

## NOTE

### HUMAN RIGHTS PRACTICES IN THE ARAB STATES: THE MODERN IMPACT OF SHARĪ'A VALUES

#### I. INTRODUCTION

*Sharī'a*, the traditional law of Islam, provides a basis for analysis of Islamic human rights practices, as it traditionally defines many aspects of Islamic criminal, property, and family law. Even where supplanted by Westernized administrative and commercial codes, *Sharī'a* values continue to have a significant impact on social and governmental behavior.

This Note is based on the following four premises:

(1) Human rights abuses result from the deliberate diminishment of individual human significance, as emphasis is placed on social and political conformity rather than individual freedom.

(2) Islam views the individual as divinely endowed with social and political rights, but these rights exist only in relation to a far greater obligation to the communal group and the State.

(3) Despite the harshness of its punishments, *Sharī'a* expresses the significance of the individual both substantively and procedurally, and it defines acceptable social and governmental conduct. Also, *Sharī'a* includes doctrinal mechanisms for adaptation to changing political climates and modern life; it is not bound totally by the Koranic tradition.

(4) An incisive critique of human rights practices in Middle Eastern nations can be predicated on these traditional *Sharī'a* values, freeing one from the dangers of imposing an analytical framework without consideration of uniquely Islamic sociopolitical characteristics.

This Note undertakes a comparative examination of the contemporary influence of *Sharī'a* values on the human rights practices of four Middle Eastern states: Saudi Arabia, Jordan, Egypt, and Iraq. These are among the oldest states in Islam, and the traditions of *Sharī'a* have had the fullest impact on their societies. They share the Arab ethnic heritage, with its characteristic spiritual, communal, and political values, and they span the spectrum of governmental types found in the Islamic world.

The Hashemite kingdoms of Saudi Arabia and Jordan are typical of traditional-conservative states, displaying a commitment to the

preservation of the society of the Koran. Of the two, Jordan adopts the more liberal posture. Egypt and Iraq, on the other hand, are praetorian-populist states emphasizing radical, secularized sociopolitical modernization. In comparing the two, Egypt is perceived as the less repressive.<sup>1</sup> While the traditional states are attempting to resolve the problems of modernization within traditional legal institutions applying traditional Islamic values, the praetorian states have abolished such institutions to a great extent. They have attempted to substitute more "rational" values which have not always coincided with traditional beliefs regarding the nature and dignity of Man.

## II. MAN AND STATE IN ISLAMIC TRADITION

### A. *The Sources and Character of Shari'a*

In the traditional view, Islam is not only a religion. It is also a defined community and a total way of life. The community is composed of all who are ready to surrender their personal autonomy to Allah,<sup>2</sup> with more emphasis placed on conformity in ritual and lifestyle than on doctrinal unity.<sup>3</sup> The traditional goal of Islamic jurisprudence has been to enforce the religious, communal, and political duties of Koranic society. By following a prescribed pattern of righteousness, the Moslem can hope to build the perfect earthly society.<sup>4</sup> However, "[t]hose who do not accept these obligations have no rights, and any claims of freedom that they make upon society lack justification."<sup>5</sup>

*Shari'a*, literally "the path to the watering place," incorporates a number of sources to form a body of law defining and regulating

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<sup>1</sup> The political taxonomy employed in this study is taken from J. BLONDEL, *COMPARING POLITICAL SYSTEMS* 155-56, 203-17 (1972).

<sup>2</sup> The term "Moslems" refers to those who have surrendered themselves to Allah. "Islam" is the state of their surrender.

<sup>3</sup> There would seem to be no word in Arabic, or indeed in any other Islamic language meaning "orthodox." The word usually translated "orthodox," *sunni*, actually means rather "orthoprax". . . . A good Muslim is not one whose belief conforms to a given pattern, whose commitment may be expressed in intellectual terms that are congruent with an accepted statement (as in the case generally of Protestant Christianity), but one whose commitment may be expressed in practical terms that conform to an accepted code.

W. SMITH, *ISLAM IN MODERN HISTORY* 20 (1957).

<sup>4</sup> "Dar al-Islam," the "Abode of Islam," is the term most frequently employed by Koranic scholars in reference to the Islamic polity. See F. HASSAN, *THE CONCEPT OF STATE AND LAW IN ISLAM* 206 (1981).

<sup>5</sup> Said, *Human Rights in Islamic Perspectives*, in *HUMAN RIGHTS: CULTURAL AND IDEOLOGICAL PERSPECTIVES* 86, 92 (1980).

almost all Islamic social and economic intercourse.<sup>6</sup> Principally, they are: (1) the scriptures of the Koran; (2) the *sunna* or "model behavior" derived from *hadith* ("traditions") surrounding the life of the Prophet; (3) the *ijma* or "consensus" of the *ulama* ("learned ones"), the religious jurists of traditional Islam; and (4) the process of *kiyās*, the analogical reasoning used by the *ulama* to construe the Koran and *sunna* and apply them to contemporary issues.<sup>7</sup> In addition to its four principal sources, *Sharī'a* has borrowed legal doctrines from (5) pre-Islamic customs, notably those arising from ethnic and tribal identities;<sup>8</sup> (6) Roman law;<sup>9</sup> and elements from the laws of various Middle Eastern ethnic groups, for example, the Hebrews' Talmudic law<sup>10</sup> and that of the Sassanians.<sup>11</sup>

In addition to these currently accepted sources of *Sharī'a*, there is another potential source which may attain considerable importance in nations with large Shi'ite populations and in those with strong fundamentalist movements. *Ijtihād* or "systematic original thinking" was employed until the tenth century by the *mujtahids*, those who endeavored to gain a thorough understanding of the will of Allah for circumstances not mentioned specifically in the Koran.<sup>12</sup> There are at least three reasons why *ijtihād* may reattain its former significance in Islamic jurisprudence: (1) its faithfulness to the Koran, which excites fundamentalist believers; (2) its potential for bringing Koranic standards to bear on every aspect of modern life; and (3) its elevation of the *ulama* to the

<sup>6</sup> F. HASSAN, *supra* note 4, at 99; Schacht, *Theology and Law in Islam*, in THEOLOGY AND LAW IN ISLAM 3, 4 (G. von Grunebaum ed. 1971). See generally S. NASR, THE CONCEPT AND REALITY OF FREEDOM IN ISLAM AND ISLAMIC CIVILIZATION (1978); F. ROSENTHAL, THE MUSLIM CONCEPT OF FREEDOM PRIOR TO THE NINETEENTH CENTURY (1960); J. SCHACHT, INTRODUCTION TO ISLAMIC LAW (1964); A. WAFI, AL-HURRIYAH AL-MADANIYYAH FIL ISLAM (1967).

<sup>7</sup> See generally F. RAHMAN, ISLAM 68-84, 100-16 (2d ed. 1979), for an excellent discussion of the component elements of *Sharī'a*. See also J. SCHACHT, ORIGINS OF MUHAMMADAN JURISPRUDENCE 42, 134-37 (1959). While the *kiyās* process has systematized *Sharī'a*, it is supplemented occasionally in modern times by the twin doctrines of *maslaha* and '*illa*, which can enable the otherwise immutable law to keep pace with modern life. See generally Khaduri, *The Maslaha (Public Interest) and 'Illa (Cause in Islamic Law)*, 12 N. Y. U. J. INT'L L. & POL. 213 (1979); Yamani, *The Eternal Sharī'a*, 12 N. Y. U. J. INT'L L. & POL. 205 (1979); See notes 61-65 *infra* and accompanying text.

<sup>8</sup> See J. SCHACHT, *supra* note 6, at 15-22.

<sup>9</sup> *Id.* at 20-21. But see Badr, *Islamic Law: Its Relation to Other Legal Systems*, 26 AM. J. COMP. L. 187, 190-91 (1978); Vesey-Fitzgerald, *The Alleged Debt of Islamic to Roman Law*, 67 L. Q. REV. 81 (1967).

<sup>10</sup> J. SCHACHT, *supra* note 6, at 21-22. But see Badr, *supra* note 9, at 193-95.

<sup>11</sup> J. SCHACHT, *supra* note 6, at 21-22.

<sup>12</sup> *Id.* at 48-49. See also F. HASSAN, *supra* note 4, at 37-38; R. LEVY, THE SOCIAL STRUCTURE OF ISLAM 180-81 (1957); F. RAHMAN, *supra* note 7, at 72; Weisse, *Interpretation in Islamic Law: The Theory of Ijtihād*, 26 AM. J. COMP. L. 199 (1978).

penultimate level of social and religious authority, thereby reestablishing a theocratic and authoritarian concept of law and government dominated by the clergy.

Whereas the Sunni jurists believe that *kiyās* and *ijmā* have been employed so thoroughly as to establish the main body of *Shari'a* as an immutable entity,<sup>13</sup> Shi'ite scholars point to the sectarian divisions<sup>14</sup> caused by differences between *kiyās* and the apparent absence of Koranic precedent<sup>15</sup> as evidence that Allah cannot intend such reasoning to be a primary basis for law. Likewise, Shi'ites eschew the *hadith* as a somewhat idolatrous and ethnically biased attempt to establish human folklore as a revelation of Divine Will.<sup>16</sup> Instead, the Shi'ites posit that the *mujtahids* are divinely gifted in their ability to fathom the Mind of Allah, and that they establish anew in every generation the relevant applications of Koranic justice.<sup>17</sup> This accounts for the tremendous popularity and political power enjoyed by Shi'ite leaders who have a recognized gift for the application of *Shari'a* to modern circumstances.<sup>18</sup>

<sup>13</sup> See I. QUTAYBA, TA'WIL MUKHTALIF AL-HADITH 331 (1326 A.H.) (holding that *ijmā* is a "surer vehicle of truth" than even the most well-established *hadith*); R. LEVY, *supra* note 12, at 180-81; J. SCHACHT, *supra* note 6, at 69-72; F. RAHMAN, *supra* note 7, at 77-78. However, Hassan has noted that:

A fortiori, the expositions of the four classical schools [established by Abu Hanifa, Hambal, Malik, and Shafi] are entitled to the highest weight and respect, but it is submitted that it is impossible to offer new interpretations for new situations, or to modify existing ones in light of contemporary circumstances by those who are learned in the law.

F. HASSAN, *supra* note 4, at 39.

<sup>14</sup> E.g., A. AL-TABARI, KAMIL-I-BAHĀI 31 (1323 A.H.); H. KILANI, QAWANIN AL-USUAL 303, 311 (1858). See R. LEVY, *supra* note 12, at 181.

Sunni jurists hold that once the four primary schools of law were established by Abu Hanifa, Hambal, Malik, and Shafi, all questions essential to *kiyās* were thoroughly discussed and settled, and a consensus developed against further independent legal inquiry. Consequently, "the door of *ijtihad* was closed," and there issued from the four schools a demand for *taklid*, the unquestioning acceptance of the doctrines of established schools and authorities. N. COULSON, A HISTORY OF ISLAMIC LAW 80-82 (1964).

<sup>15</sup> Sura 16:4 ("We have set down to you the Reminder, the Koran, . . . that you may explain to men what has been set down to you and perhaps they may reflect."). Accord, R. LEVY, *supra* note 12, at 180. But see F. HASSAN, *supra* note 4, at 38 (quoting an ancient *hadith* in which Mohammed allegedly approves of independent inquiry).

<sup>16</sup> See HASSAN, KAMIL-I-BAHĀI 31 (1323 A.H.); A. QASIM, QAWANIN AL-USUAL 303, 311 (1858); R. LEVY, *supra* note 12, at 181.

<sup>17</sup> F. HASSAN, *supra* note 4, at 125-27; R. LEVY, *supra* note 12, at 181-82.

<sup>18</sup> The popularity of Iran's Ayatollah Khomeini presents an example. In effect, the Shi'ites substitute for *ijmā* the authority of an *imām* or "leader," a *mujtahid* who becomes the final human authority with respect to *Shari'a*. H. AMILI, MA'ALIM AL-DĪN 99-101 (1301 A.H.); I. GOLDZIEHER, VORLESUNGEN 215 (2d ed. 1925). Thus, while Sunnism has become a religion of *ijmā*, Shi'ism is essentially a religion of personal authority. F. RAHMAN, *supra* note 7, at 173-74.

The modern legal substance of *Sharī'a* includes juridical reasoning, criminal law, marriage and family law, charitable gifts, and laws regulating estates and inheritance.<sup>19</sup> However, such a wide range of regulation rests on very little Koranic authority. Of the Koran's 6,237 verses, approximately 600 refer to legal matters, and Western lawyers would regard no more than 190 as modern legal material.<sup>20</sup> This scarcity of scriptural guidance has left *Sharī'a* free to develop along many lines, resulting in today's diverse schools of thought.<sup>21</sup> While the several schools may differ in their scriptural exegeses and their prescribed *kiyās*, their fundamental social teachings are remarkably similar. This suggests an Islamic consensus regarding certain basic personal and property rights which can be compared with the current human rights practices of Arab governments.

### 1. *The Function of the State*

The purpose of the traditional Islamic State is to enforce the principles of *Sharī'a*. This ensures an environment which satisfies the socio-religious needs of the *ummah* or "community of believers."<sup>22</sup> The Western notion of state sovereignty does not exist in Islam, as all sovereignty belongs to Allah alone. Therefore, the State accepts the role of *kaliphate* ("vice-regency"), the real power being vested not in a single ruler but in all who believe and follow *Sharī'a* law.<sup>23</sup> The legitimacy of the government depends on its ability to enforce *Sharī'a* provisions regarding religious practice and socioeconomic welfare.<sup>24</sup> Rulers are expected to be judged

<sup>19</sup> See J. SCHACHT, *supra* note 6, at 124-87 (considered the authoritative English-language survey of *Sharī'a* provisions in these areas of law).

