LATENT ROLE OF THE ISLAMIC RESPONSA (*FATWÂ*) IN THE SAUDI LEGAL SYSTEM DURING THE PRECODIFICATION PERIOD

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Abstract

The General Presidency of Scholarly Research Iftāʾ (the Dār al-Iftāʾ) was established as part of the Saudi government's policies of bureaucratization and institutionalization in 1953. In the absence of a constitutionally binding source of legislation, the Saudi government could consult the Dār al-Iftāʾ to issue a *fatwá* with the intention of either standardizing a legal ruling or enacting a law. For instance, the *fatāwá* regarding abduction/usurpation and drugs/alcohol were transformed into a legal regulation that considerably facilitated judges' (*qāḍīs*) application of the prescribed penalties. Before starting the codification process, many social regulations and norms (e.g., the segregation of sexes, women's dress codes, and the legality of forensic autopsies) could also be traced back to the *fatāwá* issued by the Dār al-Iftāʾ. This

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article intends to elucidate the complementary role of *fatāwá* in Saudi society as well as the judicial and legislative system by referring to the *fatāwá* transformed by royal decrees into legal regulations before the codification period. This paper provides a detailed analysis of the role of the practice of *iftāʾ* within the Saudi politico-legal area for the precodification period.

Key Words: Islamic Legal Opinions (*fatwá*), Saudi society, legal procedure, Royal Decree

Introduction

The practice of issuing Islamic responsa (*iftāʾ*) is an important mechanism that brings vitality to Islamic law while enabling the development of new Islamic responsa. This mechanism enables Muslim scholars to produce legal formulas for predicaments that are engendered by the encounter of Islamic law and modernity. Islamic responsa (*fatāwá*), the outputs of the *iftāʾ* mechanism, are defined as nonbinding in terms of their sanctioning power, so many scholars inadvertently bypass the role of the practice of *iftāʾ* in Islamic legal systems.[1] Saudi Arabia has been identified with Islam more than other Muslim countries have been since the country is known as the cradle of Islam and the two holiest places (Mecca and Medina) lie within its borders.[2] The ruler of the country, the king, is considered to be and presents himself as the custodian of these sacred sites (*Khādim al-Ḥaramayn*, or the servant of the two shrines). The population is described as entirely Muslim, so non-Muslims are not allowed to become permanent residents of the country. In this regard, it could be noted that the cou ntry did not need any legal system other than Islamic law to address and resolve any legal conflicts and disagreements

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1 Carool Kersten (ed.), *The Fatwa as an Islamic Legal Instrument: Concept, Historical Role, Contemporary Relevance* (Berlin: Gerlach Press, 2019); Omer Awass, *Fatwa and the Making and Renewal of Islamic Law: From the Classical Period to the Present* (New York: Cambridge University Press, 2023), 1-13.

2 Alexei Vassiliev, *The History of Saudi Arabia* (New York, NY: New York University Press, 2000), 3-40; Michael Darlow - Barbara Bray, *Ibn Saud: The Desert Warrior Who Created the Kingdom of Saudi Arabia* (New York: Skyhorse Publishing, 2012), 430-460.

among its populace.

Since the establishment of Saudi Arabia in 1932, it has become amply clear that the legal system of the country is based on and regulated by Islamic law. The superiority and primacy of Islamic law were formally declared in the Kingdom's Basic Law of Governance (*al-Niẓām al-asāsī li-l-ḥukm*), which was legalized by Royal Decree A/90.[3] It was clearly affirmed that Islamic legal regulations and royal decrees constituted the foundation of the country's legal system, with orders issued by the Saudi king and government given the same level of importance as Islamic legal regulations. Royal decrees functioned as authoritative legal regulations in the absence of the Islamic legal regulations related to any issue at hand.[4] Nonetheless, the nature of royal decrees was restricted to their conformity with Islamic law. The two sources (Islamic legal regulations and royal decrees based on Islamic law) governed all administrative, executive, and legislative affairs of the state. It should be noted that the Kingdom's Basic Law of Governance theoretically and ideally draws a picture of the traditional Islamic governance system that divides the authority between religious scholars (*ʿulamāʾ*) and rulers (*umarāʾ*) by accentuating the importance and necessity of obedience to the regulations issued by these two types of authority holders.

The establishment of the Saudi Kingdom was based on the alliance formed in 1744 between Shaykh Muḥammad Ibn ʿAbd al-Wahhāb (d. 1792), the founder of the Wahhābī movement, and Muḥammad Ibn Saʿūd (d. 1765), the predecessor of the Saudi dynasty.[5] This alliance played a crucial role in the power structure, taking into account Islamic

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3 Royal Decree A/90 (1992), Article 1, 7; Sümeyra Yakar, *Islamic Jurisprudence and the Role of Custom: A Comparative Case Study of Saudi Arabia and Iran* (Piscataway: Gorgias Press, 2022), 23-44.

4 Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden - Boston: Brill, 2000), 309-362.

5 Muhammad al-Atawneh, *Wahhābī Islam Facing the Challenges of Modernity: Dār al-Iftā in the Modern Saudi State* (Boston: Brill, 2010), 1-3; Vassiliev, *The History of Saudi Arabia*, 10-50; Cole Bunzel, *Wahhābism: The History of a Militant Islamic Movement* (Princeton: Princeton University Press, 2023), 130-198. For the influence of Wahhābī-Salafīs in the Islamic world, see Reyhan Erdoğdu Başaran, "Boko Haram: Tarihsel Gelişimi ve Dinî-Siyasi Söylemleri", *Ankara Üniversitesi İlahiyat Fakültesi Dergisi* 66/1 (2025), 461-488.

thought on politics, in which the ruler was obliged to implement Islamic law while religious scholars were responsible for extracting legal rulings from the sources of Islamic law.[6] In the bilateral relationship between religious and political authorities, the citizens were required to obey the ruler without demonstrating any sign of resistance. The religious authority provided both legal and religious legitimacy to the Saudi monarchy to rule the country. Hence, it was quite possible to argue that the cooperation between political and religious authorities constituted the backbone of the Saudi state and enabled its continuity as a religious monarchy. Different views exist as to the exact nature of the relationship and the power distribution between the two (religious and political authorities).

