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## THE PRINCE, THE SHAYKH - AND THE LAWYER

*Abdulaziz H. Al Fahad\**

Two stories, one a well-known historical event, the other a personal anecdote, should succinctly illustrate the position of the various legal actors in Saudi Arabia and the extent of their power. The two stories should also give a flavor of the powerful clash between “tradition” and “modernity” currently gripping Saudi society.

The first is that of the famous jurist and eponymous founder of Wahhabism, shaykh Muhammad ibn Abd al-Wahhab (1703-1792), who, after failing to gain the unqualified commitment of some Arabian princes for his reforms, moved to Dir’iyyah, a hamlet in Najd, as central Arabia is known. Its ruler, Muhanunad ibn Saud, founder of the Saudi dynasty, rushed to welcome the distinguished visitor. The shaykh asked for his support in reforming the errant Arabians and returning them to the fold of pristine Islam. The exchange that followed is revealing.

The shaykh asked for the prince’s support to spread the reform by the might of his sword, predicting that once the campaign was launched, the prince would set up a wide realm and achieve supremacy over all of Arabia. The Saudi prince agreed to begin campaigns but asked for assurance that the shaykh would not later abandon him for the sponsorship of other Arabian princes. Upon receiving proper assurances, he agreed to abide by the true edicts of Islam, but asked for an exemption with regard to taxation, as he had a custom of regularly collecting extra-canonical taxes, the legally (i.e., religiously) sanctioned levy being inadequate to support him. The shaykh politely declined this request, declaring that if the prince would simply follow the law of God, the *shariah*, he “would make up for the losses many fold.” The prince acceded, thus cementing a truly impressive bargain. The rest is history.

The other extreme in the status of legal actors in Saudi Arabia is illustrated by the following exchange I had with a friendly judge a few years ago as we were informally chatting about a few issues, including the lamentable status of lawyers in the country. He told me that for a while (and as behooves a Muslim jurist) he had had strong reservations about continuing as a judge, fearing that his inevitable mistakes in applying the *shariah* might come to haunt him on the day of judgment. He thought that resigning his judgeship and practicing as a lawyer might be the answer – until he was disabused of that notion. He was presiding

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over a trial in which the defendant was being represented by an apparently articulate and persuasive lawyer and the plaintiff was representing himself. The plaintiff soon became exasperated, slammed his fist on the table and requested that the judge grant him a continuance so that he might look for "a dog to bark" for him, i.e., a lawyer. After witnessing that scene, the judge told me, he gave up any notion of becoming a lawyer.<sup>1</sup>

Between these extremes, a jurist founding a state and a lawyer performing his canine functions, other legal actors have occupied varied social positions, many fairly exalted. The functions and powers of these actors have, of course, been evolving, especially over the last half century. From essentially sharing the top of the social pyramid for much of modern Arabian history, in the capacity of jurists, theologians, traditionists, judges and preachers, they have gradually undergone a significant differentiation in role, status, as well as power. All of these functions ultimately derive from the study of the religious sciences of Islam and have evolved in the course of Islamic history. As early as the death of the Prophet in 632, a struggle immediately ensued over his "inheritance." Slowly but clearly, a distinct group emerged, the *ulama*, or scholars of religion, especially the law (the shari'ah), whose training (and piety) lent them the ability to interpret the law authoritatively. The highest ranks were reserved for the scholars of religion proper, whether theologians, traditionists or jurists. The conflict that evolved was over whether the proper heir to the Prophet's legacy was the *caliph*<sup>2</sup> and politicians in general, or the *ulama*. The most concrete manifestation of the struggle occurred in the third Islamic century (9th century of the Common Era), during the famous *mihna* or inquisition of the leading traditionist of his time, Ahmad ibn Hanbal. The immediate focus of the inquisition is fairly abstruse, concerning the *Quran*, which, while acknowledged by all to be the literal word of God as revealed through the Prophet, still engendered debate as to its created or pre-eternal nature. After a long struggle, involving imprisonment and torture of those jurists who declined to support the position of the caliph concerning the "created" nature of the Quran, and after the death of three caliphs, Ibn Hanbal was released and the "state" more or less gave up any pretense to authority to interpret law, and religion in general. Many scholars consider this struggle to be a landmark in the evolution of Islam and the Muslim polity. Henceforth, the role of the *ulama* as the

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<sup>1</sup> Bear in mind that the Arab dog is far inferior in status to its western counterpart. The former has none of the charming qualities of the latter, and is nothing more than a vulture that happens to bark.