<sup>20</sup> Badr, *supra* note 9, at 188.

<sup>21</sup> See F. RAHMAN, *supra* note 7, at 81-83 (a concise review of the origins of the traditional legal schools); J. SCHACHT, *supra* note 7, at 21-132 (a more comprehensive comparative analysis).

<sup>22</sup> F. HASSAN, *supra* note 4, at 46-47; F. RAHMAN, *supra* note 7, at 1; Said, *supra* note 5, at 87.

<sup>23</sup> The *kaliphate* "is not the exclusive birthright of any individual or clan or class of people; it is the collective right of all those who accept and admit God's absolute sovereignty over themselves and adopt the divine code, conveyed through the Prophet, and the law above all laws and regulations." F. HASSAN, *supra* note 4, at 72. The *Khalifa* or *Caliph*, literally a substitute for the Prophet, is an institution based on this notion of "vice-regency." It is the actual form of government adopted after the Prophet's death. Although the *Khalifa* was initially an elected position, it became a hereditary form of autocracy wherein the *Khalif* was deemed a trustee of state power. This power was to be exercised in accordance with *Sharī'a* principles and values. *Id.* at 72-73. See generally R. LEVY, *supra* note 12, at 271-99. See also F. RAHMAN, *supra* note 7, at 79-81 (a concise account of the early evolution of the *Khalifa*).

<sup>24</sup> F. HASSAN, *supra* note 4, at 73-75. Said, *supra* note 5, at 87-88.

by the same *Shari'a*'s standards applied to all people, and an elaborate system of *shura*, or "counsel," among believers exists to hold the government accountable for its actions.<sup>25</sup>

Political legitimacy in Islam also depends on the ruler's ability to protect the Islamic culture's most important community, the kinship group. Most Moslems have lived in a community of family and tribe for their entire lives, and Islamic tradition holds that faith and community are woven together inseparably in a social fabric of relationships with neighbors, nature, and the supernatural.<sup>26</sup> A ruler justifies his position only by success in his relationships, whether with his own group or with Allah. Any ruler who isolates himself from his communal group may face rebellion and ouster.<sup>27</sup> Because believers are vested by Allah with the *kaliphate*, they confer upon a ruler the right to govern. However, once they select a ruler, their right to change the laws of the state is limited, as they must maintain an environment consistent with *Shari'a* and protected from any revisionism.<sup>28</sup>

Islam has witnessed a steady progression of absolute authoritarian rulers who have sought to legitimate their reigns by espousing *Shari'a*'s standards and meeting the needs of powerful communal groups within their various states.<sup>29</sup> As long as a ruler protects the *ummah* against any erosion or revision of religious practice, any political opposition is viewed as a sacrilege. Support of various communal groups whose interests are serviced by the government similarly legitimates political power. Rebellion against a ruler supported by leading clans and interest groups is tantamount to rebellion against the Divine Will of Allah.<sup>30</sup> The ruler who alienates himself from the values and interests of his people meets with political catastrophe.<sup>31</sup>

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<sup>25</sup> R. LEVY, *supra* note 12, at 294-96; Said, *supra* note 5, at 87. The *shura* concept has been seen as the Koranic command for popular participation in government. F. HASSAN, *supra* note 4, at 47.

<sup>26</sup> M. HALPERN, *THE POLITICS OF SOCIAL CHANGE IN THE MIDDLE EAST AND NORTH AFRICA* 13-14 (1963); R. LEVY, *supra* note 12, at 271-72.

<sup>27</sup> Iran's Shah Reza Pahlavi was an example. *See also* M. HALPERN, *supra* note 26, at 14. However, the overall inclination of early Islamic jurists was to insist on obedience to "unjust" rulers, rather than suffer "lawlessness." *See* F. HASSAN, *supra* note 4, at 51-53; F. RAHMAN, *supra* note 7, at 169, 237-40.

<sup>28</sup> *See* M. HALPERN, *supra* note 26, at 217-19; Said, *supra* note 5, at 87. *See generally* M. NADVI, *HUMAN RIGHTS AND OBLIGATIONS: IN THE LIGHT OF THE KORAN AND HADITH* (1966).

<sup>29</sup> *See generally* R. LEVY, *supra* note 12, at 277-94.

<sup>30</sup> This view is reinforced by the tendency toward Determinism inherent in much of Islamic thought. *See* Said, *supra* note 5, at 91-94 for an interesting discussion of the Islamic concept of freedom.

<sup>31</sup> *E.g.*, Iran's Shah Reza Pahlavi.

Substantial changes in traditional Islamic governments can succeed only if the proponent first overcomes a presumption of illegitimacy. This is very difficult in light of the close nexus between perceived "righteousness" and social relationships. The reformer must win the support of significant communal and interest groups whose needs are not met by the status quo. He needs the blessing of religious leaders who will attest to his superior obedience to the Divine Will. Armed strength alone is insufficient to gain political acceptance, but in reality it encourages the communal and religious support necessary for Islamic political legitimacy.<sup>32</sup>

## 2. *The Status of the Individual*

Every Moslem must serve Allah with his whole being. No other party can discharge the believer's religious duties or obtain for him a divine reprieve should he fail to obey.<sup>33</sup> As Allah's personal representative on earth, the believer is free to seek inward spiritual and philosophical perfection, but his external freedom is limited by the *ummah*, and his personal rights can be realized only in submission to the Divine Will expressed in *Sharī'a*.<sup>34</sup> Thus, there is tremendous cultural and communal pressure on the believer to think as he wishes, as long as he outwardly conforms to the status quo. This willingness to subordinate one's personal needs and rights to the dictates of the communal group is a most important factor in analyzing human rights in Islamic states.

The commitment to sociopolitical conformity is illustrated well by the application of *Sharī'a* law to criminals. Many alleged human rights violations occur in the area of punishment for criminal offenses. The Western concept of rehabilitation does not exist in *Sharī'a*, which prescribes an "eye for an eye, tooth for a tooth" theory of retaliation. Capital punishment is the mandatory penal-

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<sup>32</sup> See generally G. VON GRUNEBAUM, *MEDIEVAL ISLAM* 169 (1946); I. KHALDUN, *THE MUQADDIMAH: AN INTRODUCTION TO HISTORY*, vol. I at 252-86, 305-07; vol. II at 103-55 (F. Rosenthal trans. 1958); A. VON KREMER, *GESCHICHTE DER HERRSCHENDEN IDEEN DES ISLAMIS* 416 (1868); A. VON KREMER, *KULTURGESCHICHTE DES ORIENTS* 403 (1875).

<sup>33</sup> "Every soul earns but for itself, and thus shall you return unto your Lord." *Sura* 17:15; 25:18; and 31:7.

<sup>34</sup> See Said, *supra* note 5, at 91-94. The concept of freedom in Islam implies a conscious rejection of a purely liberal and individualistic philosophy as the meaning of life or the goal of society. "The goal of freedom is human creativity, but freedom is defined as belonging to the community and participating in its cultural creation. . . . From the Islamic perspective, the anarchy of liberal individualism cannot be a creative seedbed of culture." *Id.* at 93.

ty for willful murder,<sup>35</sup> but unintentional murder or manslaughter carries only a heavy fine as a penalty.<sup>36</sup> Non-fatal wounds "should be punished by retaliation; but whoever remits it . . . it is an expiation for him."<sup>37</sup> The punishment imposed is not to exceed the harm wrongfully inflicted.<sup>38</sup>

Because of the rural or nomadic histories of many Islamic peoples, the idea of imprisonment for criminal offenses is relatively new to Middle Eastern justice.<sup>39</sup> Most petty offenses were at one time punished by flogging to provide a public example and return the offender to the *ummah* as quickly as possible.<sup>40</sup> Today this penalty is seldom used outside Saudi Arabia.<sup>41</sup>

Until recently, slavery was another aspect of human rights on which Islamic and Western standards differed. The Koran allows the taking of slaves from the armies and lands of nonbelievers during holy wars, and their purchase in public markets. No Moslem can hold another in bondage; only non-Moslems may be enslaved.<sup>42</sup> With the exception of some bedouin tribes on the Arabian peninsula, the new Arab states established after the First World War brought an eventual end to slavery.<sup>43</sup>

*Shari'a* contains many prohibitions against racism, labeling it

<sup>35</sup> See J. SCHACHT, *supra* note 7, at 175, 181-85.

According to Bedouin ideas, a member of the tribe of the killer, and even more than one, could be killed if homicide had occurred. Islam allows only the killer himself (or several killers for one slain) to be put to death, and only if he is fully responsible and has acted clearly with deliberate intent; Islamic law further recommends waiving retaliation. The execution is carried out with the sword.

*Id.* at 185.

<sup>36</sup> *Id.* at 181 (the payment of "blood-money"). See also Anderson, *Homicide in Islamic Law*, 13 BULL. SCH. ORIENTAL & AFR. STUD. 811-21 (1958).

<sup>37</sup> *Sura* 5:49.

<sup>38</sup> J. SCHACHT, *supra* note 6, at 185 ("Retaliation for bodily harm is restricted to those cases in which exact equality can be assured . . ."). The criminal punishments receiving the most notoriety in the West have been those involving mutilation for theft, usually by the public amputation of a hand. This horror is prescribed by the Koran, wherein Mohammed directs his followers to sever the hands of all thieves, regardless of sex, "as an example from Allah." *Sura* 5:42. However, this practice is on the decline in most of Islam; only Saudi Arabia still resorts to it with any frequency. J. SCHACHT, *supra* note 6, at 179-80.

<sup>39</sup> Imprisonment had been used most frequently to punish recalcitrant thievery. J. SCHACHT, *supra* note 6, at 180. The absence of a corrective imprisonment penology in Islam may account partially for the poor prison conditions often found in Arab states. See notes 115-128 *infra* and accompanying text.

<sup>40</sup> See generally I. GOLDZIEHER, ISLAM, 101-12 (1967).

<sup>41</sup> *Id.*

<sup>42</sup> *Sura* 47:4.

<sup>43</sup> See 11 KITAB-AL-AGHANI 79 (1285 A.H.); F. RAHMAN, *supra* note 7, at 38-9; R. LEVY, *supra* note 12, at 73-85 (an interesting sociological depiction of Islamic slavery); J. SCHACHT, *supra* note 6, at 127-30 (a legal analysis).



*jāhiliyyah* ("injustice"). Islamic history provides numerous examples of black men who became noted members of the *ummah*.<sup>44</sup> Conflicts which may appear to be based upon racism are better explained as sectarian or territorial disputes.<sup>45</sup>

Gender-based discrimination abounds in traditional Islamic society.<sup>46</sup> Until recently, all Islamic women had little choice but to accept of the role of marriage and child care; they were denied political participation and independent employment.<sup>47</sup> Modernization and increasing world attention on sociopolitical discrimination against women<sup>48</sup> have combined to instigate some liberalization throughout the Middle East.<sup>49</sup> In many conservative societies, political and economic opportunities are becoming available to women due to a more liberal *ijmā*, though *Sharī'a* restraints have not been abolished completely.<sup>50</sup> The women still face limited educational opportunities and restrictions on travel and dress, and have few legal rights apart from those derived from their married status. In more liberal societies, governments have abolished *Sharī'a* con-

<sup>44</sup> See R. LEVY, *supra* note 12, at 85-87.

<sup>45</sup> See A. KAMIL, ISLAM AND THE RACE QUESTION 46-50 (1970); R. LEVY, *supra* note 12, at 61-64.

<sup>46</sup> It is generally conceded that harsh sexual discrimination was derived from pre-Islamic tribal mores; it did not originate with *Sharī'a*. See generally R. LEVY, *supra* note 12, at 91-134; W. SMITH, KINSHIP AND MARRIAGE IN EARLY ARABIA (1885).

<sup>47</sup> However, women were granted equality in property rights, and some were able to become noted scholars and saints. See I. GOLDZIEHER, MOHAMMEDANISCHE STUDIEN 300 (1890); R. LEVY, *supra* note 12, at 132-35; F. RAHMAN, *supra* note 7, at 38; J. SCHACHT, *supra* note 6, at 126-27; M. SMITH, RABĪ'A THE MYSTIC AND HER FELLOW-SAINTS IN ISLAM 3 (1928); Antoun, *On the Modesty of Women in Arab Muslim Villages: A Study in the Accomodation of Traditions*, 70 AM. ANTHROPOLOGIST 761 (1968); Drower, *Women and Taboo in Iraq*, 5 IRAQ 105 (1938); Lutfiyya, *Islam and Village Culture*, in READINGS IN ARAB MIDDLE EASTERN SOCIETIES AND CULTURES 44 (A. Lutfiyya & C. Churchill eds. 1970); Mohsen, *The Legal Status of Women Among Awad'Ali*, 40 ANTHROPOLOGICAL Q. 153 (1967); M. el-Sanabary, *A Comparative Study of the Disparities of Educational Opportunity for Girls in the Arab States* (1973) (unpublished Ph.D. dissertation at the University of California, Berkeley).

<sup>48</sup> See, e.g., Legal Capacity of Married Women: Capacity to Engage in Independent Work, Progress Report of the Secretary-General, U.N. Doc. E/CN.6/384 (1973).