While the traditional view defines the bilateral relationship as a symbiotic dual authority or partnership between the *umarāʾ* and the *ʿulamāʾ*, which means the descendants of Muḥammad Ibn Saʿūd (political authority) and Shaykh Muḥammad Ibn ʿAbd al-Wahhāb (religious authority), recent studies emphasize how the balance has evolved over time and, particularly in recent years, how it has radically shifted. These different approaches focus primarily on two axes: whether the relationship is a symbiotic partnership or a pragmatic instrumentalization based on the superiority of political authority. For instance, Krell identifies the basis of the relationship as the doctrine of *siyāsah sharʿiyyah* (governance in accordance with Islamic law). According to this doctrine, the legitimacy of Saudi kings depends on ensuring that all their policies comply with Islamic law. For Krell, this legitimacy creates a form of mutual authority between the *umarāʾ* and the *ʿulamāʾ*.[7] He analyses divergent views regarding the distribution of authority within this mutuality. According to one view (for example, Ibn ʿUthaymīn's interpretation as cited by Krell), the *ʿulamāʾ* are the real leaders (*hum ulū l-amr ḥaqīqatᵃⁿ*), whereas the rulers merely implement the law as defined by the *ʿulamāʾ* (*umarāʾ munaffidūn*), so it may be briefly stated that the *ʿulamāʾ* define and the *umarāʾ*

6 Emine Enise Yakar - Sümeyra Yakar, "The Symbolic Relationship Between *ʿUlamāʾ* and *Umarāʾ* in Contemporary Saudi Arabia", *Middle Eastern Studies* 13/1 (2021), 28-42.

7 Dominik Krell, *Islamic Law in Saudi Arabia* (Leiden - Boston: Brill, 2025), 24.

execute.[8] Other scholars, such as Frank Vogel, quoted by Krell, argue that in practice, the *umarāʾ* and the *ʿulamāʾ* are in a state of competition. From this perspective, the doctrine of *siyāsah sharʿiyyah* functions as a constitutional theory through which the excesses of rulers may be restrained.[9] Krell notes that the practical power distribution is far more complex: the *ʿulamāʾ* and the king often share a common agenda, yet when any conflict arises, the *ʿulamāʾ* tend to appease any social, legal, and political tension.[10] In Krell's analysis, the doctrine of *siyāsah sharʿiyyah* grants the king neither the authority to create nor to interpret the law but only to preserve and enforce it. Historically, the mutual cooperation between the *umarāʾ* and the *ʿulamāʾ* significantly limited the powers of the king and left the judiciary largely in the hands of the *ʿulamāʾ*.[11]

In a similar vein, al-Atawneh construes the relationship between the *umarāʾ* and the *ʿulamāʾ* as a continuation of the established alliance in 1744.[12] Although the institutionalization of the *ʿulamāʾ* resulted in a reduction in the focal power of the *ʿulamāʾ* in the area of Saudi politics, the allocation of power transformed the *ʿulamāʾ* into an official structure endowed with the power of intervention in the politico-legal sphere. Al-Atawneh observes, "[The incorporation of the *ʿulamāʾ* into State administration] may have enabled the *ʿulamāʾ* to increase their influence on official policies and in governmental circles. In other words, by holding official positions, the *ʿulamāʾ* became players from within the power structure. Had they remained outside the Government, their influence might have diminished over time".[13]

Rather than stripping *the ʿulamāʾ*, who serve to legitimize the regime, of its power, the Saudi government furnished the *ʿulamāʾ* with official authority. In al-Atawneh's view, the mutual dependence of the *umarāʾ* and the *ʿulamāʾ* therefore still reflects the historically established alliance between Wahhābī scholars and Saudi rulers because the official *ʿulamāʾ* has a semiautonomous structure that preserves the delicate balance of the triangle of state, society, and

8 Krell, *Islamic Law*, 25.

9 Krell, *Islamic Law*, 25.

10 Krell, *Islamic Law*, 26.

11 Krell, *Islamic Law*, 39.

12 Al-Atawneh, *Wahhābī Islam*, 14, 34-37.

13 Al-Atawneh, *Wahhābī Islam*, 36.

religion.

Some analyses of the *ʿulamāʾ* within the modern Saudi state highlight a clear centralization of power in favor of the *umarāʾ*, namely, the political authority. In considering the role of the *ʿulamāʾ* and their *fatāwá* in the Saudi political system, Layish conceives of the *ʿulamāʾ* as a legitimizing mechanism of the Saudi government. Legal reforms were actualized by the Saudi government to bring the normative and institutional system of the theocratic state into conformity with the conditions of a state, a society, and an economy confronted with the challenges of the modern era, but in this process, the *ʿulamāʾ* began to slightly resemble a legitimizing mechanism.[14] Layish states, "In Saudi Arabia, there are increasing indications of the emergence of a legislative authority outside the control of the *ʿulamāʾ* which makes masterly use of the mechanisms and devices they have placed at its disposal. The administrative regulations and orders of the king and other government authorities, steadily increasing in volume and theoretically designed to supplement the *sharīʿah*, may to all intents and purposes be regarded as statutory regulations altering positive Islamic law".[15] Despite the fact that the Saudi government provided the *ʿulamāʾ* an ostensible authority in the politico-legal area because of its theocratic character, the integration of the *ʿulamāʾ* into the ruling elite resulted in their independent powers being curbed and controlled by the Saudi government. Similarly, Mallat conceptualizes the process of the relationship between the *umarāʾ* and the *ʿulamāʾ* as the "normalization of Saudi law". In his view, Saudi Arabia has been moving progressively from the exceptional traditional model, in which judges (*qāḍī*s) make rulings based on uncodified *sharīʿah* law, toward the modern, state-centric legal model of other Sunnī Arab countries. This process of normalization alludes to a transformation of law-making authority from the traditional religious elite to the state, namely, the king and the government. Mallat describes this transformation as the statization of law, in which the state replaces the

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[14] Aharon Layish, "Saudi Arabian Legal Reform as a Mechanism to Moderate Wahhābī Doctrine", *Journal of the American Oriental Society* 107/2 (1987), 280, 288, 291-292.

[15] Layish, "Saudi Arabian Legal Reform", 292.

ʿulamāʾ as the primary source of legal legitimacy.[16] Consequently, while the 1744 alliance remains the founding backbone of the state, the nature of the relationship between the *umarāʾ* and the *ʿulamāʾ* is not static. Contemporary analyses demonstrate that the balance has transformed decisively from a partnership based on mutual dependence to a hierarchical model in which the state (political authority) establishes clear legal, administrative, and political superiority over the religious authority.