<sup>2</sup> The caliph is the supreme leader of the Muslim community, the secular and religious head of the Muslim polity. This position lasted from the death of the Prophet Muhammad until the abolition of the Ottoman Caliphate in the 1920s.

guardians and interpreters of God's law was sanctified and beyond dispute.<sup>3</sup> While never equal to the *caliph* or the successor princes, the *ulama* held a position of high esteem, many powers. Through their control of institutions of learning, many of the religious endowments and the constant needs of the princes for their services as judges, advisors, or grantors of legitimacy, they were second in rank to the princes and their military leaders, but arguably more prestigious. Muhammad ibn Abd al-Wahhab was the product of such tradition, although he did not adhere to one of the tenets of Sunni Islam in renouncing political quietism and embarking on a campaign to impose the *shari'ah* (and create a state in the process), by force if necessary.

After receiving a traditional Islamic education, including travel to centers of learning in Arabia and Iraq, he returned to his birthplace in central Arabia where he attempted to persuade the ruler of the largest town in the area to support his reforms and to impose Islamic law, a task at which his success was only temporary. Because of the politics of the times, he was expelled and found himself a refugee in Dir'iyah where he sealed his deal with Ibn Saud. Though the career and personality of Ibn Abd al Wahhab are fascinating, only a few salient points need to be mentioned here. First, as a scholar essentially espousing a revolution, he still chose to restrict his role to that of a jurist, never evincing the wish to rule himself or keep it in his family.<sup>4</sup> He, however, still retained considerable influence, including control over public treasury, *biat al mal*. When Muhammad ibn Saud grew old, the jurist designated the former's son as heir apparent. This compact was to inform the evolution of Saudi polity to this day. Succession to the throne is predicated on blood ties; succession within the *ulama* hierarchy requires learning only. In accordance with this logic, the house of Saud maintained its (more or less continuous) control over the throne, but the shaykh's descendants, the Al Shaykh, had to compete with other learned individuals in the scholarly community. In fact, the membership of the *ulama* was wide open to any individual of learning, and there were probably as many if

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<sup>3</sup> The inquisition was resolved by the release of the jailed jurist and the defeat of his opponents. It became the standard practice in the Muslim community to grant the jurists and only the jurists the role of interpreters of the scripture and the law.

<sup>4</sup> It would be fascinating to compare Ibn Abd al Wahhab's career to other (Muslim) religious reformers. While a difficult task, we know of at least a few cases where jurists launched reform crusades. Five cases are relevant. The first two, both in North Africa, that of the Almoravid's and Almohad's, took place in the 11<sup>th</sup> through 13<sup>th</sup> centuries. The former was a movement initiated and sustained by tribal leaders who themselves sought the participation of the jurist. Almohad's was launched by a theologian and jurist who remained in control and happened to die without issue. The other three more modern movements, the Sanusiya of Libya, The Mahdiyya of Sudan, and Idrisiyyah of Asir (southwest Saudi Arabia), resulted in the jurist's family inheriting political control.

not more non-Al Shaykh jurists<sup>5</sup> at the top of the *ulama* hierarchy. More strikingly, the age-honored Arabian barriers of genealogy<sup>6</sup> were completely absent, and many of the top ranking *ulama* came from non-genealogically pure backgrounds, including the former grand *mufti*<sup>7</sup> of Saudi Arabia (who died last summer). This extraordinary avenue to overcoming barriers was not merely restricted to the social realm, but actually extended to physical handicaps, especially blindness (common in Arabia until recent times).<sup>8</sup> Though difficult to quantify, it could be safely surmised that there were as many blind as non-blind members of the *ulama* until very recently (the current grand *mufti* is blind).