<sup>49</sup> See generally Anderson, *Reforms in the Law of Divorce in the Muslim World*, 31 STUDIA ISLAMICA 41 (1970); Dodd, *Youth and Women's Emancipation in the United Arab Republic*, 20 MIDDLE EAST J. 159 (1968); Hamamsy, *The Changing Role of the Egyptian Woman*, in READINGS IN ARAB MIDDLE EASTERN SOCIETIES AND CULTURES 592 (1970); Melconian, *Arab Women: In Hot Pursuit of a Feminist Oriented Economy*, THE ARAB ECONOMIST, August, 1975, at 18; Nelson, *Changing Roles of Men and Women: Illustrations from Egypt*, 41 ANTHROPOLOGICAL Q. 56 (1968); Nelson, *Public and Private Politics: Women in the Middle Eastern World*, 1 AM. ETHNOLOGIST 551 (1974); Parssinen, *The Changing Role of Women*, in KING FAISAL AND THE MODERNIZATION OF SAUDI ARABIA 145 (W. Beling ed. 1973); M. el-Sanabary, *The Education of Women in the Arab States: Achievements and Problems*, 1950-70 (paper presented at the Annual Meeting of the Middle East Studies Association, Nov. 6-9, 1974).

<sup>50</sup> For example, in Saudi Arabia and Jordan, restrictions are placed on females traveling without male companions. See notes 225 and 226 *infra* and accompanying text.

cepts in an effort to promote total equality under law.<sup>51</sup>

### 3. *Shari'a Economics*

In the economics of traditional Islam, moderation is the norm.<sup>52</sup> The believer is to shun great riches, as they offer enticement to sin,<sup>53</sup> but poverty is also to be avoided, as it leads to unbelief.<sup>54</sup> The wise Moslem is one who works for financial sufficiency, not riches, leaving his spiritual progress unimpeded. Only the essentials of life are to be desired; everything else comes wholly through the Divine Will.<sup>55</sup> There is no private ownership in traditional Islam, as all property belongs to Allah who, in turn, allows believers a "right of use" in material things.<sup>56</sup> It is the duty of the Islamic state to regulate this "right of use," and to provide from state revenues the material essentials of life for needy Moslems.<sup>57</sup>

Islamic inheritance laws have furthered a more equitable and moderate method for distribution of wealth by abolishing the rule of primogeniture whereby the eldest son inherited the entire estate.<sup>58</sup> *Shari'a* also provides that the husband or wife is always an heir; females and cognates are competent to inherit (normally, females are given half the share of males); and parents and ascendants are given the right to inherit even when there are male descendants.<sup>59</sup> These provisions vary markedly from the pre-Islamic

<sup>51</sup> E.g., Egypt and Iraq. See notes 240 and 248 *infra* and accompanying text.

<sup>52</sup> In the Koran Allah declares, "[W]e have made you a people with moderate virtues in order that you may be a witness to men." *Sura* 2:143. See generally, M. ABDUL-RAUF, *THE ISLAMIC DOCTRINE OF ECONOMICS AND CONTEMPORARY ECONOMIC THOUGHT* (1979); F. HASSAN, *supra* note 4, at 177-91; M. RODINSON, *ISLAM AND CAPITALISM* (1973) (an extensive analysis of traditional and contemporary Islamic economics).

<sup>53</sup> See Said, *supra* note 5, at 90.

<sup>54</sup> *Id.* Compare the following thought by Hassan:

The purpose of the Quranic Social Order, then, is to ensure for every individual the provision of the basic necessities of life so that he may be free to devote himself to the development of his personality in that social order. If, despite this promise, and after fulfilling the ordained requirements, people are hungry, then it is a Muslim's belief that, too, is God's will. He alone knows the mysteries of the universe, and the believer has simply to submit himself to His Wisdom and System.

F. HASSAN, *supra* note 4, at 170.

<sup>55</sup> F. HASSAN, *supra* note 4, at 170.

<sup>56</sup> *Id.* at 186-87 (regarding agricultural lands). See also, Said, *supra* note 5, at 90.

<sup>57</sup> Traditional Islam provided for an annual *zakat*, or two and one-half percent alms tax on all property, the revenues of which were to aid the poor. With the rise of the Ottoman Empire in the sixteenth century, the systematic collection of the tax ceased, and the *zakat* became a voluntary form of private charity. See F. HASSAN, *supra* note 4, at 177-85.

<sup>58</sup> J. SCHACHT, *supra* note 6, at 170-72.

<sup>59</sup> *Id.* at 169-71. See also *Sura* 4:3-4, 12-14.

practices of the Arab tribes, and they have helped to make land reform a meaningful possibility.<sup>60</sup>

#### 4. Legal Reform

Throughout its history, *Sharī'a* has been characterized by its capacity for adaptation to a wide variety of cultural and political changes.<sup>61</sup> The *ulama* must either make the law meet modern conditions or lose what influence they have and be supplanted by Westernized codes.

Cultural development and Western legal influences have caused a rift between *Sharī'a* doctrine and modern Islamic social life, leading to an acute struggle between the legal ideal and the social reality.<sup>62</sup> *Kiyās*, the construction and application of the Koran and *sunna*, has become a vehicle for maintaining the modern relevancy of *Sharī'a*. In particular, two principles of *kiyās* have gained importance: *maslaha* ("public interest") and '*illa* ("cause").

The first principle, *maslaha*, enables the *ulama*, the "learned ones", to establish rules based on the "public interest" or "general good" of the society.<sup>63</sup> Thus, *Sharī'a* provisions can be conformed to social conditions without violating the Koranic mandates. By using *maslaha*, modern jurists have been able to borrow from both Islamic and Western sources to produce administrative and commercial reforms for Middle Eastern states.<sup>64</sup> If this same principle could be employed in the consideration of human rights issues, the traditional Islamic antipathy toward Western social standards might be overcome.

The second principle, '*illa*, rests on the idea that every social regulation must be the result of a "cause" or condition which makes

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<sup>60</sup> The unwritten laws of *urf*, or "what is commonly known and practiced," and *ada*, or "custom," often prove stronger than *Sharī'a* mandates, especially among tribal bedouin. See R. LEVY, *supra* note 12, at 245-49; J. SCHACHT, *supra* note 6, at 77-85.

<sup>61</sup> See generally Yamani, *supra* note 7 (an interesting claim for the continued relevance of *Sharī'a* by the Saudi oil minister).

<sup>62</sup> Note, *Traditionalism and Modernism in Islamic Law: A Review*, 11 COLUM. J. TRANSNAT'L L. 491 (1972).

Though the legal ideal has been retained more dogmatically in family law and the law of inheritance, even here it is losing force and is under constant pressure to readjust. In administrative, civil, commercial, and criminal law the practical necessities have dominated legal reform and the ideal remains largely in general principles.

*Id.* at 495.

<sup>63</sup> Khadduri, *supra* note 7, at 214.

<sup>64</sup> See N. ANDERSON, *LAW REFORM IN THE MUSLIM WORLD* (1976) and J. SCHACHT, *supra* note 6, at 100-11 for surveys of modernist legislation and its impact on traditional legal standards.

the regulation necessary or desirable.<sup>65</sup> Thus, *'illa*, with its doctrinal mandate to keep abreast of social progress, is another potentially powerful element of *Shari'a* which could have many applications in the improvement of Arab human rights practices.

### B. *Praetorianism and the Middle-Class Revolution*

Praetorianism, the intervention of the military in politics, describes the role of Islamic armed forces in most Middle Eastern states.<sup>66</sup> Unlike Western democracies, Islam has never separated military and State. Historically, Islamic tribal leaders used armed force to extend their rule over other tribal groups. Once an Islamic empire grew too large to be defended personally by the ruler, it was divided into military districts and governed by mercenary officers.<sup>67</sup>

Military intervention is deployed often throughout the world to defend a conservative status quo threatened by radical sociopolitical change. In the Islamic world, however, armed forces have become the protectors of progressive rather than conservative interests. Military forces often take the initiative in deposing traditional governments in favor of populist regimes espousing reform.<sup>68</sup> One reason for such a unique tradition may be the result of the use of European military officers in the eighteenth and nineteenth centuries to instruct and lead Moslem troops. These foreign officers brought with them the prevalent liberal European philosophies. Thus, the military became a seedbed for democratic and other Western ideas at the very time the *ulama* and Islamic educators were condemning Westernism.<sup>69</sup>

The collapse of Ottoman rule in 1918 and the subsequent partition of the region resulted in a number of traditional-conservative

<sup>65</sup> Khadduri, *supra* note 7, at 215. There is a saying attributed to the al-Imam al-Shafti which states, "Change of law because of change of circumstance cannot be denied." See Yamani, *supra* note 7, at 207.

<sup>66</sup> See S. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 195 (1968). See generally A. PERLMUTTER, *EGYPT: THE PRAETORIAN STATE* (1974).

<sup>67</sup> Within two centuries after the Prophet's death, mercenaries held all but titular power in the Baghdad kaliphate (ca. 830 A.D.). A similar state of affairs was to persist in all Islamic monarchies for more than a millenium. M. HALPERN, *supra* note 26, at 251-52.

<sup>68</sup> *Id.* at 253. See generally E. BE'ERI, *ARMY OFFICERS IN ARAB POLITICS AND SOCIETY* 275-86 (1970); J. HUREWITZ, *MIDDLE EAST POLITICS: THE MILITARY DIMENSION* 28-46 (1969); H. SHARABI, *NATIONALISM AND REVOLUTION IN THE ARAB WORLD* (1966); Bill, *The Military and Modernization in the Middle East*, 2 COMP. POL. 41 (1969); Perlmutter, *The Arab Military Elite*, 22 WORLD POL. 269 (1970).

<sup>69</sup> M. HALPERN, *supra* note 26, at 257-61.

monarchies, the kings of which were chosen more for their allegiance to London or Paris than for their popular legitimacy. These new nations were led in some instances by monarchs who had tremendous difficulty in legitimating their governments while their colonial subservience, political corruption, and administrative ineptitude prevailed. Such dynasties alienated the devout by failing to comply with *Sharī'a* standards of justice and morality. The *ulama* gradually withdrew their bureaucratic support from these regimes, and the kings became more dependent on European advisors. Similarly, an emerging middle-class of merchants, professionals, and military officers was alienated by the monarchs' corruption and socioeconomic immobilism.<sup>70</sup>

The defeats of the first Palestinian War in 1948 stimulated an intense political reappraisal which led to the first reformist coups in the Middle East. The Egyptian coup of 1952 set the style for succeeding praetorian-populist regimes in the region, as the traditional political establishments faced a new kind of opposition. The adversaries were not petty court or tribal intrigues, but politicized civilian groups which formed parties and gained the support of responsible military forces.<sup>71</sup>

The stage was set for radical change. The middle-classes, learning from foreign commercial and intellectual contacts, continued to expand and consolidate their socioeconomic gains. Traditional groups within these classes, such as religious brotherhoods, labor guilds, and social clubs, refused to be co-opted or suppressed by the ruling governments. They began to assert the middle-class interests of their members: popular political participation, economic growth, freedom from neo-colonial trade restrictions, and social redistribution through effective land reforms.<sup>72</sup> These demands bespoke a class interest beyond national independence and self-determination. Middle-class intellectuals became the purveyors of Western rationalism and scientific socialism.<sup>73</sup>

The military was the group best suited to initiate progressive social change due to its extended exposure to Western ideas; long experience with monarchical governments; well-established administrative and security forces; and socially and geographically

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<sup>70</sup> *Id.* at 51-78. But see Perlmutter, *Egypt and the Myth of the New Middle Class: A Comparative Analysis*, 10 COMP. STUD. IN SOC'Y & HIST. 46 (1967).

<sup>71</sup> M. HALPERN, *supra* note 26, at 252. See also, Bill, *supra* note 68, at 41; Perlmutter, *supra* note 66, at 269.

<sup>72</sup> M. HALPERN, *supra* note 26, at 61-62.

<sup>73</sup> *Id.* at 56-61.

representative character. The background of the majority of officers was that of the dynamic and progressive middle-class, whose beliefs became the sociopolitical programs advanced by praetorianism.<sup>74</sup>

As these nations began to undergo a series of revolutionary internal changes, a dominating social trend developed, significantly affecting human rights practices. Praetorian populism, in its effort to transform both State and Man, swept away many of the traditional *Shari'a* values and social, political, and legal institutions which had united the old culture. Members of the old tribal aristocracies, and the peasants and bedouins who comprised a majority in every nation, did not subscribe readily to the new secular values. As these non-ruling class members distrusted the new governments, the populists were forced to speak in traditional terms, making frequent references to Arab unity (strongly reminiscent of similar Koranic proclamations), national heritage, holy war (the liberation of Palestine), and social justice. In some cases, progressive populist governments were forced to recognize traditional authority figures among the clergy, *ulama*, and tribal leaders, as to ignore or suppress them meant to risk the loss of any legitimacy the new regimes possessed at their outset.

As a result of tolerating such traditional authority figures, parallel power structures were established in most populist societies. The formal state power was wielded by the military, which purported to rule for Allah and the people. Yet, a measure of power was retained by religious and tribal leaders, who held the allegiance of those disappointed in the new systems and those who had opposed them from their inception. The secularized populist regimes relied on the support of the urban dwellers, many of whom were middle-class, as they were not wholly successful in winning legitimacy in the eyes of rural peasants and bedouin who feared many of the sociopolitical changes.<sup>75</sup>

Within the middle-class, there were further ideological divisions. Professionals and merchants often wanted moderate governments, with state subsidization of industry and education, expansion of foreign trade, and land reforms to increase domestic food production. Their views were not far removed from those of European social democracy in which an emphasis is placed on state service to the individual, albeit somewhat paternalistic in nature. They

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<sup>74</sup> *Id.* at 257-61.