With the intent of revealing the functional roles that the practice of *iftāʾ* assumed in the politico-legal area within an Islamic legal system, the article focuses primarily on the case of Saudi Arabia in light of the interactions and reflections of *fatāwá* issued by the Dār al-Iftāʾ within the Saudi politico-legal area before codification. Notably, because Saudi Arabia is a closed and complex country, gaining access to extensive and recent data about the changes and developments in the Saudi legal system is difficult and taxing. Nonetheless, the findings, as Yakar states, identify three politico-legal spheres in which the practice of *iftāʾ* played, either implicitly or explicitly, key roles during the precodification period. These were ruling family politics, internal politics, and external politics.[17] Each area in which the practice of *iftāʾ* either visibly or invisibly took an active role before the codification was elaborated upon with *fatwá* samples to highlight the reflections of the engrained doctrine of *siyāsah sharʿiyyah* (governance in accordance with Islamic law) upon the Saudi politico-legal sphere.[18] The objective is not only to investigate the legitimizing power of *fatāwá* for political issues but also to explain the unique nature of the relationship between religious and political authorities during the precodification period. Applying textual analytical methodology and contextual analysis, the article intends to uncover the connections between Saudi authority holders before the codification.

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16 Chibli Mallat, *The Normalization of Saudi Law* (New York: Oxford University Press, 2021), 3-16.

17 Emine Enise Yakar, "The Influential Role of the Practice of the *Iftāʾ* in Saudi Political-Legal Arena", *Manchester Journal of Transnational Islamic Law & Practice* 16/1 (2020), 5-6.

18 Robert W. Hefner (ed.), *Shari'a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011), 1-55; Qazi Fazl Ullah, *Sharia and Politics* (Los Angeles, CA: Hund Publishing, 2015), 7-30.

1. Legislation in the Saudi Legal System

Saudi Arabia is a state that has applied Islamic law in its legal system. The Qurʾān and the Sunnah were pronounced as the main sources of the Saudi legal system during the precodification period; thus, Islam emerged not only as a religion but also as a comprehensive system for providing public, social, and legal norms in Saudi society. This was very clearly specified in Articles 1 and 23 of the Basic Law of Governance, which were put into practice in 1992. Article 1 states:

> The Kingdom of Saudi Arabia is a sovereign Arabic Islamic State. Its religion is Islam. Its constitution is Almighty God's Book, the Holy Qurʾān, and the Sunnah (Traditions of the Prophet (PBUH).[19]

Article 23 also clarifies the following:

> The State shall protect the Islamic creed, apply the *sharīʿah*, encourage good and discourage evil, and undertake its duty regarding the propagation of Islām (*daʿwah*).[20]

An outline of the Saudi legal system was formed on the basis of Wahhābī understanding that espoused the traditional view of governance in Islamic law.[21] Throughout history, Muslim scholars established a link between religion and government. In the views of these scholars, the community must have a leader to manage affairs and to protect the community in accordance with the right religious principles and values. In light of the established link between religion and government, *siyāsah sharʿiyyah* (governance in accordance with Islamic law) developed into a well-engrained governance doctrine in traditional Islamic law. The term *siyāsah sharʿiyyah* consists of two words: *siyāsah,* which means leading the community in accordance with its interest, and *sharʿiyyah,* which means convenience to religion and law. The compound phrase *siyāsah sharʿiyyah* is terminologically used to express the authority who makes public regulations and

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19 Royal Decree A/90 (1992), Article 1.

20 Royal Decree A/90 (1992), Article 23.

21 Muhammad al-Atawneh, "Is Saudi Arabia a Theocracy? Religion and Governance in Contemporary Saudi Arabia", *Middle Eastern Studies* 45/5 (2009), 725-726; Bunzel, *Wahhābism*, 130-210.

adjustments within the scope of Islamic law.[22] The Shāfiʿī scholar al-Māwardī (d. 1058), one of the preeminent political Muslim thinkers, engaged with Islamic political philosophy while explaining rules of governance (*al-aḥkām al-sulṭāniyyah*).[23] In his view, the administration of state affairs should be implemented in accordance with the doctrine of *siyāsah sharʿiyyah*, which is acknowledged as a subsidiary legislative source. In addressing the authority assigned to the ruler within the doctrine of *siyāsah sharʿiyyah*, al-Shātibī (d. 1370), one of the influential scholars in the Mālikī school, observes that the authority entails the use of mental faculties in developing legal procedures in accordance with contemporary public interests.[24] Although the term *siyāsah* appears in Ḥanafī works, including al-Sarakhsī's *al-Mabsūṭ*, it is difficult to argue that it was employed as a fully articulated legal concept. Ibn Nujaym's (d. 1520) remark that he could not find a definition of *siyāsah* in the works of the earlier Ḥanafī scholars further indicates the challenges of tracing the conceptual development of the term throughout the tradition.[25] In Ibn Nujaym's definition, *siyāsah* means the use of authority by the ruler in making regulations regarding issues upon which there is no specific Islamic legal evidence.[26] The doctrine of *siyāsah sharʿiyyah* is also an accepted and developed theory in the Ḥanbalī school. In describing the doctrine of *siyāsah sharʿiyyah* as whatever draws people toward justice and distances them from corruption, the Ḥanbalī scholar Ibn ʿAqīl (d. 1119) recognized a broad discretionary power vested in the ruler.[27] Ibn

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22 Yunus Apaydın, "Siyâset-i Şerʿiyye", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2009), 37/299-302; Al-Atawneh, "Is Saudi Arabia a Theocracy?", 722.

23 Abū l-Ḥasan Ḥabīb al-Māwardī, *The Ordinances of Government: al-Aḥkām al-Sulṭāniyya w'al -Wilāyāt al-Dīniyya*, trans. Asadullah Yate (London: Ta-Ha Publishers, 1996), 109-115, 120-127.

24 Ibrāhīm ibn Mūsá al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-aḥkām*, ed. Muḥammad Muḥyī al-Dīn ʿAbd al-Ḥamīd (Cairo: Maktabat wa-Maṭbaʿat Muḥammad ʿAlī Ṣabīḥ wa-Awlādihī, 1969), 4/60.

