional examples of how Shari'a is executed in practice. However, as previously stated, the manner in which Shari'a is practiced in Saudi Arabia is the political result of one of many potential scholarly interpretations of Islamic religious texts---and paradoxically, the repressive political climate of Saudi Arabia is likely a key influence in promoting those interpretations, in a manner that permits the regime to draw upon the cultural legitimacy of Islamic theology to maintain the social status quo and stifle political opposition. In the question of whether or not Shari'a law can be consonant with the principles of Western-style constitutional democracy, it is necessary to address how a religious form of law like Shari'a could coexist with the purely secular and religiously neutral form of government prevailing in most Western nations.

Likewise, while it is demonstrable that some of the autocracies claiming Islam as a source of legitimacy are not above discarding its more inconvenient traditions in the name of political expediency, it is necessary to address the nature of Shari'a's minimum role within society, given the relatively high number of those autocratic regimes claiming it as an inspiration in their policies. Fethulah Gülen asserts that while there are some observers both within and outside of the Islamic community who regard Shari'a as a primarily political aspect of Islamic teaching, these observers are mistaken, arguing that any interpretation of Shari'a is primarily a standard for Muslims to live by in their own religious lives, and it is not designed to

supersede or replace secular laws imposed by the greater society. He points out that Islamic societies down through history have relied upon secular government apparatuses to form and execute laws---even in the case of heavily theocratic states such as Saudi Arabia, which claim inspiration from Shari'a in its government's policies. "In Islam, the legislative and executive institutions have always been allowed to make laws. These are based on the needs and betterment of society and within the frame of general norms of law...Muslims have always developed laws. The community members are required to obey the laws that one can identify as "higher principles" as well as laws made by humans."<sup>54</sup>

He furthermore argues that any government that permits Muslims to reasonably practice their faith without interference is sufficient to compel Muslims to obey its laws. Muslims are by no means obliged to replace functional secular laws with theocratic ones, especially if their religious freedom receives greater protection in the context of a secular constitutional democracy. Gülen concludes: "In the presence of such a state, there is no need to seek an alternative state...In order to make such ideal laws, lawmakers should reform, renew, and organize the system according to the universal norms of law. Even if such a renewal is not considered *tashri'i* (based on Shari'a), it is not conceived of as being against it."<sup>55</sup> In principle, therefore, it is arguable that not every form of Shari'a necessarily promotes nondemocratic thought, even if Shari'a interpretations prevailing within theocratic autocracies tend to affirm the policies of those regimes---and, as previously stated, the dominance of autocratic regimes

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

and their influence on the development of Islamic legal thought may tend to artificially bolster theocratic *mufti* by suppressing others who refuse to cooperate with the regime.

Another dynamic at play within the Islamic world, as previously intimated, is the legacy of colonialism, and the perception that democracy is a product of the secular West which is hostile the values indigenous cultures of the region. In many areas of the Islamic world, Muslim advocates of democracy are faced with the challenge of contending against the historical cultural memory of past experiences with democratic societies, which, unfortunately, have not always been positive. Due to competing political interests, Western democracies have, at times, contributed to the negative political dynamics prevailing in many parts of the Islamic world today. This has in turn contributed to a kind of besieged attitude in some parts of the Islamic world, which tends to further bolster the legitimacy of self-proclaimedly “Islamic” autocratic regimes, which can capitalize upon this negative historical legacy to demonize pro-democracy Islamic thinkers as cultural traitors. In order to understand all aspects of the Islamic world's relationship with democratic thought, it is necessary to understand these historical events and their impact on the perception of democratic ideals in some key Muslim-majority nations.

### **(ii.) The Impact of Historical Politics on Islamic Perceptions of Democracy**

One of the most notorious and far-reaching examples of how political interactions with Western democracies has contributed to negative perceptions of democracy in some quarters of the Islamic world is found in the events leading up to the Islamic Revolution in Iran in 1979. Over the first half of the twentieth century, Iran experienced a whirlwind cultural and political

movement in favor of Westernization that brought the absolutist power of the Qajar Monarchy to an abrupt end, replacing it with a constitutional monarchy under Reza Shah in 1925.<sup>56</sup> In 1941, United Kingdom and USSR invaded Iran, following accusations that Shah's government was colluding with the Axis powers, despite Iran's declaration of neutrality. Ultimately, the British obliged Shah to abdicate in favor of his son Mohammad Reza Pahlavi in 1941. Additionally, Iran entered into an arrangement with the Anglo-Persian Oil Company (a precursor to the modern British Petroleum Company) which was seen by many Iranians to overwhelmingly favor the British, who were likewise perceived to be using the oil company's assets to influence Iranian politics. Growing dissatisfaction with the constitutional monarchy's policies led to the rise of the Iranian National Front, which sought to transform Iran into a full-fledged democratic republic.