Whatever its composition, the community always served as an indispensable part of the governing elite, at times facilitating, at times thwarting the task of the politicians. The *ulama* became an entrenched group within the state (such as it was) and provided its intellectual elite, its apologists, its judges, its preachers. The history of the military campaigns of the Wahhabi movement is reasonably documented, but the efforts of those ideologues, who more than anyone else managed to subvert the old ways of Arabia and pave the way for the new political order, are still inadequately understood.

The Wahhabi *ulama*, in conjunction with military campaigns, launched their own wars against opponents including the anti-Wahhabi *ulama* (whether local or otherwise), who objected mostly to their sanction of the use of force to bring the misguided to the fold through the application of the powerful concept of "command of virtue and prevention of vice." In charge of the ideological defense of the realm, the Wahhabi *ulama* pursued a relentless campaign against the prevalent, errant ways: laxity in performing religious duties and the application of the shari'ah as well as the adoption of many prohibited bid'as, innovations. They attacked (and ultimately forced into exile<sup>9</sup>) their Najdi

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<sup>5</sup> Non-Al Shaykh jurists do not belong to the Al Shaykh family, which by definition includes the patrilineal descendents of the Shaykh.

<sup>6</sup> Arabians classify themselves according to whether they are descended from "pure" Arabian tribes. While the overwhelming majority of the population is so recognized, a large minority, who may have lost track of their own pure descent or were immigrants or descendants of slaves, are not.

<sup>7</sup> A *mufti*, jurisconsult, is a scholar who has attained enough learning to be able to render religious and legal answers or rulings to questions submitted to him by individual Muslims or the state; the answer/ruling is the *fatwa*. A *mufti* is, but not always, appointed by the state.

<sup>8</sup> Until recently, blindness was widespread due to the incidence of smallpox and other diseases.

<sup>9</sup> We know of at least one instance when the Wahhabi *ulama* appear to have sanctioned the execution of a dissenting scholar, Ibn Gharib, in the late 18th century. The events surrounding his death are murky, especially since the offense of which he is

opponents, first to eastern Arabia and later to Iraq, until Najd became their exclusive domain. They also sustained powerful polemics against other opponents outside of Najd—such as the *ulama* of Hijaz and various Ottoman provinces, especially Iraq and Syria. Their most effective fight was arguably the subversion of the nomadic order, always a thorn in the side of any aspiring polity seeking to impose central authority in Arabia.<sup>10</sup> By deploying the law of God against the nomadic tribes (all of whom were nominally Muslim), their way of life and their own “judges,”<sup>11</sup> by questioning the legality of their possessions (some if not most of which were acquired through raids), they managed to seriously weaken the legitimacy of the nomadic order and enlist various tribes as soldiers in the cause of the true religion.

In all these campaigns, the Wahhabi scholars essentially adhered to the Hanbali school of Islamic law. On the theological (i.e., ideological) level, the Wahhabis followed a strict Hanbali theology, as interpreted by the great jurist Ibn Taymiyya (d. 1328) and his disciples. Their enemies, local or otherwise, were those who adhered to other theological schools, such as Ashari speculative theology and antinomian sufism. Both were eventually defeated by the Wahhabis and a puritanical Islam was imposed on the population. Such was the power of those ideologues.

Until the second half of this century, the *ulama* simply functioned in the traditional ways as muftis, providing citizens with religious rulings, or the prince with proper edicts for state administration. Some scholars were appointed as judges in towns, and the lesser educated were sent to preach among nomads and settled alike. In an essentially illiterate society, they were the learned class, the authors of the majority of the surviving literature of the era. Despite their erudition, the organization of the judicial apparatus was skeletal and no formal rules, except for the ancient texts, existed. Judgments were rarely written and no appeals existed beyond the customary petition to the prince.

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accused (his edict that booty taken from non-Wahhabi Muslims could not be treated as that taken from non-Muslims) does not appear to be sufficient ground to “legalize” his blood. The other well-known example, the execution of the scholar Ibn 'Amr early this century, does not appear to have been endorsed by a *fatwa* (ruling upon a point of belief, practice or law rendered by a qualified “jurisconsult,” i.e., the mufti) and seems to be firmly rooted in politics—he supported the competing house of Al Rashid.