25 Apaydın, "Siyâset-i Şerʿiyye", 37/299.

26 Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al-Baḥr al-rā'iq sharḥ Kanz al-daqā'iq*, ed. Zakariyyā ʿUmayrāt (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 5/118.

27 Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-ḥukmiyyah fī l-siyāsah al-sharʿiyyah* (Beirut: Sharikat Dār al-Arqam ibn Abī l-Arqam, 1999), 19.

Taymiyyah (d. 1328), another preeminent scholar who intellectually influenced Saudi scholars, asserted that an Islamic government is necessary to apply Islamic law and to establish justice in the community through the legal maxim of commanding right and forbidding wrong.[28] The prominent Ḥanbalī scholar Ibn Qayyim al-Jawziyyah (d. 1350), one of the disciples of Ibn Taymiyyah, acknowledges politics as part of religion. In his view, the Islamic government is an indispensable mechanism for protecting and sustaining religious values. In terms of the doctrine of *siyāsah sharʿiyyah* as a legal mechanism to identify the divine will and that of the Prophet, Ibn Qayyim al-Jawziyyah refers to its potential in providing legal regulations and adjustments.[29]

The traditional doctrine of *siyāsah sharʿiyyah* allocates a broad power to the ruler in making legal regulations, since the various problems and changes of the time need continuous adjustment of the law.[30] The doctrine therefore not only refers to governmental and administrative authority but also includes legislative authority in implicitly conferring legislative power upon the political authority. In this regard, the doctrine of *siyāsah sharʿiyyah* gives the impression that Islamic governance, to some extent, embodies an integration of religion and legislation as well as religion and politics. In alluding to the doctrine of *siyāsah sharʿiyyah* that underlies the Saudi governance philosophy, some scholars inadvertently portray the Saudi monarchy as politically secular and socially religious. Al-Rasheed observes that a form of separation between religion and politics had been indirectly practiced in Saudi Arabia by allocating the authority between the scholars (*ʿulamāʾ*) and the ruling family (*umarāʾ*); that is, the scholars were designated as the authority in conducting religious and social affairs, whereas the ruling family was entrusted with political and legal authority.[31]

The use of reason (*ʿaql*) and public interest (*maṣlaḥah*) in making legal regulations and adjustments regarding issues upon which there

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[28] Taqī al-Dīn Ibn Taymiyyah, *al-Siyāsah al-sharʿiyyah fī iṣlāḥ al-rāʿī wa-l-raʿiyyah*, ed. Bashīr Muḥammad ʿUyūn (Damascus: Maktabat Dār al-Bayān, 1985), 176.

[29] Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-ḥukmiyyah*, 5-7, 39-40.

[30] Layish, "Saudi Arabian," 284.

[31] Mawadi al-Rasheed, *Contesting the Saudi State: Islamic Voices from a New Generations* (Cambridge: Cambridge University Press, 2007), 57-58.

is no specific Islamic legal evidence possibly led some scholars to define the Saudi legal system as semisecular. However, the doctrine of *siyāsah sharʿiyyah* was not outside of Islamic law during the precodification period.[32] Referring to the legislative power allocated to the political authority, it is misleading to infer that religion and legislation were independent of each other. Apaydın asserts that legal regulations and adjustments made with the intent of public interest can be considered within the scope of the doctrine of *siyāsah sharʿiyyah* because the high principles of these regulations and adjustments are established by religion.[33] However, if these regulations and adjustments are only ascertained in accordance with the principles established by pure reason, then the argument regarding their secular characteristics can be considered valid.

In emphasizing the role of religion in society, some scholars refer merely to Saudi Arabia as a theocratic state. It would be misleading to delineate precodified Saudi Arabia either as a semisecular state or as a fully theocratic state because there was cooperation between the official *ʿulamāʾ* and the ruling *umarāʾ*.[34] These two authority holders paid attention not to interference in each other's spheres of power but instead worked together in a complementary manner.

In describing Saudi Arabia as a theo-monarchy, al-Atawneh emphasizes its distinctive character, which was shaped by pervasive religio-cultural norms and by the cooperation between the *ʿulamāʾ* and *umarāʾ* prior to the codification period. He states:

> [The Saudi monarchy] is based on an ongoing compromise between the two major authorities, the existing religious institutions and the Saudi monarchy. In other words, throughout their cooperation, the *ʿulamaʾ* maintained a central role in preserving the religious feature of the state, not only in the social realm, but also in the political one, thus contributing to the theocratic façade of the state. The King, on the other hand continued to consider the *ʿulama's* opinions,

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[32] Sümeyra Yakar, "The Usage of Custom in the Contemporary Legal System of Saudi Arabia: Divorce on Trial", *Kilis 7 Aralık Üniversitesi İlahiyat Fakültesi Dergisi* 6/11 (2019), 400-411.

[33] Apaydın, "Siyâset-i Şer'iyye," 37/300-304.

[34] Yakar - Yakar, "The Symbolic Relationship", 30-40.

consulting them and taking note of their interests.[35]

The views of Saudi scholars regarding governance and authority were shaped in accordance with the traditional doctrine of *siyāsah sharʿiyyah*, as articulated by the leading Hanbali scholars. According to these views, it was possible to observe the inseparable coalescence of religion and politics.

In engaging with the significance of the doctrine of *siyāsah sharʿiyyah* in the Saudi legal system, Alnemari refers to the intervention of royal authorities in the regulation of *ḥudūd* (paramount prescribed punishments) rulings. He focuses particularly on recent royal edicts, including the abolition of discretionary flogging punishment (*al-taʿzīr bi-l-jald*) and the abolition of criminal conviction based on doubt (*al-ḥukm bi-l-shubhah*). Alnemari asserts that these edicts constitute "direct royal commands to the judiciary to change some of its established *ḥudūd* precedents".[36] This may be construed as an intervention of the royal authorities in the Saudi judiciary. This is significant because *ḥudud* punishments are regarded as criminal demarcations established by divine authority; thus, any royal interference in this domain results in a particularly delicate theological dimension. The process of the intervention alludes to the changing interaction between the *umarāʾ* and the judiciary (or the *ʿulamāʾ*), demonstrating how classical Islamic legal doctrines are reinterpreted to align with the contemporary structures of the political authority. Alnemari situates the royal prerogative within the doctrine of *siyāsah sharʿiyyah*, which permits the king to issue statutes (*anẓimah*) that aim to promote the public interest (*maṣlaḥah ʿāmmah*), provided that they remain consistent with the teachings of the Qurʾān and Sunnah.[37]

Since religion was acknowledged as a comprehensive system that encompasses every aspect of human life, it could not be conceived of the Saudi legal system as being dissociated from Islamic law. In the interpretation of scholars, God is accepted as the source of all authority and the supreme lawmaker who has identified the good and evil, the

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35 Al-Atawneh, "Is Saudi Arabia a Theocracy?", 733.