<sup>75</sup> See A. MALEK, EGYPT: MILITARY SOCIETY 372-87 (1968).

stressed some aspects of Koranic government, such as social justice, legal rectitude, and political respect for the individual citizen, but desired modern political and legal improvements.<sup>76</sup>

Another middle-class view emphasized the concentration of state power in the hands of a political elite. This concept prevailed among elements of the intellectual elite and was especially popular among the military, who desired national modernization over social equality. Under this view, the intelligentsia formulated, the military personified, and the bureaucracy implemented policies designed to promote industrial development, agricultural sufficiency, social welfare, and national prestige. Individuals and communal groups were forced to serve the State, thus progressive ideology emphasized traditional concepts subordinating individual autonomy to the will of the community.<sup>77</sup>

Those emphasizing state power quickly rose to leadership in the various populist states. The governmental institutions they initiated were secular, authoritarian, and bureaucratic, with militarized political parties. Political moderates often possessed only titular authority without power, or were omitted from the new governments altogether.<sup>78</sup>

A combination of factors appears to have ensured the success of authoritarianism over moderate social democracy. First, parliamentary governments under traditional monarchs had never been more than pawns, never legislating effectively to meet the needs of the people. Therefore, parliaments were viewed as a part of the problem of traditionalism, not a potential answer to its abuses.<sup>79</sup> Second, authoritarianism was seen as a form of government ordained by Allah, as He had historically blessed rulers who identified themselves with the customs, mores, and needs of the governed. Liberal parliamentary government was viewed as a weak system wherein no one could be held responsible for the enforcement of traditional standards.<sup>80</sup> Third, democracy was the practice of imperialist nations, which the authoritarians had always implicated in the wrong-doings of the monarchies. Finally, the authoritarians were better prepared than their liberal opponents.

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<sup>76</sup> See Halpern, *Egypt and the New Middle Class: Reaffirmations and New Explorations*, 11 COMP. STUD. IN SOC'Y & HIST. 97 (1969).

<sup>77</sup> See part II. A.2. *supra* at pp. 61-64.

<sup>78</sup> See P. VATIKIOTIS, *NASSER AND HIS GENERATION* 126-37 (1978).

<sup>79</sup> J. BILL & C. LEIDEN, *POLITICS IN THE MIDDLE EAST* 26-27 (1979).

<sup>80</sup> The parliaments promoted "underrepresentation, pseudo-representation, and misrepresentation." *Id.* at 27.

Their military leadership and administrative expertise enabled them to seize and retain the political initiative in every Arab state undergoing a populist revolution.<sup>81</sup>

From a human rights standpoint, praetorian-populist regimes have subscribed to the same basic formula which enabled traditional governments to rule: (1) maintain the intercourse of government, commerce, and religion; (2) continue the moral rapport with the community, which provides the political power base, by expressing values congruent with theirs; (3) erect a loyal bureaucracy; and (4) tap the individual Moslem's desire to see himself as a member of a purposeful group committed to a common effort of historic proportions.<sup>82</sup> Traditional concepts of authoritarianism have hindered the modern populist governments in any attempts to enlarge the sphere of individual rights. Consequently, except for those who work directly for the government, social, economic, and political rights have progressed slowly for the common Moslem.<sup>83</sup>

### C. *Religious versus Secular Authority*

Under different circumstances, the *ulama* might have provided the moral counterweight needed to balance civil liberties and political power in the traditional Arab states. They were the keepers and diviners of the oracles of Allah; they were of the common social stock, not from the tribal aristocracies; and although other areas of law modernized too quickly to remain within their grasp, they had frequently shown great ingenuity in utilizing *maslaha* and *'illa* to maintain their jurisdiction over socioeconomic matters in the face of sudden change.

Historically, the *ulama* have been unable to oppose the military rulers successfully.<sup>84</sup> Early doctrine provided that all Moslems were able to determine for themselves the mysteries of the Divine Will. However, in the tenth century, competition among opposing clans and rulers, each claiming Allah's blessing, forced the *ulama* to "close the gate" to individual interpretation of *Shari'a*.<sup>85</sup> This prohibition

<sup>81</sup> See generally Lenczowski, *Democracy, Development, and Political Integration in the Arab World: A Search for a Comprehensive Formula*, in *THE CONFLICT OF TRADITIONALISM AND MODERNISM IN THE MUSLIM MIDDLE EAST* 61 (G. Leiden ed. 1966).

<sup>82</sup> Compare these criteria for political legitimacy with those of traditional Islam. See part II. A *supra* at pp. 56-66.

<sup>83</sup> E.g., Iraqi sociopolitical mobility is determined largely by whether one is a member of the Ba'th Party. See part III. C.3.b. *infra* at pp. 88-89.

<sup>84</sup> M. HALPERN, *supra* note 26, at 12-13.

<sup>85</sup> *Id.* at 15-16.



provoked a period of bloody reprisals as clans and leaders turned to self-help to settle their grievances.<sup>86</sup> Because this social unrest threatened to destroy order in the *kaliphate*, the religious and secular authorities joined forces in an effort to save the socio-political system, despite their differing values.<sup>87</sup>

By this marriage of convenience, the secular rulers reestablished an ideological justification for their authority. The *ulama* became the official ideologues of the State, countering the factious religious and political inclinations of the common people. Admission to the ranks of the *ulama* came to be based predominantly on heredity. In short, the *ulama* became co-opted by the same sociopolitical establishment which opposed their spiritual and ethical principles.<sup>88</sup>

This co-optive relationship between the *ulama* and government continues. The decline of formal *Sharī'a* authority in many spheres of Islamic jurisprudence has diminished the legal role of the *ulama*. Since the nineteenth century, many of these scholars have retreated to their seminaries and mosques to study and lecture, no longer needed by secularized governments. Yet, as the current Islamic revival illustrates, the *ulama* can still play an influential role in defining acceptable social mores and bestowing or withholding governmental legitimacy.<sup>89</sup>

### III. VARIED MANIFESTATIONS OF THE SHARĪ'A TRADITION

#### A. *Traditional-Conservative States*<sup>90</sup>

Traditional-conservative states continue to base their sociopolitical conduct on *Sharī'a* religious and communal principles, as their *raison d'être* is the preservation of Koranic faith and society.<sup>91</sup> They exhibit a willingness to accept socioeconomic progress, but only if such modernization can be controlled so that it does not threaten the traditional foundations of society and politics. Saudi Arabia is the purest example of a society in which *Sharī'a* values have remained relatively unchanged despite notable

<sup>86</sup> *Id.* at 16.

<sup>87</sup> *Id.* at 18-19.

<sup>88</sup> *Id.* at 16-18. However, the *ulama* were able to "modify" the exercise of government authority. *Id.* at 19.

<sup>89</sup> See Bayat, *Islam in Pahlavi and Post-Pahlavi Iran: A Cultural Revolution?*, in ISLAM AND DEVELOPMENT: RELIGION AND SOCIOPOLITICAL CHANGE 87 (J. Esposito ed. 1980).

<sup>90</sup> See note 1, *supra*.

<sup>91</sup> Most of these states have expressly incorporated large portions of *Sharī'a* into their national constitutions, and retain a system of *kādis'* courts to administer traditional law on a voluntary basis in certain types of cases.

socioeconomic progress. Viewing the Koran as its only constitution, the Saudi nation relies upon its religious and tribal institutions to define and regulate the relationship between Man and State.<sup>92</sup> Jordan, on the other hand, has adopted a more moderate approach to national development. *Shari'a* values are implemented through modern governmental institutions and procedures which correct some of the abuses and inadequacies inherent in the traditional concept of human rights.<sup>93</sup>

### B. *Praetorian-Populist States*<sup>94</sup>

Whereas traditional-conservative states protect the integrity of *communal* groups, praetorian-populist states express the interests of *associational* groups. Often heedless of tradition, these states press for socioeconomic development with popular participation in the process of nation-building. There is a profound redefinition of the traditional Islamic view of Man and State.<sup>95</sup> A pervasive one-party or militaristic political order is erected, and a strong leader personifies the national ideology. Egypt has combined constitutionally the principles of *Shari'a* with a complete restructuring of society and politics along the lines of Arab socialism. They seek to achieve social justice and equality by scientific rationalism and state planning.<sup>96</sup> Iraq, while declaring itself an "Islamic State," has attempted a more radical sociopolitical transformation, combining socialism, rationalism, and state planning with the most pervasive authoritarianism in the region.<sup>97</sup>

### C. *Comparing Human Rights Practices*

As many legal factors affect the overall quality of life in any given society, this comparative survey is not limited to an examination of factors affecting political liberties.<sup>98</sup> In its annual *Country*

<sup>92</sup> See Rentz, *The Saudi Monarchy*, in KING FAISAL AND THE MODERNIZATION OF SAUDI ARABIA 15 (W. Beling ed. 1980).

<sup>93</sup> See, e.g., Law No. 78 (1952) (Jordan).

<sup>94</sup> See note 1, *supra*.

<sup>95</sup> The substantive redefinition supplants the traditional allegiance to clan and communal group with state nationalism. See H. SHARABI, NATIONALISM AND REVOLUTION IN THE ARAB WORLD 82-92 (1966).

<sup>96</sup> See generally A. MALEK, *supra* note 75, at 320-50.

<sup>97</sup> See generally L. KIMBALL, THE CHANGING PATTERN OF POLITICAL POWER IN IRAQ 105-19 (1972).

<sup>98</sup> E.g., freedom of speech, press, and assembly. See generally M. MCDUGAL, H. LASSWELL, & L. CHEN, HUMAN RIGHTS AND WORLD PUBLIC ORDER 1-93 (1980) (a comprehensive discussion of common demands and deprivations regarding a broad range of factors and consequences).

*Reports on Human Rights Practices*, the United States Department of State employs a set of human rights factors that has been adapted to the needs of this study. A three-point analysis is used to set forth governmental policies affecting: (1) *Respect for the Integrity of the Person* (Torture; Cruel and Inhuman Punishment; Arbitrary Arrest and Imprisonment; Denial of Fair Public Trial; and Invasion of the Home); (2) *Policies Relating to Such Vital Needs as Food, Shelter, and Education* [hereinafter referred to as "Social Welfare Needs"];<sup>99</sup> and (3) *Respect for Civil and Political Liberties* (Freedom of Speech, Press, Religion, and Assembly; Freedom of Movement, Travel, and Emigration; and Participation in the Political Process). From this holistic perspective, one may compare the degrees to which different Arab states have upheld, modified, or abolished traditional *Sharī'a* values and institutions, and evaluate the impact of such policies on human rights.

# 1. *Respect for the Integrity of the Person*

## a. *Torture*

Reports of torture in traditional-conservative Arab states are surprisingly few and understandably difficult to substantiate. It is surprising that so few allegations of torture in nations such as Saudi Arabia have been brought to world attention, because several Western scholars have documented the tribal heritage of torturing prisoners. Tribal tortures have been inflicted on religious dissidents, political prisoners, and common criminals alike, despite *Sharī'a* admonitions for mercy.<sup>100</sup> However, international groups monitoring human rights conduct in the region report no substantiated claims of physical torture in Saudi Arabia and Jordan.<sup>101</sup> Whereas Jordanian government spokesmen are fond of repeating the fact that their Constitution implicitly prohibits torture,<sup>102</sup> the Saudi government has made no effort to disprove claims of torture beyond general denials.<sup>103</sup>

<sup>99</sup> For purposes of this study, the lengthy title of this sphere of rights has been shortened to "Social Welfare Needs."

<sup>100</sup> See A. KHALIFA, *FUNDAMENTAL HUMAN RIGHTS* 115-20 (3d ed. 1952); F. ROSENTHAL, *THE MUSLIM CONCEPT OF FREEDOM PRIOR TO THE NINETEENTH CENTURY* 55-60, 93-95 (1960).

<sup>101</sup> U.S. DEPT. OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES* 1014, 1084 (released 1981) [hereinafter cited as 1980 COUNTRY REPORTS].

<sup>102</sup> AL-DUSTŪR (Constitution) art. 8 (Jordan). This section guarantees "lawful" treatment during detention. There is, however, no express constitutional or legal prohibition of torture in Jordan.

<sup>103</sup> AMNESTY INTERNATIONAL, 1978 REPORT 270 (1978) [hereinafter cited as 1978 AI REPORT].

Praetorian-populist states have not exhibited the apparent reluctance to torture that has restrained their traditional-conservative neighbors. In an environment in which power at the personal level is more pervasive than that exercised by any Islamic monarch, internal security forces have violated individual integrity on a regular basis by torturing alleged perpetrators of "subversion."<sup>104</sup> Such practices, however, may be the logical result of establishing police states in societies which never had an accepted tradition of individual human worth.<sup>105</sup>

The Egyptian Constitution clearly stipulates that prisoners are to be treated "in such a manner as will preserve human dignity."<sup>106</sup> President Sadat insisted that his government was in compliance with the Universal Declaration of Human Rights,<sup>107</sup> and the national courts have heard cases of alleged torture brought by ex-prisoners.<sup>108</sup> In addition, information obtained by torture cannot be used against the party from whom it was coerced,<sup>109</sup> a radical departure from the common practice under Sadat's predecessor, Nasser.<sup>110</sup> Yet, allegations of the torture of political prisoners persist.<sup>111</sup>

The Iraqi regime has a long history of torturing persons suspected of violating national security measures.<sup>112</sup> Despite the Iraqi Constitution's explicit prohibition of torture,<sup>113</sup> Amnesty International has collected a number of reports alleging the deaths of detainees at the hands of their interrogators.<sup>114</sup>

#### b. *Cruel and Unusual Punishment*

*Shari'a* punishments, often brutal by Western standards, are employed in full by the Saudi judicial system. The result is the death penalty for those convicted of murder, kidnapping, armed

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<sup>104</sup> See, e.g., notes 112-14, *infra*. While the available evidence suggests that Sadat ameliorated the treatment of political prisoners in Egypt, the Iraqi government has shown no such improvement.