The election of National Front candidate Mohammad Mosaddegh to the office of Prime Minister of Iran in 1951 saw the introduction of wide variety of Western-inspired liberalization measures, including labor protection laws, the construction of Western-style universities and infrastructure, and a wide variety of other development projects aimed at realizing the National Front's vision of transforming Iran into a modern republic.<sup>57</sup> His most controversial project was the proposed nationalization of the Anglo-Persian Oil Company's assets, which would place Iran's fossil-fuel resources under the control of the Iranian government, and

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<sup>56</sup> "Reza Shah Pahlavi (shah of Iran): Introduction". *Britannica Online Encyclopedia*. Retrieved 16 June 2012.

<sup>57</sup> Constantino, Redentor Renato, *Nothing New in the World*. The Asia Times, September 2004.

beyond the reach of the British economy, which had benefited immensely under the previous agreement. In direct response to this event, the United Kingdom established itself as a strong opponent to the ascendant democratic movement within Iran. Likewise, the United States government, concerned that Iran had remained neutral in the Cold War standoff between NATO and the Warsaw Pact countries, perceived the democratic faction of Iran as a potential threat to U.S. interests in the region, particularly if they potentially chose to support the Soviet bloc.<sup>58</sup> This fear was heightened to an ever greater degree when Mossadegh's government, in the face of British oil embargoes sending the Iranian economy into a state of near-collapse, successfully passed a referendum dissolving parliament and stripping the Shah of his remaining powers.

Accordingly, the CIA and MI6 colluded to overthrow the elected members of the Iranian government, and quash the Iranian democratic faction before it achieve its goals of appropriating Iran's natural resources for the country's own use. The operation, known by the codename Operation Ajax, not only sought to interfere with the Iranian electoral process by bribing local officials, but also manufacture civil unrest and violence to undermine the authority of Mossadegh's government. Ultimately, Operation Ajax culminated in a full-fledged coup d'etat which saw Mossedagh arrested by Iranian monarchist and army General Fazlollah Zahedi, and the Shah's full powers being restored against the will of much of the country.

Over the next three decades, the Shah's near-absolutist reign would be dogged by economic problems, accusations of brutality by his subjects, and the indelible stigma of being

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<sup>58</sup> Keddi, Nikki. "Roots of Revolution", Yale University Press, 1981,

an autocratic leader propped up by Western democracies. His restoration of Britain's considerable fossil-fuel privileges on Iranian soil likewise won him the further disdain of Iranian democrats and nationalists alike. Ultimately, Shah Pahlevi's dictatorial approach to modernization and secularization caused the galvanization of a nascent political faction of religious fundamentalists in Iran, and his lack of support from fellow secularists embittered by his Western-backed autocratic rule precipitated the Islamic Revolution of 1979, which instituted the theocratic government ruling Iran today. In 2013, CIA documents declassified under the Freedom of Information Act belatedly acknowledged the United States' intimate involvement in the Iranian coup of 1953,<sup>59</sup> confirming the long-held accusations of Iranian political historians that the United States had played a key role in orchestrating the extinguishment of the democratic movement of Iran--a suspicion which had, unsurprisingly, caused many Muslims in the region to lose faith in Western forms of democratic government.

Another major area of diplomatic abrasion between Middle-Eastern Muslims and the United States' foreign policy is the consistent support the United States has shown to Saudi Arabia's House of Saud. Indeed, economic interactions between the United States and the House of Saud in the 1930s arguably enabled the family to become power-brokers in the modern world, transforming them from an aristocratic but largely destitute Arab family whose fortunes were in apparent decline by the twentieth century, into an anachronistic but fantastically wealthy medieval-style Islamic monarchy before the dawn of the twenty-first

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<sup>59</sup> Hanna, Jason, & Merica, Dan. *In declassified document, CIA acknowledges role in '53 Iran coup*. CNN, August 2013.

century. The arrival of American oil surveyors in the region in the early 1930s was a pivotal event in the history of the Islamic world; while part of the region now known as Saudi Arabia had long held religious significance as the location of the holy city of Mecca, the area had, until the 20<sup>th</sup> century, been something of a political backwater on the fringe of the Ottoman Empire.