36 Hazim H. Alnemari, "God's Law, King's Court: *Ḥudūd* Jurisprudence under Saudi Monarchical Decrees", *Journal of Islamic Law* 6/1 (2025), 85.

37 Alnemari, "God's Law, King's Court", 91-92.

licit and illicit. All human actions and interactions must therefore be regulated in accordance with divine will and legislation. For instance, Ibn Bāz (d. 1999), an influential scholar in Saudi society, asserted that the Qurʾān and Sunnah constituted the eternal source from which all political, legal, social, and moral norms were extracted. In citing Q 4: 58-59, he observes the following:

> ... the Muslim learns that applying Sharīʿah and seeking judgment from it is obligated by Allah and His Messenger (peace be upon him). It is a prerequisite of submitting to Allah and attesting that His Messenger Muḥammad (peace be upon him) came with the Message. Opposing these facts or any part of them brings forth Allah's torment and punishment. Moreover, the command applies to the way a Muslim country deals with its subjects and to Muslim individuals at any place and time.[38]

In the view of Ibn Bāz, secular political ideologies that are built upon the basis of man-made principles are equal to disbelief. Nonetheless, God does not regulate all human affairs; rather, human beings are implicitly regarded as His vicegerents who are furnished with the authority to identify the highest divine principles through endowed reason.[39] These principles, which intend to preserve and enhance human dignity and welfare, are established as the uninfringeable frontiers in which Islamic law is applied. Islamic law is therefore acknowledged as the primary mechanism that provides laws, regulations, bylaws, and norms appropriate to any time and place. It is incumbent upon Muslims to obey these instructions because they intrinsically have a kind of divine character. In this regard, considerable jurisdiction –including governance, administration, and legislation– is left to human beings to regulate their own affairs, provided that they do not wittingly transgress divine principles and moral standards. The authority of legislation was, even though God is the supreme lawmaker, allocated to the ruling authority, public institutions, and Muslim scholars of Saudi society. Ibn Bāz refers to the

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[38] ʿAbd al-ʿAzīz ibn ʿAbd Allāh Ibn Bāz, "Obligation of Applying the Law of Allah and Anything Contradictory to it", *English Translations of Majmoo' al-Fatawa of Ibn Bazz* (Alifta, 2001), 1/79.

[39] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 2003), 20-45.

allocation of legislative authorization, and he observes that "… it is the duty of Muslim populace, their rulers and kings and those in charge of Muslim affairs to observe *taqwá* (fearing Allah as He should be feared) and apply Sharīʿah in their countries and in relation to all of their affairs".[40] It is obvious that in Ibn Bāz's thought, legislation is conducted by human agency. The system associated this agency with religious scholars and rulers who should be obeyed as long as they act in accordance with Islamic law.

The issue here is how the legislative authority operated while being allocated to both religious scholars and rulers and what kind of procedure was pursued by these authorities in making regulatory laws. The operational system could be traced back to the division of authority by Ibn ʿAbd al-Wahhāb, the eponymous founder of Wahhābī ideology.[41] The religious scholars were designated as the authority in the jurisprudential sphere, while the rulers were recognized as the authority in matters of state affairs, presumably on the condition of consulting the *ʿulamāʾ*. The ruler needed to apply to Islamic law and to enforce its instructions, but it was also concurrently in need of the legitimacy provided by the religious scholars through the mechanism of Islamic law. It was therefore possible to observe mutual cooperation between both authorities during the precodification period. However, the structure and function of this cooperation was not determined by Ibn ʿAbd al-Wahhāb through clear-cut terms.

In time, a model of cooperation was shaped through the institutionalization and bureaucratization process that followed the growth of oil wealth in Saudi Arabia. Although cooperation was not identified in a categorical way, it was possible to observe a cooperative process between the two authorities in the legal system of Saudi Arabia. Al-Atawneh refers to this cooperative relationship, and he states, "Clearly, Wahhābīs in all generations attributed authority to both the *ʿulamāʾ* and the political rulers. While the former were obliged to clarify the *sharīʿah*, the latter were expected to implement those instructions".[42] In the course of the process of modernization and

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[40] Ibn Bāz, "Obligation of Applying the Law of Allah and Discarding anything Contradictory to it", 1/72-79.

[41] Bunzel, *Wahhābism*, 192-220.

[42] Al-Atawneh, "Is Saudi Arabia a Theocracy?", 728.

bureaucratization, religious scholars officially took the form of the *Dār al-Iftāʾ wa-l-Ishrāf ʿalá al-Shuʾūn al-Dīniyyah* (Institute for Religious Legal Opinions and the Supervision of Religious Affairs; henceforth: the Dār al-Iftāʾ). The traditional mode of cooperation between religious scholars and rulers, even though Dār al-Iftāʾ conceded some part of its independent character through the institutionalization process, continued to be practiced in Saudi legislation until codification was implemented.

2. The Establishment of an Official Religious Institution (the Dār al-Iftāʾ)

After the discovery of oil in the 1930s, Saudi Arabia experienced economic prosperity that ignited the process of institutionalization and modernization. The institutional development of the state led to substantial changes in the country's economic, legal, political, religious, and social structures. During the 1950s, a series of administrative and institutional reforms were implemented, and this reform process also influenced the traditional structure of the religious establishment.[43] The institutionalization process of the *ʿulamāʾ* began with the official designation of Shaykh Muḥammad ibn Ibrāhīm Āl al-Shaykh as the State Grand Muftī on December 18, 1952. One year later, the Dār al-Iftāʾ was established under the authority of the Grand Muftī.[44] This was a significant development because the preceding centuries (1745-1953) of the establishment of interdependence between the *ʿulamāʾ* and the *umarāʾ* were given formal recognition.