<sup>10</sup> The nomads and the settlers were both Muslims, which the purists found not acceptably Islamic enough.

<sup>11</sup> Each Arabian nomadic clan had its own *'arifah* or judge who settled disputes according to customary Bedouin laws. Those “laws” were handed down through the centuries and appear to have been sufficient for the nomadic communities to maintain a semblance of order, such as it was. One interesting aspect of this practice was the application of *stare decisis!*

With the consolidation of the modern (third) Saudi state, which in 1999 celebrated its centennial, the pressures of modernity were felt and a slow evolution took hold, gradually transforming the *ulama* and the judiciary.

Courts were divided into more specialized tribunals, such as general and summary courts. Appeals were instituted, first to the grand *mufti* of the country and later into a more elaborate system, including a supreme court. Despite this impressive evolution, the demands of modernization created serious tensions among the *ulama* and between them and the state. While the *ulama* have historically been one of the pillars of the formation and maintenance of the state, they also presented serious challenges to the introduction of modern reforms, be they legal, social, technological or educational.

Although many reforms were successfully introduced over their objections, it is a testimony to their extraordinary power that this group has served and still serves as a powerful check on an otherwise autocratic system of governance.

Examples of *ulama* resistance are abundant. In addition to their function as upholders and interpreters of the law, they also took their role as protectors of the common man seriously. As in other traditional Islamic societies, taxes constituted the battleground. (Recall Ibn Abd al Wahhab's refusal to endorse Ibn Saud's extra-canonical taxes.) Early this century, the battleground was the introduction of customs duties over imports, which the *ulama* fought but eventually lost, an indication of relatively declining power.

Among modern innovations, the learned *ulama*<sup>12</sup> were originally uneasy with the introduction of the telegraph, holding (under prodding by the late King Abdulaziz) that they did not know enough to issue a ruling, while the less qualified suspected the invention as an instrument of the devil and fought it, despite the tremendous advantage it presented in allowing leaders to control the huge country.<sup>13</sup> Radio was opposed by

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<sup>12</sup> It is incorrect to speak of the *ulama* as one undifferentiated group. Among them always existed conservatives and moderates, those who were willing to accommodate the prince and modernity and those who refused. To examine these distinctions is beyond the scope of this paper.

<sup>13</sup> There is a legend circulating in history books about the introduction of the telegraph. It is said that when King Abd al Aziz (d. 1953) decided to introduce the wireless, in order to overcome the objections of the *ulama* and prove that the device was human-made and not an instrument of the devil, he demonstrated its acceptability by having the *Quran* transmitted, thus proving that no devil was involved, as he would have prevented the *Quran* to go through as religious beliefs dictate. The true story is rather that the late king was too astute to fall for this. When the idea was suggested, he refused to allow the demonstration, noting that if during transmission, the telegraph happened to fail, as is the wont of these devices, it would be impossible to overcome the *ulama*'s resistance in the foreseeable future

many *ulama*, some to this day, proclaiming its impermissibility, not by and of itself, but as a vehicle for impermissible things. Thus legitimate religious concerns came to the fore, such as the airing of music. Likewise, television was fought,<sup>14</sup> with one religious prince killed during a related altercation,<sup>15</sup> and was only imposed by state fiat.<sup>16</sup> This proclivity is still alive and well in the most recent battle over the legality of satellite dishes, where the *ulama* are generally united in their hostility. Relatedly, the *ulama* have been adamantly opposed to still pictures, not allowing the state to use or require them of citizens until recently (but not for women). Interestingly, the recent introduction of internet service in the country did not elicit much controversy, a sign of growing sophistication with respect to modern inventions and probably in recognition that as a medium it could lend itself, just like radio and TV, to becoming a means for spreading the Islamic message.<sup>17</sup>

While the preceding examples give the impression that the anti-modernity elements of the *ulama* have been on the losing end of the struggle, that conclusion would certainly be unjustified. For, as typical of conservative forces in any society, initial hostility towards introduction of modern devices soon turns to acceptance, use, and control, once the advantages of the new technology become apparent. The powerful committees now monitoring state radio and television broadcasts are a case in point. Indeed, many conservative *ulama* have concluded that use of the new media was the best way to convey the message and promote conformity to God's laws. Hence there is an inordinate presence of religious matters in the Saudi media.