The discovery of Saudi Arabia's massive oil reserves by the American surveyors and the subsequent foundation of the Arab-American Company (ARAMCO) established the unlikely but enduring partnership between the United States and the Saudi Kingdom, which, over the course of the century, accrued unbelievable wealth due to the oil trade, enabling the Saudi monarchy to garner favor with its people by abolishing taxation. Additionally, the United States has consistently sold modern weaponry to the Saudi Kingdom, with the Obama administration offering to sell a total of \$115 billion in advanced tanks, aircraft, and other military hardware to the monarchy over the course of President Obama's two terms in office. Additionally, both the Obama and Trump administrations have offered logistical and strategic support to Saudi Arabia's controversial war in the neighboring state of Yemen, which, though widely criticized as a pointless struggle that has caused a major humanitarian crisis in the region, is reflective of a long pattern of political and militaristic aid that the United States has offered its ally and oil trading partner.<sup>60</sup>

The reasons that the United States' relationship with Saudi Arabia present a myriad of

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<sup>60</sup> Keating, Joshua. *Trump Is Increasing U.S. Support for the Pointless, Brutal War in Yemen*. Slate Magazine, March 28, 2017/

problems for the perception of democracy in the region are as multi-faceted as they are unique to the politics of the region. The royal family of Saudi Arabia, while managing to maintain power into the modern era through the oil trade, nonetheless bears the dubious distinction of being despised by secularists, religious moderates, advocates of democracy, and radical fundamentalists alike across the Middle East, a near-unanimous hatred which colors much of the Islamic world's perception of the United States. The House of Saud has earned the ire of democratic reformers in the Islamic world, who loathe the regime's anachronistic governmental structures, which in the typical style of a feudal monarchy places members of the Saud clan in most important offices of government.<sup>61</sup> Religious moderates in the Islamic world detest the brutality of the Saud regime, and the executions of peaceful Muslim dissidents such as the late Shiekh Nimr al-Nimr, who, as previously stated, was beheaded with forty-six of his fellow activists for speaking against the policies of the Saudi government. Secularists oppose the Saudi government's theocratic policies, its alliance with the militant Wahabist sect, and its persecution of atheists such as Raif Badawi, a Saudi blogger who in 2016 was sentenced to ten years in prison and 2,000 lashes for tweets deemed blasphemous by Saudi authorities.<sup>62</sup>

Most peculiarly, the Saudi royal family has made innumerable enemies among many if not most radical fundamentalists outside of the Wahabist sect. Non-Wahabist fundamentalists

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<sup>61</sup> Osborne, David. *Isolated abroad, hated at home: House of Saud faces uncertain future*. The Independent. May 31<sup>st</sup>, 2004

<sup>62</sup> Burke, David. *Saudi Arabian man is jailed for 10 years and given 2,000 lashes for tweeting that he is an atheist and criticising religion*. September 1<sup>st</sup>, 2016.

often regard the supposed religiosity of the regime as a hypocritical front, and harbor a long list of grievances against the House of Saud. The fundamentalists point to the lavish Westernized lifestyles enjoyed by the Saudi oil-aristocracy, the numerous sex scandals that have rocked the sprawling royal family over the years, and the materialism and plutocracy that characterizes much of the government. Fundamentalists also object to the Saudi government's toleration of non-Muslims on the sacred ground where the Prophet Muhammed lived and preached, and were particularly outraged by the presence of non-Muslim military personnel on Saudi soil during the Gulf War, which they regarded as a profanation of holy ground.<sup>63</sup> Despised and beset on all sides by disparate ideological groups, and economically challenged by recent fluctuations in oil prices, the House of Saud can count few allies in the arena of world politics as influential as the United States---to the detriment of the United States' image in the region. Writing for the Atlantic newspaper, former CIA field director Robert Baer summed up the situation faced by the United States' monarchical Arab ally: "Saudi oil is controlled by an increasingly bankrupt, criminal, dysfunctional, and out-of-touch royal family that is hated by the people it rules and by the nations that surround its kingdom."<sup>64</sup>

Given the widespread disdain for the Saudi royal family from most ideological quarters of the Middle East, it is perhaps unsurprising that the United States' diplomatic and economic relationship with the monarchy reflects badly on the image of the democratic values that the United States symbolically represents on the world stage. Even to religious moderates and

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<sup>63</sup> Ibid.