Despite the fact that the institutionalization of the *ʿulamāʾ* undoubtedly rendered them more dependent on the Saudi government, the *ʿulamāʾ* nevertheless evolved into an institution that became an official authority within the state power structure. While the *ʿulamāʾ* previously were acting in a more independent way and might be an equal foci power compared to the *umarāʾ*, the establishment of the Dār al-Iftāʾ transformed the *ʿulamāʾ* into a state-controlled institution. In portraying the relationship between the Saudi government and the *ʿulamāʾ*, Yakar observes that "The Saudi

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43 Vassiliev, *The History of Saudi Arabia*, 395-430.

44 Emine Enise Yakar, *Islamic Law and Society: The Practice of Iftāʾ and Religious Institutions* (New York: Routledge, 2022), 26-28.

Government reinforced its control over the political sphere by incorporating the *ʿulamāʾ* into the government institutions".[45] Despite the Saudi government's attempts to formally restrict the political influence of the *ʿulamāʾ*, their active participation and role in state affairs continued throughout the 1950s to the 1970s. In the power struggle between King Saud and Crown Prince Faysal, for instance, the *ʿulamāʾ* issued an Islamic legal opinion that provided legitimacy to the enthronement of Crown Prince Faysal upon the grounds of the legal principle of general public interest (*maṣlaḥah ʿāmmah*).[46] Amid the political conflicts generated by the struggle between King Faysal and the Liberal Princes, the political and financial crises ignited by the Yemenī revolution and the wave of labor strikes throughout the 1960s, the *ʿulamāʾ* provided crucial support to the Saudi state by issuing *fatwá*s that legitimized and reinforced its authority.[47]

Within the triangle of the Saudi government, the Dār al-Iftāʾ and Saudi society, the Dār al-Iftāʾ emerged as a legitimating power in considering the religious nature of the state, so the privilege status of the previous *ʿulamāʾ* from the Āl al-Shaykh family and their associated religious power likely transferred to the official *ʿulamāʾ* who functioned within the Dār al-Iftāʾ. Two years after the death of Grand Mufti Shaykh Muḥammad ibn Ibrāhīm in 1969, a royal decree was

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45 Yakar, *Islamic Law and Society*, 27.

46 Mordechai Abir, "The Consolidation of the Ruling Class and the New Elites in Saudi Arabia", *Middle Eastern Studies* 23/2 (1987), 160; Alexei Vassiliev, *King Faisal of Saudi Arabia: Personality, Faith and Times* (London: Saqi Publications, 2015), 10-52; Yakar, *Islamic Law and Society*, 27-28; Serdar Kurnaz, "The Search for Originality within Established Boundaries – Rereading Najm al-Dīn al-Ṭūfī (d. 716/1316) on Public Interest (*maṣlaḥa*) and the Purpose of the Law", *Religions* 14/12 (2023), 1522-1540.

47 Saʿd al-Sharīf, "al-Umarāʾ al-aḥrār wa-tajribat al-niḍāl al-waṭanī (al-Qism al-thānī)", *al-Ḥijāz* (Accessed December 13, 2025); Abir, "The Consolidation", 155-162; Nabil Mouline, "Enforcing and Reinforcing the State's Islam: The Functioning of the Committee of Senior Scholars", *Saudi Arabia in Transition: Insights on Social, Political, Economic and Religious Change*, ed. Bernard Haykel - Thomas Hegghammer - Stephane Lacroix (Cambridge: Cambridge University Press 2015), 54.

issued to reconfigure the Dār al-Iftāʾ.[48] Two new agencies, the Hayʾat Kibār al-ʿUlamāʾ (Broad Senior of *ʿUlamāʾ*; henceforth: BSU) and the al-Lajnah al-Dāʾimah li-l-Buḥūth al-ʿIlmiyyah wa-l-Iftāʾ (Permanent Committee for Scientific Research and Legal Opinion; henceforth: CRLO), were formed and incorporated into the structure of the Dār al-Iftāʾ.[49] The aim of this reconfiguration was likely to provide a more hierarchical mode of operation within the structure of the institution because the two agencies do not work independently from each other; rather, they work in a cooperative manner. Nonetheless, the institutionalization process of the Dār al-Iftāʾ was completed with the reintroduction of the office of the Grand Muftī in 1993. The office of Grand Muftī had been suspended for almost two decades after the death of Shaykh Muḥammad ibn Ibrāhīm in 1969. After the reconstruction of the office of Grand Muftī, Ibn Bāz was designated Grand Muftī and served as the permanent chairman of both the BSU and the CRLO until his death in 1999. The reestablishment of the office means the recentralization of the official practice of *iftāʾ* conducted by both the CRLO and the BSU because the two agencies were placed under the authority of the office of the Grand Muftī. After the death of Ibn Bāz, Shaykh ʿAbd al-ʿAzīz ibn ʿAbd Allāh Āl al-Shaykh was appointed Grand Muftī, and he is still in this position.[50]

The mode of operation within the structure of the Dār al-Iftāʾ was determined by Royal Decree A/137. The BSU is established as the highest religious authority that promulgates ultimate legal decisions related to Islamic legal issues and as the advisory body that provides assistance to the king on matters of common law issues.[51] The CRLO is an influential body that provides appropriate research materials for discussions and debates conducted by the BSU. Additionally, the CRLO

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[48] The configuration of the Dār al-Iftāʾ was one of King Fayṣal's reform policies, which were identified in his "Ten Point Reform Program", but it could not be put into practice because of Grand Muftī Shaykh Muḥammad ibn Ibrāhīm's charismatic personality and broad institutional power. King Fayṣal did not to desire to intervene in the existing religious establishment with the intend of obtaining the support of the *ʿulamāʾ* to initiate and actualise a range of innovations and reforms. Yakar, *Islamic Law and Society*, 28-29.

[49] Royal Decree A/137 (1971).

[50] Yakar, *Islamic Law and Society*, 31-45.