<sup>105</sup> See part II. A. 2 *supra* at pp. 61-64.

<sup>106</sup> AL-DUSTUR (Constitution) art. 42, para. 1 (Egypt).

<sup>107</sup> 21 U.N. GAOR Supp. (No. 16) 46-49, U.N. Doc. A/6316 (1966).

<sup>108</sup> 1980 COUNTRY REPORT, *supra* note 101, at 963.

<sup>109</sup> See notes 35-39 *supra*.

<sup>110</sup> See AMNESTY INTERNATIONAL, REPORT ON TORTURE 206-07 (1973).

<sup>111</sup> AMNESTY INTERNATIONAL, 1979 REPORT 155 (1979) [hereinafter cited as 1979 AI REPORT].

<sup>112</sup> AMNESTY INTERNATIONAL, REPORT ON TORTURE 210-11 (1973).

<sup>113</sup> CONSTITUTION PROVISIOIRE art. 42(a) (Iraq).

<sup>114</sup> AMNESTY INTERNATIONAL, 1980 REPORT 141 (1980) [hereinafter cited as 1980 AI REPORT]. See generally AMNESTY INTERNATIONAL, IRAQ: EVIDENCE OF TORTURE (1981), which concludes that torture may be continuing and widespread in Iraq, and that the Iraqi government has failed to safeguard detainees legally against torture.

robbery, adultery, or rape.<sup>115</sup> Recidivist thieves may have their hands severed, although this practice is no longer common,<sup>116</sup> and public floggings are meted out for a host of petty crimes and misdemeanors.<sup>117</sup> Saudi prison conditions are difficult to ascertain, as records are inadequate and there is little public access to the facilities. Amnesty International's requests to inspect prisons and discuss alternatives to traditional punishments have been met by silence from King Khalid.<sup>118</sup>

The Jordanian government maintains two types of prison systems: civilian jails and prisons for ordinary offenders, and high-security detention centers for accused violators of the martial law provisions in effect since 1973.<sup>119</sup> Amnesty International reports numerous human rights violations with regard to the treatment of political detainees.<sup>120</sup> The Abdeli Security Prison in Amman, a military compound housing martial law violators, allegedly contains punishment cells where uncooperative prisoners may spend weeks with inadequate water, food, and light. Similar conditions are reported for the civilian Manhatta Central Prison.<sup>121</sup> While the Jordanian military has exercised sole jurisdiction over all martial law violations to date, there is some indication that civilian courts may be willing to limit the absolute power of the military in such matters.<sup>122</sup> Also, King Hussein has been remarkably cooperative in submitting information regarding particular cases to various international agencies. This indicates a sensitivity on his part to world opinion which could be employed productively whenever cases can be identified precisely.

Since the liberalizing measures adopted by President Sadat in the mid-1970s, Egyptian prison conditions have been adequate, with no reports of institutional mistreatment.<sup>123</sup> President Sadat resisted

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<sup>115</sup> J. SCHACHT, *supra* note 6, at 175-87 (1964). See also notes 35-39, *supra*, and accompanying text.

<sup>116</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1084.

<sup>117</sup> The floggings are seldom brutal. *Id.*

<sup>118</sup> See 1978 AI REPORT, *supra* note 103, at 270 (partial text of the original AI request).

<sup>119</sup> U.S. DEPT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 573 (released 1979) [hereinafter cited as 1978 COUNTRY REPORTS].

<sup>120</sup> See, e.g., 1978 AI REPORT, *supra* note 103, at 265; 1979 AI REPORT, *supra* note 111, at 163-64.

<sup>121</sup> The amnesty of several political detainees has been granted in recent years. See 1978 COUNTRY REPORTS, *supra* note 119, at 770-71; 1980 COUNTRY REPORTS, *supra* note 101, at 1015.

<sup>122</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1015.

<sup>123</sup> *Id.* at 964.

repeated attempts to reimpose legislatively *Shari'a* punishments for a number of offenses.<sup>124</sup>

The Iraqi regime has fourteen preliminary detention and interrogation centers, all of which are quite unsanitary; but better conditions have been reported in the regular prisons.<sup>125</sup> Iraqi political detainees are held incommunicado by the military throughout their interrogations, and only afterward may they receive visitors and food. Executions are routine in many types of security cases,<sup>126</sup> and there have been reports of the poison deaths of two detainees after their acquittal and release from custody.<sup>127</sup> Both Amnesty International and the United States Department of State report that hundreds of political prisoners are executed every year.<sup>128</sup> Evidently, the prospect of civil unrest in Iraq is great enough to have prompted the ruling junta, which has scorned most traditional indicia of political legitimacy, to take draconian measures to ensure domestic cooperation with the government.

### c. *Arbitrary Arrest and Imprisonment*

Saudi Arabia has no *habeas corpus* provisions, and unlimited detention may occur while government prosecutors investigate and prepare their case against the accused.<sup>129</sup> As *Shari'a* discourages penal detention,<sup>130</sup> petty offenders may be released on bond pending trial.<sup>131</sup> Some persons are detained briefly for security reasons without facing formal charges, but most are either charged quickly or deported.<sup>132</sup> Saudi debtors may be imprisoned without lengthy formalities, but they are no longer subject to periods of involun-

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<sup>124</sup> The most persistent efforts have been made by Islamic fundamentalists intent on reimposing the death penalty for Moslems who convert to Christianity. 1978 AI REPORT, *supra* note 103, at 253.

<sup>125</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 986.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> 1979 AI REPORT, *supra* note 111, at 159-60. *Accord*, 1980 COUNTRY REPORTS, *supra* note 101, at 986.

<sup>129</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1085.

<sup>130</sup> See note 39, *supra*, and accompanying text.

<sup>131</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1085.

<sup>132</sup> In 1979, religious zealots stormed the Mosque in Mecca and incited a rebellion among tribesmen in the Eastern Province of Saudi Arabia. The government responded to the crisis with a wave of arrests, culminating in the beheading of sixty-nine rebel leaders. *Shari'a* hearings were granted to hundreds of detainees in a lengthy determination of responsibility for the affair, indicating, no doubt, a sensitivity to worldwide attention to the tense situation. *Id.*

tary servitude in payment of their debts.<sup>133</sup> An interesting Saudi institution is the number of benevolent societies organized to pay a debtor's obligations to obtain his release from prison. This practice manifests the Koranic emphasis on alms-giving and forgiveness of debts.<sup>134</sup>

Under Jordanian law, martial law detainees may petition the High Court of Justice for review of the legality of their continued confinement; otherwise, they may face unlimited detention without trial.<sup>135</sup> The High Court recently has overturned several martial law convictions on the ground that the accused actually did nothing which threatened national security. King Hussein has granted amnesty to hundreds of political prisoners since 1973, many of whom had been held without trial. Although the government announced in 1979 that it no longer held political prisoners, meaning those held without trial, it acknowledged that many were still serving sentences for "subversion."<sup>136</sup>

Throughout most of his tenure, Egyptian President Sadat ruled under State of Emergency provisions which provide for special security measures in arrests, detentions, interrogations, and other police functions. Generally, *habeas corpus* is respected in Egyptian courts, but Sadat invoked a number of laws which gave him the power to refer certain cases to special security tribunals for *in camera* proceedings. From these courts, there is no appeal except to the President.<sup>137</sup> Sadat also claimed the power to ratify the decisions of security tribunals, in one case causing the retrial of nineteen suspects after their initial acquittal.<sup>138</sup> Arrests for illegal party membership, unfavorable press reports, and the mere suspicion of Communist affiliation<sup>139</sup> are rather frequent, although suspects are charged promptly or released.<sup>140</sup> Recently, the Egyptian Bar

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<sup>133</sup> Classical *Shari'a* prescribes the imprisonment of an allegedly impoverished debtor until the *kadi* is convinced that he would pay if he could. J. SCHACHT, *supra* note 6, at 197-98.

<sup>134</sup> U.S. DEPT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 1085 (released 1980) [hereinafter cited as 1979 COUNTRY REPORTS].

<sup>135</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1015.

<sup>136</sup> 1979 AI REPORT, *supra* note 111, at 165.

<sup>137</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 964.

<sup>138</sup> 1979 AI REPORT, *supra* note 111, at 154-55.

<sup>139</sup> In September, 1981, Sadat ordered the arrest of over 1800 members of the political opposition for allegedly conspiring with Communist elements to overthrow the government. The opposition media was silenced, and foreign correspondents who had been critical of the government were expelled from Egypt. At this writing, the long-term effect of these actions on domestic political dissent is unclear. Evidently, such measures may have set the stage for Sadat's assassination by fanatical Moslems on October 6, 1981.

<sup>140</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 964.

Association has become assertive in protecting the procedural rights of political defendants at both the pre-trial and trial stages of detention.<sup>141</sup>

In Iraq, there are frequent arrests and detentions for "suspicion" of seditious sentiments or activity.<sup>142</sup> If political charges are formalized for trial, they usually fall into two broad categories: "treason" or "affiliation with an illegal party."<sup>143</sup> Entire professional groups and ethnic communities have been subjected to sweeping arrests, especially Freemasons (active among older urban professionals) and Kurdish tribesmen in the northeast.<sup>144</sup> Due to pressure from Western Europe and Amnesty International, the Baghdad regime declared amnesties during 1978 for Iraqi political prisoners, and during 1979 for the Kurds.<sup>145</sup>

#### d. *Denial of Fair Public Trial*

Traditionally, trials under *Shari'a* are public, and the accused is given the right to speak on his own behalf, call witnesses, and cross-examine the witnesses of his adversary. There are no attorneys in the Western sense, but an impartial *kādi* is charged with questioning each party and applying the law.<sup>146</sup>

In Saudi Arabia, both parties may receive a court-appointed counselor for assistance in preparing their case, and interpreters are provided for those who do not speak Arabic.<sup>147</sup> All trials are public, except those of cases involving state security issues.<sup>148</sup> Saudi *kādīs* hear two types of actions: (1) *Public Right*, usually a criminal action prosecuted by the government, and (2) *Private Right*, a civil action seeking individual redress. Matters involving both types of actions commonly are decided in the same trial.

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<sup>141</sup> See AL-DUSTŪR (Constitution) art. 173 (Egypt). See generally F. ZIADEH, *LAWYERS, THE RULE OF LAW AND LIBERALISM IN MODERN EGYPT* (1968).

<sup>142</sup> 1978 COUNTRY REPORTS, *supra* note 119, at 750.

<sup>143</sup> Rudolph, *National Security, in IRAQ: A COUNTRY STUDY* 223, 254-57 (3d ed. R. Nyrop 1979).

<sup>144</sup> Thousands of Kurds have been removed forcibly from their ancestral lands and sent to government resettlement areas away from sensitive border regions. E. GHAREEB, *THE KURDISH QUESTIONS IN IRAQ* 176-77 (1981).

<sup>145</sup> 1978 COUNTRY REPORTS, *supra* note 119, at 750. There are, however, recent reports of new mass arrests of clandestine Christian groups and Iraqi Communists for alleged security violations. See 1979 AI REPORT, *supra* note 111, at 158-61.

<sup>146</sup> Baroody, *The Practice of Law in Saudi Arabia*, in KING FAISAL AND THE MODERNIZATION OF SAUDI ARABIA 113, 116 (W. Belinf ed. 1980); Wormser, *The Legal System of Islam*, 64 A.B.A. J. 1359, 1361 (1978).

<sup>147</sup> However, these counselors are not legal "advocates" in the Anglo-American sense.

<sup>148</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1085. (E.g., the 1976 trial of King Faisal's assassin and narcotics matters).



Courts of first instance are the Summary and General courts, which most often employ a single *kādi*. Matters involving severe punishment or the possibility of a death sentence can be heard only in a General Court before three *kādīs*. An Appellate Court is composed of a chief *kādi* assisted by three to five others, depending on the seriousness of the case. The Supreme Judicial Council is composed of eleven *ulama*, and serves the dual roles of advising the government on all legal matters and providing final review of all severe punishments and death sentences imposed.<sup>149</sup> The King himself retains plenary pardon power in all cases, criminal and civil. The military judiciary assumes jurisdiction over all criminal actions involving military affairs, including those in which the defendant is a civilian. However, appeals from military courts may be made through the civilian appellate process.<sup>150</sup>

Jordanian martial law tribunals are not required to protect the procedural rights of defendants, although rights to counsel and cross-examination are evidently honored.<sup>151</sup> The martial law courts assume absolute jurisdiction over cases involving espionage, bribery of officials, narcotics trafficking, black marketeering, and illegal weapons sales.<sup>152</sup> Although there are no appeals from the martial law courts, the prime minister must review each sentence in his capacity as martial law governor, and he may reduce, alter, or annul the sentence as he sees fit.<sup>153</sup>

In civilian cases, all arrests must be reviewed by the Public Prosecutor's Office within twenty-four hours, and the matter turned over to the Attorney General for prosecution.<sup>154</sup> The defendant is entitled to legal counsel, and the National Bar Association will provide counsel for indigent defendants.<sup>155</sup> There is no established appellate process for felony convictions except direct appeal to the King. A separate system of *kādīs'* courts is maintained for Moslems who desire this means of adjudicating property and family issues.<sup>156</sup>

Egyptian security trials are held usually *in camera* and without

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<sup>149</sup> See Baroody, *supra* note 146, at 123-24.