<sup>64</sup> Baer, Robert. *The Fall of the House of Saud*. The Atlantic. May 2003.

advocates of democracy in the region, the United States' alliance with the feudal regime presents a frustrating dilemma, as it undermines faith in the values of the democratic governments of the West that are offering support to a brutal, despised, and anachronistic monarchy in the Middle East. International organizations such as the United Nations have in recent years also contributed to the growing doubts of some quarters of the Islamic world in the veracity of democratic values, which, in the context of international politics, may sometimes appear to be a moral fig-leaf for the ambitions of self-interested nations. In October of 2016, for example, while the Russian Federation's representatives were effectively kicked out of the United Nations Human Rights Council over the country's annexation of Crimea and subsequent support for rebel factions in Ukraine, Saudi Arabia was re-elected to the same UN human rights council, this following a controversy in September 2015 which saw one of Saudi Arabia's representatives being appointed as the chairman of a panel that selects independent human rights experts.<sup>65</sup> The Saudi Kingdom's re-election to the human rights council occurred despite the aforementioned mass-execution of peaceful pro-democracy activists at the start of the year, the consistent regressive persecutions of Islamic moderates, atheists, homosexuals, alleged "sorcerers", etc., and the deaths of Yemeni civilians in the kingdom's ongoing war in that country. In the face of this, organizations such as the United Nations, which claims democracy as one its "core values and principles"<sup>66</sup> have in their way served to further erode the confidence many Middle Eastern Muslims have in Western ideals

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<sup>65</sup> Osbourne, Samuel. "UK helped Saudi Arabia get UN human rights role through 'secret deal' to exchange votes, leaked documents suggest". The Independent. 30 September 2015.

<sup>66</sup> United Nations.org Index. *Democracy*.

of democracy, negatively impacting the growth of democratic values in an Islamic world that witnesses Western democracy legitimizing and supporting a regional monarchy against the will of the inhabitants.

### **(iii.) Does Shari'a or Politics Promote Fundamentalist Thought?**

In light of the clear regressive policies of certain regimes such as Saudi Arabia and Iran, it has been argued in certain quarters that Islam, Shari'a law, or both inevitably promote these forms of fundamentalist thinking. However, it is arguable that the form of Shari'a law, and the manner in which the Islamic faith is practiced, is more heavily influenced by the broader political context in which they exist. Governments, law systems, or non-territorial federal systems influenced by Shari'a law that exist within a more moderate or liberal political context, will, arguably, exhibit a proportionally moderate tone in many cases. As previously stated, the greater freedom of expression and religious conscience afforded in secular-democratic nations tends to stimulate the growth of different perspectives towards Muslim philosophy that would not be permitted to exist in many of the aforementioned autocratic regimes. Indeed, without the heavy administrative hand of a quasi-theocratic government that relies upon a specific narrative of the Islamic religion to promote its own legitimacy, the tradition of *ijtihad* typically produces a myriad of traditions, philosophies, and expressions of Islamic thought.

Whereas the Saudi Arabian government enforces an extremely narrow range of Islamic philosophical belief, and tends to suppress liberal thought, democratic sentiment, and alternative perceptions of religion, Islamic communities within the West, when free of such

constraints, can fall into either the left or right of the political and social spectrum. As Dr. Kecia Ali of Boston University notes in the opening chapter of *Sexual Ethics And Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence*, "The spectrum of Muslim engagements with interlocutors both Muslim and non-Muslim is vast...There is no one Muslim perspective on anything. Even among madrassa-educated scholars...one finds a spectrum of views ranging from enlightened to obscurantist.<sup>67</sup>" This paradigm of how the Islamic faith is practiced when freed of the arguably artificial mitigating factors created by the unique political dynamics of the traditionally-defined Islamic world raises a question of to what degree the apparent opposition to liberal values is actually a product of the Islamic faith, and to what degree it is generated by the specific modern political context of the region. It should be noted that large portions of the Islamic world had, in prior eras, a social dynamic that was extremely different than exists in much of the Islamic world today and an interpretation of Shari'a law that is more in keeping with modern liberal values.