[51] Royal Decree, A/137 (1971), Article 3.

conducts the practice of *iftāʾ* related to micro level issues (e.g., everyday religious questions). If the issue directed to the CRLO is beyond its field of competence, a research report is prepared by the CRLO's members and submitted to the BSU with the intent of issuing an Islamic legal decision (*qarār*).[52] Almost all decisions concluded by the BSU could be traced back to research prepared by the CRLO. After the reestablishment of the office of the Grand Muftī, the Dār al-Iftāʾ has been presided over by the Grand Muftī. As the president of the Dār al-Iftāʾ, the Grand Muftī assumes the responsibility of opening and chairing sessions held within the institution. Additionally, if a clear majority is not constituted in the process of issuing a *fatwá* or a *qarār*, the vote of the Grand Muftī has a decisive authority.[53]

The office of Grand Muftī, the BSU and the CRLO constitute the Dār al-Iftāʾ, which is the highest official authority in issuing a *fatwá* or a *qarār*. These three agencies, although having different roles and duties, function in a cooperative and hierarchical manner in issuing a *fatwá*. Article 45 states:

> The Holy Qurʾān and the Sunnah (Traditions) of God's Messenger shall be the source for *fatwás* (religious advisory rulings). The Law shall specify hierarchical organization for the composition of the Council of the Senior ʿUlamāʾ, the Research Administration, and the Office of the Muftī, together with their function.[54]

Even if the incorporation of the *ʿulamāʾ* into the state administrative structure gives the impression that the influence of the *ʿulamāʾ* has diminished in legal and political areas, the *ʿulamāʾ* obtained official authority through the institutionalization process. Al-Atawneh observes:

> … via [the *ʿulamāʾ*s] incorporation, the *ʿulamāʾ* increased their influence over official policies and governmental circles. In other words, by holding official positions, the *ʿulamāʾ* became players from within the power structure. Had they remained external to the [Saudi] government, their influence would have diminished.[55]

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52 Royal Decree, A/137 (1971), Article 4, 6.

53 Yakar, *Islamic Law and Society*, 53-55.

54 Royal Decree A/90 (1992), Article 45.

55 Al-Atawneh, "Is Saudi Arabia a Theocracy?", 729.

The Dār al-Iftāʾ, the official hub of the *ʿulamāʾ*, is the highest interpretative mechanism of Islamic legal sources; thus, it continued to exercise an influential role in all legal and religious areas before the codification.

Given that the legal system of Saudi Arabia was grounded in Islamic law, the Dār al-Iftāʾ unquestionably emerged as the main authoritative institution in the legislative area. Article 55 specifies:

> The king shall rule the nation according to the Sharīʿah. He shall also supervise the implementation of the Sharīʿah, the general policy of the State, and the defense and protection of the country.[56]

Despite the fact that Article 55 designated the king as the main authority in applying Islamic law, it alluded implicitly to the interpretative authority of the Dār al-Iftāʾ in making legal regulations because it was responsible for deciding whether any issue raised by either the king or the Saudi government was fully compatible with Islamic law. If the orders did not comply with Islamic law, they were mainly categorized under the scope of religious heterodoxy (*bidʿah*) that needed to be prohibited.[57] Additionally, before the codification, the Dār al-Iftāʾ emerged as the legitimating authority of Saudi government policies. Article 7 states:

> Government in the Kingdom of Saudi Arabia derives its authority from the Book of God and the Sunnah of the Prophet (PBUH), which are the ultimate source of reference for this Law and the other laws of the State.[58]

The legitimacy of the Saudi government was unequivocally grounded in its compliance with the principles of the main sources of Islamic law. At this juncture, the Dār al-Iftāʾ provided religious legitimacy to government policies. For instance, in response to major political crises –including the violent seizure of the Kaʿbah in 1979, the deployment of American troops in Saudi Arabia during the First Gulf War in 1990, the Arab-Israeli peace process of 1993-1995, and the public demonstrations of 2011– the Dār al-Iftāʾ provided legal

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[56] Royal Decree A/90 (1992), Article 55.

[57] Sümeyra Yakar, "The Consideration of Bidʿa Concept According to Saudi and Iranian Scholars", *Mazahib Jurnal Pemikiran Hukum Islam* 19/2 (2020), 234-239.

[58] Royal Decree A/90 (1992), Article 7.

legitimacy to the Saudi government by endorsing its political policies through *fatāwá*.[59] The *fatāwá* therefore had two main functions in Saudi society. In the first instance, they were used as a legitimating mechanism with the intent of providing a green light to Saudi government policies. In the second instance, they were applied as a legislative source in issuing regulatory rulings in the absence of authoritative regulations and laws.

In the legal system of Saudi Arabia, both religious and governmental authorities played active roles in the legislative process during the precodification period. The Saudi government, which included the king and his representatives, was the visible actor in the legislative process, while the Dār al-Iftāʾ appeared to play an invisible role because of its prelegislative function. In reference to the authority of the Saudi government in the legislative process, Article 67 states the following:

> The Regulatory authority shall be concerned with making regulations and bylaws in order to attain welfare and avoid harm in the State affairs in accordance with the general principles of the Sharīʿah. Its powers shall be exercised according to provisions of this law and the Law of the Council of Ministers and the Law of the Shūrá Council.[60]

In applying to the principle of public interest (*maṣlaḥah*), the Saudi government was authorized to enact legal regulations through royal decrees. Article 70 specifies, "Regulations, international agreements, treaties and concessions shall be approved and amended by Royal Decrees".[61] It appears that the legislative authority was formally vested in the Saudi government, but the Dār al-Iftāʾ emerged as the main institution in reviewing whether the relevant legal regulation was compatible with the general principles of Islamic law. In alluding to the role of the prelegislative mechanism of the Dār al-Iftāʾ, Royal Decree A/137 specifies the following:

> [The BSU] express[es] legal opinions based on the Sharīʿah regarding matters submitted it to by the king (*walī al-amr*) and

[59] Emine Enise Yakar, "The Influential Role", 46, 52.

[60] Royal Decree A/90 (1992), Article 67.

[61] Royal Decree A/90 (1992), Article 70.

> recommend[s] legal advice on religious matters [in order] to facilitate the king's decisions.[62]

Recommendations and legal opinions generally manifested in the form of *fatāwá* or *qarār* issued by the Dār al-Iftāʾ. It was therefore possible to state that *fatāwá* assumed a legitimating role in the process of legislation. Both the Dār al-Iftāʾ and the Saudi government were therefore designated as legislative authorities in making legal regulations.

The legislation procedure in Saudi Arabia sometimes proceeded intermittently through a two-tiered institutional mechanism, combining executive regulation by the Saudi government with sharīʿah-based validation by the Dār al-Iftāʾ. Royal decrees and *fatāwá* therefore came into play as two constituent components in the legislative process. The first was grounded in the authority of the Saudi government, whereas the second was allocated to the Dār al-Iftāʾ thanks to its authority in the jurisprudence of Islamic law. Nonetheless, the two components, although the role of *fatwá* lost its visibility in the legislative process, complement each other. Examining the transformation of *fatāwá* into legal regulations through royal decrees might more explicitly reveals the substantial role of *fatāwá* in the legislative process of the Saudi legal system before the codification period.