<sup>150</sup> "There is automatic appellate review for military court martials by the Minister of Defense and the King." 1980 COUNTRY REPORTS, *supra* note 101, at 1085.

<sup>151</sup> *Id.* at 1015.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> "Many defendants are unaware of this right and fail to exercise it." These lawyers are trained in advocacy, which is a modern departure from *Shari'a* tradition. *Id.*

<sup>156</sup> AL-DUSTŪR (Constitution) arts. 105, 106 (Egypt).

the procedural rights attending ordinary cases.<sup>157</sup> One right afforded security defendants is the right to counsel, and the security tribunals will appoint counsel if necessary.<sup>158</sup> The Egyptian Bar Association has been active in defending prisoners' procedural rights, insisting in one case that the government reduce the cost of reproducing an 11,000-page investigation dossier and grant more time for its study by defense counsel prior to trial.<sup>159</sup> The Egyptian Constitution incorporates the basic principles of *Shari'a*,<sup>160</sup> although there is no separate system of *kadis'* courts. A Court of Cassation exists, with six appellate chambers and courts of first instance. A Special Judicial Council is appointed by the President to ensure the independence of the judiciary from undue political influence, reflecting the *Shari'a* standard of impartial justice.<sup>161</sup>

The structure of the Iraqi court system is almost identical to that of Egypt, but separate *Shari'a* courts are allowed to adjudicate religious and family matters if both parties agree to be bound by the *kadi's* decision. Revolutionary tribunals inaugurated in 1965 to try matters relating to state security have been used increasingly since 1975. All proceedings before these courts are *in camera*, and all attorneys are court employees.<sup>162</sup>

#### e. *Invasion of the Home*

Traditional Islamic culture has recognized the home as a haven, inviolable by those outside the clan.<sup>163</sup> Both Saudi Arabia and Jordan require search warrants before a dwelling can be searched by police. Although such incidents were once uncommon,<sup>164</sup> the United States Department of State reports frequent searches conducted by the Saudi government in residences of foreigners, ostensibly to look for "alcohol, drugs, and pornography."<sup>165</sup>

Egyptian law also requires the judiciary to issue a search war-

<sup>157</sup> 1980 AI REPORT, *supra* note 114, at 326-27. 1979 COUNTRY REPORTS, *supra* note 134, at 732; accord, 1980 COUNTRY REPORTS, *supra* note 101, at 964.

<sup>158</sup> 1979 AI REPORT, *supra* note 111, at 155.

<sup>159</sup> *Id.*

<sup>160</sup> "The principles of Islamic *Shari'a* are primary sources of legislation." AL-DUSTUR (Constitution) art. 2 (Egypt).

<sup>161</sup> AL-DUSTUR (Constitution) art. 173 (Egypt). See generally F. ZIADEH, LAWYERS, THE RULE OF LAW, AND LIBERALISM IN MODERN EGYPT (1968).

<sup>162</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 986-87.

<sup>163</sup> However, at least one sociologist has commented on the notable lack of privacy in Arab society. S. HAMADY, TEMPERAMENT AND CHARACTER OF THE ARABS 32-33 (1960).

<sup>164</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1085.

<sup>165</sup> *Id.*

rant before any home can be entered legally by the police.<sup>166</sup> The Iraqi government, however, routinely practices unwarranted searches in security matters, especially in cases regarding the Kurdish rebellion.<sup>167</sup>

## 2. *Social Welfare Needs*<sup>168</sup>

Saudi Arabia has used its petrochemical wealth to provide free health services and free education, with subsidies for housing, food, and collegiate studies.<sup>169</sup> However, much of this assistance has been concentrated around the cities of Riyadh, Jiddah, Mecca, and Medina, with little "trickle-down effect" to the benefit of bedouins and rural peasants.<sup>170</sup> Saudi women are allowed to work in government clinics and schools, but *Shari'a* traditions limit their participation in other kinds of employment.<sup>171</sup> Social friction is caused by thousands of immigrant workers who crowd into Saudi Arabia,

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<sup>166</sup> AL-DUSTŪR (Constitution) art. 44 (Egypt) guarantees against unwarranted invasions of the home.

<sup>167</sup> CONSTITUTION PROVISOIRE art. 22(c) (Iraq) states: "Homes have their sanctity. It is inadmissible to enter or search them, except in accordance with the rules of the law." The latest series of violations in this area of human rights have involved Iraqi and foreign Christians holding worship services in private homes. Amnesty International estimates that over 600 Christians may have been arrested for a variety of alleged offenses, some being sentenced to as many as five years of imprisonment. Three reasons have been advanced to explain such arrests, because detention on purely religious grounds is rare in Islamic society:

- (1) the Iraqi worshipers failed to obtain government permission to hold meetings in their homes;
- (2) the Baghdad authorities suspected the Christians and their foreign friends of conducting "subversive" activities; and
- (3) the groups were outside the mainstream of the Iraqi Christian community, and many members of an Assyrian faction had traditionally favored regional autonomy.

1979 AI REPORT, *supra* note 111, at 158-59.

<sup>168</sup> See note 99 *supra*.

<sup>169</sup> See R. NYROP, B. BENDERLY, L. CARTER, D. EGLIN & R. KIRCHNER, AREA HANDBOOK FOR SAUDI ARABIA 86-89 (1977) [hereinafter cited as AREA HANDBOOK FOR SAUDI ARABIA]; SAUDI ARABIAN CENTRAL PLANNING ORG., DEVELOPMENT PLAN 1395-1400 (1975-80), reprinted in THE NAT'L TECH. INFORMATION SERVICE, U.S. DEPT OF COMMERCE, PB 246, 572.

<sup>170</sup> See generally A. Kantanani, Policies and Models for Planning the Economic Development of the Non-Oil Sector in Saudi Arabia (1971) (Ph.D. dissertation in the Economics Dept., Iowa State University). *Contra*, 1980 COUNTRY REPORTS, *supra* note 101, at 1086-87 (reporting that lower income brackets have been raised significantly due to increased petroleum revenues).

<sup>171</sup> AREA HANDBOOK FOR SAUDI ARABIA, *supra* note 169, at 101, 154, 195, 198, 236. See generally A. Alaki, Industrial-Vocational Education in Saudi Arabia: Problems and Prospects (1972) (unpublished Ph.D. dissertation in the Business Administration Dept., University of Arizona).

preempting native employment in both professional services and manual labor.<sup>172</sup>

Jordanian society was affected adversely by Israel's occupation of the West Bank in 1967. Jordan's most fertile and productive region was taken, and almost a half million refugees were sent into the Jordanian interior, a land already poor in natural resources. Thus, Jordan, formerly self-sufficient, has been forced into dependence on foreign aid to feed its populace.<sup>173</sup> King Hussein's primary goals have been the elimination of hunger and the provision of education through the eighth-grade level.<sup>174</sup> Another concern has been the emigration of thousands of Jordanian workers and professionals, often to the Persian Gulf States where salaries are much higher.<sup>175</sup> With the creation of a special Department of Women's Affairs in 1976, Hussein hoped to rely on Jordanian women as a new source of workers and professionals. Some important results have been obtained. Women now hold several posts in the bureaucracy, police, and armed forces, and over eighty percent of Jordanian women are enrolled in government educational programs.<sup>176</sup>

In Egypt, Nasser's centralized state planning and resultant Five-Year Plans enjoyed mixed success in terms of meeting social welfare needs. Rural education and health care, almost nonexis-

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<sup>172</sup> AREA HANDBOOK FOR SAUDI ARABIA, *supra* note 169, at 145-46. See generally Sayigh, *Problems and Prospects of Development in the Arabian Peninsula*, in THE ARABIAN PENINSULA: SOCIETY AND POLITICS 286 (D. Hopwood ed. 1972).

<sup>173</sup> See Eglin, *The Economy*, in JORDAN: A COUNTRY STUDY 108-10, 144-47 (R. Nyrop ed. 1980). See generally CENTRAL BANK OF JORDAN, SEVENTEENTH — ANNUAL REPORT, 1980 (1981); DEPT OF STATISTICS, AGRICULTURAL STATISTICAL YEARBOOK AND AGRICULTURAL SAMPLE SURVEY, 1978 (1979); M. MAZIR, ECONOMIC GROWTH AND DEVELOPMENT IN JORDAN (1979); Y. SAYIGH, THE DETERMINANTS OF ARAB ECONOMIC DEVELOPMENT (1978); U.S. EMBASSY IN AMMAN, ANNUAL ECONOMIC TRENDS REPORT — JORDAN (U.S. Dep't of State Air-gram A-22) (May 29, 1979).

<sup>174</sup> Jordan had progressed from twenty-five religious schools in 1925 to more than 2,400 schools at present. Over 625,000 students are enrolled in the state education system, which involves nearly one-third the national population as teachers or students. In 1979, nearly 97% of Jordan's six to twelve-year-olds were in primary programs, nearly 82% of the twelve to fifteen-year-olds were in preparatory programs, and 58% of the fifteen to eighteen-year-olds were in secondary schools. 90% of the ten to fifteen-year-olds were literate, with adult literacy estimated at over 60%. Government schools and those operated in refugee camps by the United Nations Relief and Works Agency are free. Subsidized by the Hussein government, a significant number of Jordanians obtain university degrees from foreign institutions. See Kaplan, *The Society and Its Environment*, in JORDAN: A COUNTRY STUDY 53, 96-102 (R. Nyrop ed. 1980).

<sup>175</sup> Eglin, *supra* note 173, at 112-13.

<sup>176</sup> *Id.* at 112, 127, 164, 209, 226-27.

tant before 1952, improved dramatically.<sup>177</sup> However, private economic incentives never developed due to state-imposed restrictions on income and private enterprise.<sup>178</sup> It remained for Anwar Sadat to loosen the restrictions of state planning which had stifled the private sector of Egypt's economy. His "open door" policy, begun in 1974, featured a series of private incentives designed to boost agricultural production and channel more currency to the middle-classes.<sup>179</sup> However, United States analysts believe that the classes which have benefited most from these incentives have been the professionals and commercial "middle men" who have raised their prices in order to capture the increased money supply.<sup>180</sup> For this and related reasons, Sadat maintained a strict series of wage and price controls. Free health and educational services are now available even in the remotest areas, and two billion dollars have been spent to subsidize food, clothing, and housing for the poor.<sup>181</sup>

Iraqi social welfare programs are structured along socialist lines. Agricultural collectives and cooperatives spearhead efforts at agrarian reform and increased food production. There is extensive central planning, but thriving private sectors exist in urban areas such as Baghdad and Mosul. Agricultural collectivization programs have encouraged thousands of peasants to flee to the cities, creating severe housing shortages and poor health conditions.<sup>182</sup> Free health and educational programs are raising the quality of life in rural areas, and special programs have been implemented to boost the literacy rate of women from the current level of under thirty percent.<sup>183</sup>

<sup>177</sup> See R. NYROP, B. BENDERLY, W. COVER, D. EGLIN & R. KIRCHNER, AREA HANDBOOK FOR EGYPT 97-110 (3d ed. 1976) [hereinafter cited as AREA HANDBOOK FOR EGYPT]. See generally CENTRAL AGENCY FOR PUBLIC MOBILIZATION AND STATISTICS, STATISTICAL ABSTRACT OF THE ARAB REPUBLIC OF EGYPT, 1951, 1952-1971, 1972 (1973).

<sup>178</sup> See A. Gray, Egypt's Ten Year Economic Plan, 1973-82 (paper presented at the Annual Meeting of the Middle East Studies Association, November 7, 1974); Holden, "Hero of the Crossing," *They Shout*, "Where Is Our Breakfast?" N.Y. Times, June 1, 1975 (Magazine) at 12-13, 71-73, 76, 78-80, 94.

<sup>179</sup> See A. SADAT, THE OCTOBER WORKING PAPER (1974); J. WATERBURY, THE BALANCE OF PEOPLE, LAND, AND WATER IN MODERN EGYPT (1974); Sylvester, *Land: The Key to Egypt's Progress*, NEW MIDDLE EAST, March, 1969, at 31.

<sup>180</sup> 1979 COUNTRY REPORTS, *supra* note 134, at 733. Cf. 1980 COUNTRY REPORTS, *supra* note 101, at 965. ("While some private entrepreneurs may have benefitted disproportionately from the private sector's greater role in economic development, the government has taken steps to ensure that the poor are insulated from inflation and that basic commodities and services are available at affordable prices.").

<sup>181</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 965.

<sup>182</sup> *Id.* at 988.

<sup>183</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 987-89. See MacPherson, *The Society and Its Environment*, in IRAQ: A COUNTRY STUDY 108 (3d ed. R. Nyrop 1979).

### 3. *Respect for Civil and Political Liberties*

#### a. *Freedom of Speech, Press, Religion, and Assembly*

All Middle Eastern governments practice a degree of censorship in political matters, although only a few praetorian-populist regimes (Iraq among them) exercise direct control over all forms of popular expression. The *Shari'a* principle of free consultation among members of the *ummah* is respected in most states of the region, but such consultation usually does not bring into question the fundamental nature or structure of government. It is in those rare instances when such a critique is given that censorship is applied most often.