In addition to technology, modernity also confronted the *ulama* through education. Initially, they fought to maintain the old system both in style and content, rejecting "secular" education which had to be introduced piecemeal and sometimes by stealth, with most modern schools starting in the Hijaz where the conservatism of the Najdis could be evaded.<sup>18</sup> Acceptance of education for girls took even longer, with the first government school opening in 1960. The only way the state was able to "go public" with such schools was through granting the *ulama*

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<sup>14</sup> A well-known jurist, shaykh Abdallah ibn Humaid, issued a fatwa holding that television was a prohibited innovation.

<sup>15</sup> For a perspective on this episode, see HRH GENERAL KHALED BIN SULTAN, DESERT WARRIOR 106-07(1995).

<sup>16</sup> The acceptability of TV (but not necessarily all its content) seems to be beyond dispute now with the appearance of the new grand mufti on Saudi TV on a regular basis during the holy month of Ramadan in 1999.

<sup>17</sup> The late grand mufti, Abd al-Aziz ibn Bas has his own website at <http://www.binbaz.org.sa>.

<sup>18</sup> A case in point is my father's village which steadfastly refused to accept a boys' school until 1974 and a girls' until 1980.

essentially total control over the education of girls, both in administration and substance. Thus a special Presidency for the Education of Girls was created, separate from the Ministry of Education whose bureaucrats the *ulama* apparently could not trust with the well-being and morals of girls. Indeed, the introduction of modern education for girls, compromises and all, proved to be very traumatic for the country. When the late King Faysal (d. 1975) introduced these schools to the Al Qasim region, a true conservative bastion, he had to employ force to keep them open.

Actually, nothing arouses the passions of the Saudis, *ulama* and laity alike, so much as the issue of women. While a comprehensive treatment is beyond the scope of this paper (and perhaps beyond the competence of the writer), a quick glance may demonstrate the extraordinary power and grip of the *ulama*. As many may know, Saudi women are not allowed to drive. During the Gulf War, a number of women decided to dramatize their plight by driving through Riyadh, creating a tremendous backlash against the demonstrators personally and against their cause in general. As a result, what was taken to be a social convention was elevated to the status of law, with the government seeking to appease the *ulama* by accepting their fatwas against driving and proclaiming it the law of the land. Even when the interest of the government appears to be clearly to allow driving, as the presence of the hundreds of thousands of foreign drivers has proved to be a drain on the economy, the government simply felt unable to confront the *ulama* and their supporters. This goes beyond driving, as the government, for example, is still unable to require women to provide photos for any purpose, except passports, the possession of which is not compulsory.

In the sphere of law, the *ulama* still maintain a powerful grip on both the process of law making and on the judiciary as well as training in the law colleges. Because of the impermissibility of promulgating laws that are not in conformity with the *Shari'ah*, the state has been engaged in a long battle with the *ulama* over both content of the laws and legal procedure. As recently as 1990, the government sought to enact a law of procedure to govern proceedings before the *shari'ah* court system.<sup>19</sup> Even after it was fully vetted by several senior *ulama*, and following proclamation and publication of the requisite royal decree (thereby committing the king's prestige to the enterprise), the whole law had to be abrogated within weeks as a result of widespread objections among the *ulama*, especially the judges. To this day no codified law of procedure exists in the *shari'ah* courts.

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<sup>19</sup> One of the most frustrating aspects of litigating before *shari'ah* judges is the almost total lack of procedural rules. Although rudimentary notions exist, there is nothing the litigant can use as a guide as to how a case might proceed, for each judge seems to have his own rules to which the protagonists must adhere.