It is arguable that the current lag in the development of liberal thought in the modern Islamic world, and the fundamentalism that is so stereotypical of some modern Islamic states such as Saudi Arabia represents only a negative extreme of the form that a Shari'a system may take. During the Golden Age of Islam, (circa 780-1260 CE), many regions of the Islamic world, operating under their respective understandings of the Shari'a law tradition, were notable for their comparatively high degree of tolerance and what might be considered more

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<sup>67</sup> Ali, Kecia. *Sexual Ethics And Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* Oneworld Publications, Dec 21, 2015

liberal thought, certainly compared to their non-Islamic peers of the era, but to a certain extent, also some of their counterparts in the Islamic world of today. The Fatimid Empire, which stretched from southern Spain to North Africa and the Middle East, was one of the few societies of the era to allow for a degree of freedom of expression and religion, with Christians, Jews, and others being free to practice their faith under the Fatimid reading of Shari'a law.<sup>68</sup>

Likewise, during this period of Islamic history, to facilitate the practice of debate under the tradition of *ijtihād*, scholars and philosophers with diverse philosophies and viewpoints were subsidized by the Fatimid government, along with translators who recovered and preserved the works of pagan philosophers from Greece, Rome, and other earlier civilizations, storing them in a large library in Baghdad.<sup>69</sup> This stands in stark contrast to the practices of some authoritarian regimes and organizations in certain areas of the modern Islamic world, which attempt to preserve their own political and ideological legitimacy by iconoclastically attacking and suppressing the achievements of earlier cultures, most notoriously demonstrated by the Taliban's demolition of ancient Buddhist statues in Afghanistan in 2001.<sup>70</sup>

Due to the comparatively high level of freedom of expression and thought, the Golden Age of Islam produced varying perspectives and theories about how the Islamic faith is most appropriately practiced, frequently with the emphasis on the acquisition of scientific and

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<sup>68</sup> Amīn, Ḥasan (1 January 1968). "Islamic shi'ite encyclopaedia". SLIM Press.

<sup>69</sup> Vartan Gregorian, "Islam: A Mosaic, Not a Monolith", Brookings Institution Press, 2003, pg 26–38

<sup>70</sup> Rashid, Ahmed. After 1,700 years, Buddhas fall to Taliban dynamite. The Telegraph Newspaper, March 2001.

philosophical knowledge that characterized much of Islamic culture. Indeed, the emphasis on a narrow understanding of Islamic orthodoxy that characterizes the practice of Shari'a in some modern regimes like Saudi Arabia was notably absent from Islamic philosophical practice of the Golden Age era, and some of the myriad of religious theories even incorporated farsighted scientific ideas that would not debut in modern Western science until the after industrial Revolution and would certainly be condemned as heterodox by certain Islamic regimes today. For instance, Islamic Golden-Age thinker and theological commentator Ibn Khaldun (1332-1406), writing in his famous work the *Muqaddimah* some 432 years before the birth of Charles Darwin, theorized that humans evolved from lower primates in an incremental divine plan:

One should then take a look at the world of creation. It started out from the minerals and progressed, in an ingenious, gradual manner, to plants and animals...The last stage of plants, such as palms and vines, is connected with the first stage of animals, such as snails and shellfish...The animal world then widens, its species become numerous, and, in a gradual process of creation, it finally leads to man, who is able to think and reflect. The higher stage of man is reached from the world of monkeys.<sup>71</sup>

This example serves to emphasize the radical differences in freedom of thought, expression, and belief that is possible under more liberal readings of Shari'a. Far from the dogmatic suppression of alternative theological thought so characteristic of Shari'a law in regimes such as Saudi Arabia, some historical Islamic societies operating under the tradition of *ijtihad* gave

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<sup>71</sup> Kiros, Teodros. *Explorations in African Political Thought*. 2001 .

rise to alternative understandings of Islamic thought, facilitated by a degree of free expression that was not generally characteristic of the era.

Ultimately, while some contemporary Islamic fundamentalists indisputably cite Shari'a law as a justification for violence and the abuse of human rights, the historical record attests to the fact that these circumstances are not inevitable in Islamic societies. In an Islamic society where members of the faith are permitted to participate in the tradition of debate and discussion of Muslim theological thought, it may be expected that a wider diversity of religious interpretations and perspectives will arise, and, if the philosophical tradition is observed, coexist. While fundamentalism is a phenomenon that occurs within religions and religious societies, the broader political context is a major deciding factor on the predominance of fundamentalist religious perspectives in certain areas; that is, political structures may deliberately encourage and nurture the growth of certain radical religious perspectives, if, as previously stated, it serves the purpose of that regime.