As there has been neither a tradition of political dissent in *Shari'a* society nor a democratic electoral process, many Saudis channel their grievances and petitions through informal or tribal contacts.<sup>184</sup> The *shura* system operates to provide a complex but effective method for intra-tribal consultation on matters regarding property or family law.<sup>185</sup> Another system, the *majlis* or "council", allows leading government officials to meet at specified times in open session with any citizens who seek to express their views on political issues and register grievances.<sup>186</sup> The King keeps *majlis* faithfully, hearing the complaints and requests of even the lowliest bedouin.<sup>187</sup>

There is strict political and moral censorship of all foreign publications, and native presses employ "self-censorship" due to the general ban on all political activity.<sup>188</sup> The government seldom practices prior censorship of domestic publications, but it reserves the right to approve the hiring of all newspaper editors and sanctions violators of government restrictions with the closing of their presses for several weeks.<sup>189</sup> The Saudi government prohibits all

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<sup>184</sup> "Mutual consultation" is deemed an essential element of traditional Islamic government, as Allah approves of those who consult companions. *Sura* 3:153. The *majlis* concept has been enlarged in modern Islam to encompass the notion of a representative body "reflecting the total legal wisdom of the entire community." Such a body may be appointed or popularly elected, the only criteria for appointment or election being intimate knowledge of the *Shari'a*, previous service to the cause of Islam, and character. See F. HASSAN, *supra* note 4, at 47.

<sup>185</sup> Again, the concept of "mutual consultation" is woven into the Saudi social fabric. *Sura* 3:153.

<sup>186</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1088.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at 1087.

<sup>189</sup> *Id.*

political parties, trade unions, and public demonstrations.<sup>190</sup>

Religious freedom is respected for all foreigners, but Saudis must remain Moslem. The puritanical *Wahhabi* moral code applies to everyone, including foreign visitors. Religious authorities are quick to punish anyone (especially women) for immorality, and even foreigners have found themselves at a public whipping post for violations of liquor and dress regulations. Non-Moslems are permitted to worship only in private, and they are expected to comply with all Islamic holiday observances.<sup>191</sup>

The Jordanian Constitution guarantees the freedoms of speech, press, and assembly, within certain legal limitations.<sup>192</sup> Due to the extensive and effective government bureaucracy, *shura* and *majlis* are not as widely practiced in Jordan as in Saudi Arabia; however, personal contacts are still the key to the quick resolution of any problem.<sup>193</sup> The Jordanian government tolerates minor criticism, but has closed publications in the past for their harsh critique of national policies.<sup>194</sup> Morals are censored heavily, especially as published in foreign periodicals.<sup>195</sup> Although political parties generally are not allowed to operate, trade unions and professional organizations are granted government licenses and serve to transmit the views of their members to the government bureaucracy.<sup>196</sup> There is complete religious freedom in Jordan.<sup>197</sup>

The Egyptian Constitution also guarantees the freedoms of

<sup>190</sup> *Id.* at 1086.

<sup>191</sup> See Rentz, *Wahhabism and Saudi Arabia*, in *THE ARABIAN PENINSULA: SOCIETY AND POLITICS* 54 (D. Hopwood ed. 1972).

<sup>192</sup> AL-DUSTŪR (Constitution) arts. 15(i)-(ii), 16(ii) (Jordan).

<sup>193</sup> Jordanian bureaucracy has won high praise from domestic and foreign analysts for its efficiency and ethics. A large number of displaced Palestinians comprise a majority of the bureaucracy at lower echelons. See Shinn, *Government and Politics*, in *JORDAN: A COUNTRY STUDY* 157, 163 (R. Nyrop ed. 1980).

<sup>194</sup> For example, in 1979, one newspaper was closed for two weeks and members of its staff were detained by security forces for reprinting a Western news article alleging secret Jordanian-Israeli negotiations. 1979 COUNTRY REPORTS, *supra* note 134, at 773; 1980 COUNTRY REPORTS, *supra* note 101, at 1019.

<sup>195</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1019.

<sup>196</sup> Jordan prohibited Communist Party membership in 1953, and has required permits for public assembly since the civil war with Palestinian guerrillas in 1970-1971. A number of arrests of suspected members of the Communist Party or pro-PLO *fedayeen* groups have been reported under the current martial law provisions. See 1979 AI REPORT, *supra* note 111, at 165.

<sup>197</sup> AL-DUSTŪR (Constitution) art. 14 (Jordan).

speech,<sup>198</sup> press,<sup>199</sup> assembly,<sup>200</sup> and religion.<sup>201</sup> Here, too, an extensive government bureaucracy has replaced the traditional practices of *shura* and *majlis*.<sup>202</sup> The government owns and controls all electronic media and exercises strict oversight of all publications, both government and private. Non-government publications are regulated by the *Shura* or consultative council, which owns fifty-one percent of each publication and holds a majority of seats in every institutional organization.<sup>203</sup>

In May, 1978, a law on "National Unity and Social Peace" was promulgated after approval by national referendum. Among its several restrictive provisions were those condemning hostile journalists and subjecting them to harsh sanctions, including arrest and imprisonment for "corrupting national life and subjecting national unity and social peace to danger."<sup>204</sup> These regulations and others like them have legalized the extensive control exercised during the past five years over all dissident spokesmen. Since 1978, the government has brought many journalists before the Prosecutor General to answer to charges of subversion for articles critical of the regime.<sup>205</sup> In 1980, the leading leftist newspaper *Al-Ahali* suspended publication, allegedly due to government harassment, and *Al-Shaab*, an opposition centrist paper, was forced to suspend publication temporarily, claiming that the government had interfered with its ability to purchase newsprint.<sup>206</sup>

Egyptian party politics are somewhat confusing at present. Since Nasser's time, no parties have been allowed to organize along religious or class lines, thereby eliminating the Communists and the Moslem Brotherhood. Also barred from political activity is the old *Wafd* Party, which was the conservative majority party under

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<sup>198</sup> AL-DUSTŪR (Constitution) art. 47 (Egypt).

<sup>199</sup> *Id.* art. 48.

<sup>200</sup> *Id.* art. 54.

<sup>201</sup> *Id.* art. 46.

<sup>202</sup> See notes 185-86 *supra*.

<sup>203</sup> The Egyptian *Shura* acts as a non-legislative advisory board to the People's Assembly and the Executive. Of its 210 seats, 140 are filled by the majority party, the New Democratic Party. 1980 COUNTRY REPORTS, *supra* note 101, at 967.

<sup>204</sup> 1978 AI REPORT, *supra* note 103, at 253.

<sup>205</sup> *Id.* at 153-54. The September, 1981, crackdown on opponents of the Sadat government included the threatened prosecution of Egyptian journalists publishing critical articles abroad if they ever return to Egypt from their foreign assignments. An interesting issue is whether such threats constitute exile, a penalty forbidden by the Egyptian Constitution. AL-DUSTŪR (Constitution) art. 51 (Egypt).

<sup>206</sup> 1979 COUNTRY REPORTS, *supra* note 134, at 966.



the monarchy.<sup>207</sup> The government must approve all new parties, and members of unauthorized groups are subject to trial before the security tribunals.<sup>208</sup> Law No. 40 (1977) has been invoked with increasing frequency to arrest opposition party leaders and expel dissidents from the elected 392-seat National Assembly,<sup>209</sup> thus causing some legal parties to "voluntarily" cease their activities.<sup>210</sup>

Mubarak's New Democratic Party completely dominates every facet of government, holding nearly five-sixths of the Assembly's elected seats and all elected seats in the *Shura* under a controversial new electoral list provision.<sup>211</sup> The Party also permeates the workings of the trade union movement, which boasts some 3 million members.<sup>212</sup> Strikes are forbidden, although the government formally confers with union leadership regarding economic policies.<sup>213</sup>

As religious freedom is protected by the Egyptian Constitution,<sup>214</sup> the government has resisted recent attempts to impose traditional sanctions (*i.e.*, social ostracism and even death) on Egyptians who convert from Islam to Christianity.<sup>215</sup> However, the Egyptian government has experienced mounting friction with leaders of the Coptic Christians, many of whom have criticized domestic policies loudly and engaged in periodic disturbances with Islamic groups.<sup>216</sup>

The Iraqi regime has imposed severe restrictions on all forms of speech, assembly, and press, constitutionally prohibiting any act aimed at undermining the national unity of the people, provoking racial, sectarian, or regional bigotry, or violating gains and achievements of the nation.<sup>217</sup> The *Ba'th* Party controls the political

<sup>207</sup> On February 4, 1978, the government modified the election laws to allow the *Wafd* to re-enter Egyptian politics as the New *Wafd* Party and espouse many of its original right-wing doctrines. However, the New *Wafd* dissolved barely four months later in protest against tighter state security laws. 1979 AI REPORT, *supra* note 111, at 154.

<sup>208</sup> Law 40 (1977), §§ 22-23 (Egypt).

<sup>209</sup> 1979 AI REPORT, *supra* note 111, at 154. Leaders of the National Progressive Unionist Party were first expelled from the Assembly, then arrested in the ensuing months on various charges of "subversion."

<sup>210</sup> *Id.*

<sup>211</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 967.

<sup>212</sup> *Id.* at 968-69. See also AREA HANDBOOK FOR EGYPT, *supra* note 177, at 190, 191, 298-99; P. O'BRIEN, THE REVOLUTION IN EGYPT'S ECONOMIC SYSTEM: FROM PRIVATE ENTERPRISE TO SOCIALISM, 1952-1965 (1966).

<sup>213</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 967.

<sup>214</sup> AL-DUSTŪR (Constitution) art. 46 (Egypt).

<sup>215</sup> See note 124, *supra*.

<sup>216</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 967. See generally O. Meinardus, *The Coptic Church in Egypt*, in I RELIGION IN THE MIDDLE EAST 423 (1969).

<sup>217</sup> See CONSTITUTION PROVISoire art. 26 (Iraq). The Constitution guarantees these freedoms "within the limits of the law," and protects only those means of expression "which comply

channels and institutions in Iraqi society, although other parties are allowed to operate from time to time in concert with *Ba'th* policies.<sup>218</sup> The leadership core of the ruling Revolutionary Command Council has been integrated with the Party's Regional Command, resulting in a Sunni-dominated power structure that endeavors to mobilize every segment of the largely Shi'ite populace toward militant Arab unity.<sup>219</sup> The Iraqi government strictly controls all forms of media, monitoring all publications to eliminate any criticism of the government.<sup>220</sup> Iraqi *Ba'thists* have never been tolerant of political dissent and have not hesitated to arrest entire ethnic or associational groups thought to be a potential threat to the Baghdad regime.<sup>221</sup> No assemblies other than *Ba'th* meetings are allowed, unless approved for religious purposes. Government controls have been especially harsh in the Kurdish regions of the northeast, where illegal opposition parties and their respective guerrilla forces remain active.<sup>222</sup>

#### b. *Freedom of Movement, Travel, and Emigration*

Most states in the Middle East allow virtually unrestricted travel. Saudi Arabia allows free travel and emigration, but does not allow women to drive cars or travel abroad without the permission of their husbands or fathers, and they are expected to travel with male companions.<sup>223</sup> Jordan and Egypt restrict travel in designated military zones, usually near sensitive border areas. Jordan also

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with the revolutionary, national and progressive trend." See Shinn, *Government and Politics*, in IRAQ: A COUNTRY STUDY 179, 192-96 (3d ed. R. Nyrop 1979).

<sup>218</sup> The Progressive National Front has included loyal Kurdish parties and the Iraqi Communist Party, although the Communists have recently been eliminated from the Front and have resumed clandestine opposition. Shinn, *supra* note 217, at 196-203.

<sup>219</sup> Rudolph, *supra* note 143, at 227-29. See generally ARAB BATH SOCIALIST PARTY, REVOLUTIONARY IRAQ 1968-73: THE POLITICAL REPORT ADOPTED BY THE EIGHTH REGIONAL CONGRESS OF THE ARAB BATH SOCIALIST PARTY—IRAQ (1974); M. KHADDURI, SOCIALIST IRAQ: A STUDY OF IRAQI POLITICS SINCE 1968 (1978); Marr, *The Political Elite in Iraq*, in POLITICAL ELITES IN THE MIDDLE EAST 109 (G. Lenszowski ed. 1975).

<sup>220</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 989.

<sup>221</sup> Thus, Assyrian Christians (usually under governmental protection), Freemasons (a non-political group tolerated since the end of Ottoman rule), leaders of the indigenous Communist Party (formerly allied with the government), and even leading *Ba'thists* who have fallen from political grace, have been arrested for allegedly subversive activities. See 1978 AI REPORT, *supra* note 103, at 2591; 1979 AI REPORT, *supra* note 111, at 158.

<sup>222</sup> For an excellent summary of the activity and impact of the Kurdish autonomy movement, see Rudolph, *supra* note 143, at 224-27. See also Feili & Fromchuk, *The Kurdish Struggle for Independence*, 9 MIDDLE EAST STUD. 47 (1976).