Nor is resistance to codified procedure the only triumph enjoyed by the *ulama*. While the Saudi state is unequivocally committed to the implementation of Islamic law, there are legitimate arguments on how such implementation may take place. Saudi judges are instructed to use six standard (medieval) canonical texts in which majority and minority views are considered all valid. Judges are free to choose among these views, with the result that some rulings over identical disputes may diverge. Some suggest that the best way to overcome what may be unfair results (and lack of predictability in outcomes) is to codify these rulings by choosing a particular view and requiring all judges to apply it.<sup>20</sup> The judges and *ulama* in general object to this step, reasoning that both majority and minority views are legitimate and the legal reasoning of the judge (his *ijtihad*) is the only acceptable way to remove the conflict between the two views - and not the views of bureaucratic codifiers.<sup>21</sup>

Largely because of the recalcitrance of the *ulama* and the *shari'ah* judges with respect to laws and procedure, the state was slowly forced to create parallel judicial tribunals.<sup>22</sup> These "alternatives" do not challenge the principle that the *shariah* courts are the courts of general jurisdiction but exploits *shariah* rules that allow the ruler to vest particular jurisdiction in a particular court or judge. Over the years, special tribunals proliferated, ranging from those dealing with labor disputes, customs violations (e.g., smuggling) to negotiable instruments, forgery, banking and others. The most significant parallel institution, however, is the Board of Grievances. It was originally conceived to avail the state of a tribunal where it could be sued, the notion taken over from some well-known historical experience of Muslim rulers. Slowly, as the government saw it was unable to impose the applications of what it considers legitimate laws on the *shariah* judges,<sup>23</sup> it shifted jurisdiction over specific disputes (and laws) to this Board. A significant broadening

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<sup>20</sup> It is not fully accurate to say there is no codification of the *shari'ah* in Saudi Arabia. While the question of modern-style codification was debated by senior *ulama* and a majority rejected it, certain parts of the judiciary rules explicitly rank the canonical texts where the judge is obligated to follow a certain view over the alternative.

<sup>21</sup> Indeed, in both the *shari'ah* courts and the Board of Grievances, when the court of appeal reverses a judgment on substantive (and not procedural) grounds, the case is remanded to a different judge (or panel of judges) as the original judge may not be forced to change his views.

<sup>22</sup> Those familiar with the late period of the Ottoman empire may find this experience all too familiar.

<sup>23</sup> Another interesting method the government employs to impose laws that the *shari'ah* judges reject is to use the judges to convict, but not sentence, those indicted with a certain crime (e.g., drug use, where the statutory punishment would actually be imposed by the Ministry of Interior.)

of the Board's jurisdiction took place in 1988 when commercial disputes were transferred from the old commercial tribunal at the Ministry of Commerce and vested in the Board. The Board judges are essentially trained in the same fashion as those of the *shariah* Courts. However, those who choose to serve on the Board are jurists who do not find codified laws and procedure to be objectionable, so long as they are not inconsistent with Islamic law. Laws applied by the Board tend to be clearer and its court of appeal generally adheres to precedents, which lawyers and litigants find helpful. Procedure has also been evolving, with a fully codified law dealing with administrative disputes in place which also informally serves as a guide for commercial claims. Nonetheless, the judges here are just as "pure" in their interpretation of the laws as any *shari'ah* judge. Although empowered to enforce foreign judgments and arbitral awards, we still are unaware of a single such enforcement, for a truly Muslim polity would not apply any law but that of the *shariah* and the enforcement of judgments based on man-made laws are considered anathema. This attitude suffuses the whole system such as the (almost total) refusal to acknowledge choice of law provisions. Furthermore, the Board would steadfastly uphold the strict interpretation of prohibition against banking interest, and the state was thus forced to create yet another tribunal to settle banking disputes (still not upholding interest but at least declining to re-characterize already paid interest as repayment of principal).

Banking indeed is one field where tension between the needs of a modern state (and economy) and the old laws is clearly demonstrated as seen in the preceding paragraph and as shown by the role of the notary public. Unlike many other countries, the function, role, and training of the notary public is highly specialized, for he must be a fully trained *shariah* graduate; he is also a salaried employee of the Ministry of Justice. Many transactions are documented through the notary public, including mortgages. As a *shariah* graduate, the notary public finds it objectionable to register mortgages in the name of banks, and so far the government has been unable to force them to do so. Likewise, as the authority entrusted with notarizing new companies and (formerly and still practically) any amendments to their articles of association, the notary public controls what objects the company may perform (videos, satellite dishes, banking and other "prohibited" activities are routinely declined as well as dating by the Gregorian calendar). The Ministry of Commerce has had to resort to creative ways to overcome these difficulties.