Indeed, in the case of Saudi Arabia, the connection between the notoriously decadent House of Saud and the austere followers of the Wahhabi sect was not coincidental. Their alliance is a political one that dates back to the mid-1700s, when the Saud clan formed an agreement with Muhammad ibn Abd al-Wahhab, the founder of the Wahhabi sect, whereby he agreed to imbue their territorial ambitions with the theological legitimacy of his sect, and they in return would provide the Wahhabi sect with a political power base and social influence;<sup>72</sup> the three-century old symbiotic relationship between the Saudi royal family and

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<sup>72</sup> Hunt Janin; André Kahlmeyer *Islamic Law: The Sharia from Muhammad's Time to the Present*. 22

the Wahhabists provides an archetypical example of how a fundamentalist religious sect can be propped up by the government. In return, as previously mentioned, the Wahhabist *mufti* continue to lend a certain theological legitimacy to the House of Saud, while they also generally choose to tolerate the decadence and materialism which has caused other fundamentalists to turn against the Saudi royal family. While the values of the political regime and the predominant fundamentalist sect are thoroughly at odds with one another, members of both groups choose to overlook this discrepancy in the name of deriving a mutual benefit.

In societies where the government does not rely upon a specific faith or sect to establish its legitimacy, fundamentalists are arguably less likely to take hold in the manner as the Wahhabists have in Saudi Arabia, and impose their own specific interpretation of the Shari'a law tradition. Ultimately, then, it appears that Islam or Shari'a themselves are not the chief causes of the growth of fundamentalism, but, as previously argued, it is political structures that lack inherent legitimacy that attempt to manufacture it through the promotion of fundamentalism, drawing upon autocratic understandings of Shari'a that serve to underpin their autocratic political practices. Furthermore, this offers broader implications for the relationship between religion and the state---when not interfered with to by the interest of a state that lacks inherent legitimacy, Shari'a, and possibly other religious traditions as well, tend to conform within the moderate spectrum of the political context they exist within.

## **VI: Conclusions**

### **(i). Future Prospects for Shari'a in the West.**

Given the current political dynamics and numerous ongoing political crises involving the Islamic world, the future of Shari'a in Western democracies is mixed. In Canada, if the elimination of religious courts in Ontario precipitates a general ban in the coming years, Shari'a courts in that nation may see an abrupt end. In any case, the example of Ontario demonstrated that the prospects of Shari'a in Canada may be bleaker than elsewhere in the West. Likewise, the rise of nationalist sentiment in the United Kingdom, combined with Brexit, may pose a challenge to the existence of Shari'a tribunals, as campaigns against them continue; unlike in Canada, however, there are few indicators in the United Kingdom of an immediate legal threat to the continued operation of Shari'a courts.

In the United States, the state legislatures of many states have voiced their displeasure to the presence of Shari'a in any context of the legal system by passing laws attempting to ban foreign or religious law from state courtrooms. However, courtrooms relying upon the legal doctrine of neutral principles tend to sidestep First Amendment concerns by focusing on the contractual aspects of religious arbitration agreements, treating them like any other agreements. Furthermore, the two pronged legitimacy offered by case law and the Federal Arbitration Act would appear to indicate that arbitration courts, Shari'a courts included, are likely to be a part of the U.S. legal landscape for years to come.

### **(ii) Broader Implications**

The conclusions reached over the course of this project raise a number of further questions regarding the interaction between religion and politics. Most saliently, while it appears that Islamic religious practice, in general, is greatly shaped and impacted by the

research of this project is somewhat limited at this juncture by focusing on the Islamic faith alone, as per its objective of analyzing whether or not Shari'a arbitration courts are consonant with democratic principles. A more comprehensive analysis of this paradigm between religion and politics would require an examination of other faiths in their respective political contexts. However, assuming that the relationship between Islamic conceptions of law and the values of the government it exists in holds true across other faiths, a hypothesis could be advanced that widespread religious radicalism of any variety could be prevented through political moderation.

### **(iii). Are Shari'a Courts Compatible with Secular Democracies?**

Taking into consideration the wide diversity of religious perspectives falling under the umbrella of Shari'a law in the Islamic faith, and the legal traditions of the Western nations examined, Shari'a courts are arguably compatible with secular constitutional democracies, provided that they receive the proper oversight due to all arbitration courts to ensure their rulings are in accordance with the laws of the nation they operate in, and the parties whose cases are heard in the Shari'a court are recouring to it of their own free will. Historical examples and modern diversity of thought within Islam demonstrate that fundamentalist values are not inevitable within Shari'a systems, and that those existing within more moderate political contexts tend to show more diversity of thought and ideological moderation than those existing in more extremist political contexts. Shari'a arbitration courts, if properly monitored by the authorities, should present few difficulties to a secular democratic system. Where the flexible religious system that is Shari'a law exists in a moderate democratic political

context, it is likely to conform more to that political system than impact it.

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