<sup>223</sup> AREA HANDBOOK FOR SAUDI ARABIA, *supra* note 169, at 150; 1980 COUNTRY REPORTS, *supra* note 101, at 1088.

requires male permission for females traveling alone.<sup>224</sup> Iraqi domestic travel controls are pervasive, with roadblocks and police checkpoints on major highways, and limited access to high security areas.<sup>225</sup> Iraqi Jews have been discouraged from traveling abroad by the imposition of excessive travel bonds and emigration fees.<sup>226</sup>

c. *Participation in the Political Process*

*Majlis* and *shura* remain the principal means whereby Saudi citizens participate in the mechanisms of government, as there are no parliamentary assemblies, political parties, or trade unions. The traditional tribal channels of influence have special importance in Saudi politics because all government policies are formulated by the senior princes of the ruling family.<sup>227</sup> Numerous specialized agencies have been established to deal with specific domestic issues, but most Saudis prefer to go through traditional channels to influence such agencies. Tribal authorities have an interest in ensuring the effectiveness of such political input; their own political viability depends on adequately meeting the needs of their people.<sup>228</sup>

The Jordanian experience is more diverse, as the extensive government bureaucracy has largely supplanted traditional means of political access and trade unions are permitted within legal limits. Although only one party, the Communist Party, is prohibited in Jordan, the government has not allowed other parties to operate freely.<sup>229</sup> Also, despite constitutional provisions for an appointed Senate and a popularly-elected Chamber of Deputies,<sup>230</sup> the Chamber has remained adjourned since 1973, ostensibly due to the inability of the Jordanian government to conduct elections in the Israeli-

<sup>224</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 967 (Egypt), 1019 (Jordan).

<sup>225</sup> *Id.* at 990. *E.g.*, travel to the center of Baghdad is strictly controlled.

<sup>226</sup> *Id.*

<sup>227</sup> AREA HANDBOOK FOR SAUDI ARABIA, *supra* note 169, at 166.

<sup>228</sup> See Wenner, *Saudi Arabia: Survival of Traditional Elites*, in POLITICAL ELITES AND POLITICAL DEVELOPMENT IN THE MIDDLE EAST 157 (F. Tachau ed. 1975); I. al-Awaji, *Bureaucracy and Society in Saudi Arabia* (1971) (unpublished Ph.D. dissertation in the Woodrow Wilson Dep't of Gov't and Foreign Affairs, University of Virginia); S. al-Mazyad, *The Structure and Function of Public Personnel Administration in Saudi Arabia* (1973) (unpublished Ph.D. dissertation in the Political Science Dep't, Claremont Graduate School).

<sup>229</sup> The martial law restrictions and continued suspension of parliamentary legislation have stifled partisan politics for an indefinite period. The only group allowed to function without pro-government loyalties is the Moslem Brotherhood, which is kept under close surveillance by security operatives. See Shinn, *supra* note 217, at 166-67. See generally Dann, *Regime and Opposition in Jordan Since 1949*, in SOCIETY AND POLITICAL STRUCTURE IN THE ARAB WORLD 145 (M. Wilson ed. 1973).

<sup>230</sup> AL-DUSTŪR (Constitution) arts. 62-96 (Jordan).

occupied West Bank area.<sup>231</sup> King Hussein established a National Consultative Council in 1978, composed of appointed representatives from different regions and social, ethnic, and tribal groups. The Council has the power to review all royal decrees, but it lacks the veto power of its parliamentary predecessor.<sup>232</sup> Women have been allowed to seek elected office and must hold at least five of the sixty seats in the Council.<sup>233</sup> Municipal elections are still conducted freely.<sup>234</sup>

The Jordanian labor movement contains many kinds of labor and professional groups, but concentrates more on social welfare policies than contractual disputes.<sup>235</sup> Some strikes have been tolerated, but arrests of some labor leaders have been acknowledged as well. Authorities in Amman claim that such detentions have occurred for membership in radical parties, for example, the Communist Party, and not for their trade union work *per se*.<sup>236</sup>

Egyptians enjoy universal suffrage, and recent decrees have loosened the formerly strict criteria that political parties were required to meet in order to achieve government recognition.<sup>237</sup> Parties are not allowed to organize along religious or ethnic lines.<sup>238</sup> All approved parties are eligible to participate in national elections for the Assembly and in municipal elections.<sup>239</sup>

Egyptian women have been granted almost complete political and legal equality with men. Sadat ordered at least thirty seats in the Assembly reserved for elected women, and female employment opportunities have increased dramatically in the past two decades.<sup>240</sup> Indeed, the government's war on gender-based

<sup>231</sup> Shinn, *supra* note 217, at 163-65.

<sup>232</sup> As the dissolution of the Chamber of Deputies has left Jordanians with no means of political expression through elected representatives, the Council appears to be more political than legislative in nature. It is supposed to transmit grassroots opinions and grievances to the King and his appointed Senate as an interim step toward reestablishment of popular democracy. However, it appears that the Council, with its relatively weak powers, has yet to win the confidence of most Jordanians. *Id.* at 164.

<sup>233</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 1020-21.

<sup>234</sup> *Id.* at 1020.

<sup>235</sup> 1979 COUNTRY REPORTS, *supra* note 134, at 774.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* at 756.

<sup>238</sup> *Id.*

<sup>239</sup> As of January, 1980, prospective parties can apply for recognition if they have: (1) at least fifty founding members; (2) submitted their application to a special Workers' Committee; (3) drafted a platform distinguishable from that of any other active party; and (4) the platform conforms to the Egyptian Constitution. 1979 COUNTRY REPORTS, *supra* note 134, at 735.

<sup>240</sup> See Dodd, *Youth and Women's Emancipation in the United Arab Republic*, 20 MIDDLE

discrimination has progressed so rapidly that it regularly incurs the criticism of leading conservative *ulama*.<sup>241</sup>

The government's trade union movement currently contains some 7.5 million workers. Although organized by and theoretically under the control of the government, the unions exercise great independence in selecting their leaders and conducting contract negotiations with government-owned industries.<sup>242</sup> The Sadat regime was remarkably tolerant of outspoken union leadership and, when confronted by a series of wildcat strikes, refused to exercise the massive police power which his predecessor Nasser believed effective.<sup>243</sup>

In Iraq, the *Ba'th* Party dominates all forms of political participation. At present, only three parties enjoy government approval: the *Ba'th* party and two Kurdish parties which are strictly controlled.<sup>244</sup> Members of the army or police services may belong only to the *Ba'th*, and very few non-Ba'thists have enjoyed political success in the Baghdad government.<sup>245</sup> In June, 1980, the first elec-

EAST J. 159 (1968); L. Hamamsy, *The Changing Role of the Egyptian Woman*, in READINGS IN ARAB MIDDLE EASTERN SOCIETIES AND CULTURES 592 (1970); M. el-Sanabary, *A Comparative Study of the Disparities of Educational Opportunity for Girls in the Arab States* 29-35 (1973) (unpublished Ph.D. dissertation at the University of California, Berkeley).

<sup>241</sup> Since the 1952 Revolution, Egypt has been plagued with a high rate of unemployment, estimated at from 8% to 10% during the late 1970s. The national labor movement has been hard-pressed to provide benefits to idle workers while unemployment continues at such a high rate. See AREA HANDBOOK FOR EGYPT, *supra* note 177, at 297-99 (a summary of the history and goals of the Egyptian unions). See also Holden, *supra* note 178, at 12-13, 71-73; Nagi, *Labor Force and Employment*, in EGYPT: A DEMOGRAPHIC AND SOCIOECONOMIC ANALYSIS (1971).

<sup>242</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 968-69.

<sup>243</sup> *Id.* at 969.

<sup>244</sup> See A. AL-BAKR, STEADFAST PROGRAM IN DEALING WITH THE MASSES (Ministry of Information Documentary Series, No. 53) (1976); ARAB BA'TH SOCIALIST PARTY, HOW THE REVOLUTION CONFRONTS THE IMPERIALIST CONSPIRACY AND THE COUNTER-REVOLUTION (1977); Shinn, *supra* note 217, at 196-203.

<sup>245</sup> See al-Qazzaz, *The Changing Patterns of the Politics of the Iraqi Army*, in ON MILITARY INTERVENTION 335 (M. Janowitz & J. van Doorn eds. 1971); Dann, *The Iraqi Officer Corps as a Factor for Stability—An Unorthodox Approach*, in THE MILITARY AND STATE IN MODERN ASIA 257 (H. Schiffman ed. 1976). See also *Army is for Homeland and Revolution and We Will Not Permit Its Allegiance to Become Manifold*, AL-WATAN AL-'ARABI June 26-30, 1978, at 1.

The Communist Party was expelled from the Progressive National Front in 1979. It has become, with the *Da'wa* Party, the object of severe repression, leading in many cases to the execution of arrested members. Large-scale purges of suspected subversives allegedly linked with the Communist leadership began even before the Communist Party was officially outlawed. See *Huge Purge in Iraq: Campaign Includes 1,000 Civil Servants, Many of Them Ba'thists*, AL-NAHAR AL-'ARABI WA AL-DUWALI, April 29, 1978, at 1; *Official Iraqi Source Tells Al-Dustūr: No Political Ban Iraqi Communist Party's Activity; Ba'th Party Rejects Policy of Open Half and Concealed Half*, AL-DUSTŪR, June 12-18, 1978, at 2; *On Military Executions, Baghdad: Responsibility Falls on Shoulders of Communist Party Leadership*, AL-

tions were conducted in Iraq since the overthrow of the monarch in 1958. The resulting National Assembly is composed of candidates carefully screened by the *Ba'th*.<sup>246</sup> Regional and many local political posts are appointed by the government. Municipal and labor authorities have no independent power.<sup>247</sup> Women hold sixteen seats in the Assembly, and are encouraged to join and even lead many *Ba'thist* groups. Traditional *Shari'a* restrictions on women are actively opposed by the government.<sup>248</sup>

#### IV. CONCLUSION

*Shari'a* law, with its regulation of social and political life, provides an Islamic analytical framework in which to assess the human rights practices of Arab states. It embodies and balances two potentially conflicting beliefs regarding Man and State: the utter subordination of individual rights to the communal group, in contrast with manifold provisions for social welfare needs and impartial justice under law. In its subordination of personal autonomy, *Shari'a* lays a philosophical foundation for human rights abuses by diminishing individual human significance. There is strong religious pressure for outward conformity and obedience in the Arab state, a fact which enables and legitimates autocratic government of the traditional-conservative and praetorian-populist types. Ruthless suppression of dissent and cruel punishment are the inhumane legacies of *Shari'a* that kings and colonels employ to perpetuate their reigns. Yet, Islamic monarchs and secular dictators also pay careful attention to their people's needs for food, medicine, and education. The requisite communion between the rulers and the ruled, implicit in *Shari'a*, is a political and legal necessity transcending political taxonomies.

Despite the similarities of the authoritarianism employed by

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Watan Al-'Arabi June 3-9, 1978, at 4; Saddam Husayn: *A Comprehensive Talk: The Revolution is not Capricious and People Who Think it has Changed its Relations with the Socialist Camp are Fantasizing*. Al-Dustūr, July 20-24, 1978, at 3.

<sup>246</sup> 1980 COUNTRY REPORTS, *supra* note 101, at 991; Shinn, *supra* note 217, at 186-88.

<sup>247</sup> The eighteen regional governors are appointed by the President, as are the mayors of Baghdad, Mosul, and other large cities. To bridge the long-standing gap between the government and the common people, "popular councils" have been established in all administrative subdivisions to supervise, criticize, and inspect government programs, and to transmit popular opinions and grievances back to the Revolutionary Command Council. Shinn, *supra* note 217, at 190. See also *Effectiveness of People's Councils Viewed*, Baghdad Observer, March 25, 1976, at 1, col. 3.

<sup>248</sup> Women currently hold more than 15% of all government jobs and may attain warrant officer ratings in the armed forces. Shinn, *supra* note 217, at 189; Rudolph, *supra* note 143, at 243.

traditional-conservative monarchies and praetorian-populist regimes, careful scrutiny reveals important differences in their responses to *Sharī'a* values, which have critical bearing on Arab human rights conditions. Traditional states have continued to allow *Sharī'a* institutions and leaders to influence criminal, property, and family law, and to serve as an alternative to government bureaucracy. This legal policy appears calculated to preserve the values and maintain the allegiance of the peasants and bedouin who comprise a majority in all Arab states. While this may impede social evolution, it nonetheless ensures the doctrinal survival of impartial justice under law. Another by-product of this policy, perhaps unintended, is the survival of the doctrinal means whereby impartial justice can maintain its relevance in changing social circumstances.

Praetorian governments, on the other hand, have either swept away traditional institutions or minimized the importance of their leaders in an effort to effectuate the secular ideals of their urban middle-class supporters. The legal and political power once vested in the vice-regent of Allah now rests with the secular State, producing a positivistic jurisprudence which diverges from the objective moral and ethical values of traditional Islam. An unfortunate victim of such radical transformation has been the legal objectivity which gave meaning to impartial justice. Despite the cruelty, corruption, and nepotism of traditional societies, the doctrinal mechanisms for fairness and predictable change were present and protected. Such is not the case in praetorian societies, a fact reflected in the rising tide of religious fervor and political unrest among the rural masses.

While Arab states, with their interest in communal obligations, probably lack the necessary philosophical and historical antecedents for Western-style democracy, that is no indication that life cannot be improved for the individuals residing therein. Arab nations can be encouraged to protect and assert those elements of *Sharī'a* that advance individual human freedom: impartial justice under law, social welfare duties, and close communion between the government and its people. The doctrinal elements of *Sharī'a* which enable legal modernization can be employed to render cruelty, sociopolitical elitism, and repression obsolete, as having no proper place in modern Arab societies. By these means, the Arab nations can build upon the best of the values which have made them a great people, and *Sharī'a* can afford a path to a freer future.