These tensions characterizing the relationship between the *ulama* (judges and scholars alike) and the state should be qualified for the old symbiosis between the *ulama* and the prince is still intact. Once the anomaly of the "revolutionary" Sunni *ulama* was tamed with the foundation of the Saudi state, the *ulama* reverted to their historically

well-practiced quietism. The Sunni creed dictates that no matter how the prince behaves, his subjects must remain obedient and no armed rebellion is sanctioned, thus assuring the state of the *ulama's* loyalty even if they object to specific acts. Furthermore, the *ulama* still provide the indispensable ideological props for the state. To this end, the Saudis created the "Council of the Senior Ulama" in which is vested the function of promulgating fatwas dealing with new issues (e.g. drug smuggling, liability for livestock losses on express highways, etc.) as well as providing "politically" needed fatwas. The Council has a good track record of upholding the old partnership and providing appropriate rulings when summoned by the government. During the attack on the Mecca Mosque in 1979, the Council did not hesitate to issue edicts allowing the government forces to fight the rebels in the Holy Mosque.<sup>24</sup>

Indeed, even Saudi "dissent," limited as it is, has to be wrapped in the mantle of religion and only dissenting *ulama* would attract any serious following.<sup>25</sup> Interestingly enough, some of the dissidents were also licensed as lawyers, as were some of the members of the (now-dissolved) Committee for the Defense of Legitimate Rights,<sup>26</sup> whose licenses were revoked in a governmental crackdown on dissent a few years ago. But such lawyers are more the exception than the rule, and most are involved with the more mundane aspects of legal practice.

Although there is now a recognizable group practicing law in Saudi Arabia, nowhere is the equivalent Arabic word of lawyer, *muhami*, to be found in any relevant law. For historically, the function did not exist and only the limited notion of attorney-in-fact was known, in which a party would appoint (or perhaps hire) another party to pursue its claims in its stead before the court. Even such a limited practice did not extend to the field of criminal law, as defendants were simply expected to present their defense and the judge was entrusted with correctly upholding the law.<sup>27</sup> In the recent notorious case of the two English nurses in Saudi

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<sup>24</sup> For more details of the Mecca incident in 1979 and the role of the *ulama* see generally Joseph A. Kechichian, *The Role of the Ulama in the Politics of an Islamic State: The Case of Saudi Arabia*, 18 INT'L J. MIDDLE EAST STUD. 53 (1986).

<sup>25</sup> Dissent in Saudi Arabia has historically been parochial (tribal, regional, sectarian, etc.), and only recently has dissent gained a national character (the pan-Arabist dissent of the 1960s, while national in terms of leadership, basically was of no consequence as it had little if any following).

<sup>26</sup> This was a group "reportedly formed to monitor the Saudi regime's human rights' violations and report charges of government corruption." See Mamoun Fandy, *Serious Threats to Saudi Arabia's Stability*, CHRISTIAN SCI. MONITOR, Jan. 16, 1996, available in LEXIS, News Library.

<sup>27</sup> Impressionistically, it seems that most criminal convictions are based on confessions. But because of the judges' distrust of the police, their claim and even presentation of a signed confession would not be accepted. For a confession to be admissible, the suspect had to be hauled before a judge and declare that he actually

Arabia who murdered a third, the parties were represented by counsel largely in deference to the international scrutiny the case attracted.<sup>28</sup>

From this limited notion, a profession is slowly emerging.<sup>29</sup> But like other spheres, tension between tradition and modernity pervades the field. For the graduate of *Shariah* colleges, the *shari'ah* courts would grant licenses called "license to accept appointment as attorney-in-fact," to avoid the designation of a lawyer. For those who have graduated from the *non-shari'ah* law colleges, whether in Saudi Arabia or abroad, the Ministry of Commerce issues licenses designating the holder as "legal advisor." Whereas the *shariah* license is heavily weighed towards character<sup>30</sup> (after satisfaction of receipt of degree or providing evidence of equivalent knowledge), the Ministry of Commerce only takes the length of academic schooling and actual training into account. In all, there is no law governing the profession, no unified criteria for granting licenses, with the result that there is now an explosion of licenses of highly divergent standards.

Because of the extraordinary diversity of background in education and training, Saudi lawyers probably have little in common except the contempt with which the profession is viewed, especially by *shari'ah* judges. On the bright side, as the economy grows in sophistication, more and more legal services are being required and a grudging acceptance (if not respect) is slowly gaining hold. No such thing is happening in criminal law as both government interest and Islamic edicts<sup>31</sup> seem to ensure a hostile attitude toward such acceptance.

Even that attitude may not hold for long, as the mounting pressure of modernity and international scrutiny is forcing through some reforms. In recent years, the government has sought to re-organize the "public prosecutor" functions. Whereas in the past it was handled haphazardly, with the government represented by all kinds of bureaucrats, including policemen or even the judge himself, a new agency for investigations

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confessed and the confession would be attested appropriately, to be submitted later in the trial, which would not necessarily be before the same judge.

<sup>28</sup> See Russell Jenkins & Michael Binyon, *Family Pleads For Nurse Accused Over Murder*, *TIMES* (London), Dec. 28, 1996, available in LEXIS, News Library; SA: *Leading QC to Represent Gilford Family*, AAP Newsfeed, Aug. 29, 1997, available in LEXIS, News Library.

<sup>29</sup> Indeed, recently the government has granted a group of lawyers a license to publish a monthly magazine devoted to lawyers, *Al Muhami*.

<sup>30</sup> One of the criteria used by some judges is to request the applicant to submit a certificate from his local mosque that he regularly attended early morning (*fajr*) prayers.

<sup>31</sup> There are fatwas from time immemorial clearly stating that an attorney may not accept appointment if he knows the position of his client to be clearly wrong. In addition, Islamic law does not automatically presume the innocence of the suspect, bringing his character and previous convictions into the assessment.

and public prosecution has been created.<sup>32</sup> Its members are required to have the same qualifications as the judges (even their pay scale was originally linked to that of the judiciary) in addition to receiving training in modern investigative techniques and prosecutorial methods. This agency is slowly taking over the functions of the police in interrogation and prosecuting cases on behalf of the state. Interestingly, a recent draft of its bylaws mentions the right of the accused to have an attorney-in-fact and to have the latter present during interrogations. Whether it survives in the final draft remains to be seen.

The demands of modernity are most striking in the government's attitude towards legal education in non-Muslim countries. In a system where only the *Shari'ah* is considered valid and all man-made laws categorically rejected, one would expect the study of law in the west to be forbidden or at least ignored. The reality is more mixed. For even when the government seriously cut back on scholarships for students abroad, law, along with medicine, were the exceptions. Indeed, for some time now, many western-trained lawyers have occupied very high positions in the bureaucracy of the state, and currently two are members of the Council of Ministers. In addition, much of the drafting of regulations is normally entrusted to the Legal Advisors Department of the Council of Ministers, most of whose staff are trained, at least in part, in the west.

Finally, the "renowned" Committee for the Command of Virtue and Prevention of Vice, the morality police in short, is a peculiar Saudi agency that is quite controversial, especially with the expatriate communities. An institution that is theoretically the embodiment of that venerable Islamic principle, the Committee is empowered to ensure that people, merchants, foreigners and all conform to Islamic edicts in dress, worship and conduct. Its powers tend to fluctuate, with the government occasionally granting them more latitude and at others restricting their freedom to act, but never totally stopping their activities. Although set up and paid for by the government, volunteers are allowed to join its activities and many embarrassing incidents are routinely reported by the foreign press. During the Gulf war, the activities of those vigilante were excessive where citizens and foreigners alike were sometimes gratuitously harassed, leading to an eventual government crackdown on these groups after the departure of foreign troops from Saudi Arabia.

The above should, it is hoped, give a flavor of the type and power of the legal actors in Saudi Arabia. It is by no means an exhaustive list and some actors are not dealt with; nonetheless, the major actors have been identified along with their roles.

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<sup>32</sup> This agency is called the Commission for Investigation and Public Prosecution.