3. Complementary Role of *Fatāwá* in the Precodified Legal System

Since its establishment, the Dār al-Iftāʾ has played an active role in the legislative process on contentious matter encompassing criminal law, ethics, health, family, and ritual practices. Some regulatory laws were formulated through the cooperative and complementary efforts of both the Dār al-Iftāʾ and the Saudi government. In considering the cooperative mode of the operation, royal decrees explicitly reflected the influence of the Saudi government, while *fatāwá* clearly revealed the role of the Dār al-Iftāʾ. The former provided the state authority to *fatāwá*, and the latter furnished it with religious legitimacy.

Within the scope of Islamic law, a *fatwá* does not normally have any binding authority; it provides only a legal opinion or a ruling

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[62] Royal Decree A/137 (1971), Article 7.

regarding the issue directed by a questioner. In comparison with a court decision (*ḥukm*), which is binding on the attendant parties, a *fatwá* is deprived of coercive authority because of its nonbinding character.[63] Nonetheless, a *fatwá* could be transformed into a binding regulation through a royal decree issued by the Saudi government. The transformation of a *fatwá* into a binding regulation, namely, a royal decree, could be pursued in two different ways. In the first instance, a previously existent *fatwá* could be furnished with legal authority through a royal decree issued by the Saudi government when there was a need for a legal regulation in society. In the second instance, when no authoritative *fatwá* existed, the Saudi government sought a new *fatwá* from the Dār al-Iftāʾ to provide the religio-legal basis for the proposed regulation.[64] However, it is worth noting that this cooperation was functional before the codification period, since issues regarding the codes were solved after the codification.

In the context of ethical and moral issues, ritual practices, and issues regarding women, the existent *fatāwá* generally became binding regulations through royal decrees. In evaluating issues related to the participation of women in social and working life, the Dār al-Iftāʾ issued many *fatāwá* upon the ground of the legal principle of blocking illegitimate means (*sadd al-dharāʾiʿ*).[65] For example, the *fatāwá* that restricted intermingling between men and women was transformed into a legal regulation by Royal Decree 80/1631.[66] The legal reasoning behind the *fatāwá* rests explicitly on the assumption that the intermingling of unrelated men and women results in seduction and temptation in any society.[67] It was therefore prohibited for men and

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63 There is difference between court decisions (*aḥkām*) and Islamic responsa (*fatāwâ*). Muhammad Khalid Masud - Brinkley Messick - David S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation", *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. Muhammad Khalid Masud et al. (Cambridge, MA: Harvard University Press, 1996), 1-32; Yakar, *Islamic Jurisprudence*, 249-256.

64 Al-Atawneh, "Is Saudi Arabia a Theocracy?", 730.

65 Kamali, *Principles of Islamic Jurisprudence*, 397-409.

66 Royal Decree 80/1631(1980).

67 Abdullah Bin Baz, "Danger of Women Joining Men in Their Workplace", *English Translations of Majmoo' al-Fatawa of Ibn Bāzz* (Alifta, 2001), 1/418-427; "Fatwa No. 20397", *Fatwas of the Permanent Committee*, 24/398-399. (Accessed December 30, 2025). There are also examples of cases where the reasoning behind

women to coexist in many places, including hospitals, schools, universities, libraries and public transportation. Another issued *fatwá* regarding women driving a car became binding through a Royal Decree issued by the Saudi Ministry of Interior.[68] The prohibition was grounded upon the legal principle of blocking illegitimate means because its justification was to protect women from dangerous situations that might ensue from being alone in the company of an unrelated man (*khalwah*) while they drive. This regulation, however, was repealed by virtue of codification regarding Saudi Arabia's Vision 2030, which emphasizes women's participation in the workforce as the central requirement of a flourishing economy and a sustainable future. Nonetheless, the Dār al-Iftāʾ issued another *fatwá* that permitted women's driving.[69] Another relevant example could be the transformation of the *fatwá* regarding ethical behavior during the month of Ramadan into a legally binding regulation. During the fasting time in the month of Ramadan, the *fatwá* restrained the service of food to foreigners and prohibited dining in public. This *fatwá* became a legal regulation through the Royal Decree 4/174277.[70] Presumably acting pursuant to this royal decree, the Saudi Ministry of Interior continues to issue recurring annual circulars notifying non-Muslim residents in the Kingdom to respect the sanctity of the holy month of Ramadan. These circulars reiterate the observance of public fasting protocols –specifically abstaining from eating or drinking in public during daylight hours– out of consideration for the religious sentiments of the Kingdom's Muslim population.[71]

By the 1975s, the lack of codified and standardized criminal procedures had become a notable problematic issue within the Saudi legal system. Saudi judges (*qāḍī*s) demonstrated reluctance in

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fatwas can also, at times, represent a political stance. Reyhan Erdoğdu Başaran, "Does Being Rafidi Mean Shi`ite?: The Representation of the Kızılbaş Belief in the Sixteenth Century Ottoman Records", *Trabzon İlahiyat Dergisi* 6/1 (2019), 11-35.

68 Yakar, *Islamic Jurisprudence*, 60-70.

69 Wafa Alhajri, *Women's Perspective on Social Change in Saudi Arabia* (Indianapolis: Indiana University, Ph.D. Dissertation, 2020), 150.

70 Al-Atawneh, "Is Saudi Arabia a Theocracy?", 730.

71 Saudi Press Agency (SPA), "Wizārat al-Dākhiliyyah tadʿū l-muqīmīn min ghayr al-muslimīn bi-l-Mamlakah ilá ʿadam al-mujāharah bi-l-akl fī nahār Ramaḍān". Accessed December 18, 2025.

applying criminal penalties, especially prescribed punishments (*ḥudūd*), because of their severe nature. Consequently, some amendments were ordered regarding both judicial authority and legal procedures, regulating the implementation of these punishments. In the course of remediating the *sharīʿah* courts and criminal legal process, the Dar al-Ifta' issued a *fatwá* addressing the scope of judicial authority in cases of brigandage crime (*ḥirābah*), which was classified as one of the prescribed punishments.[72] This *fatwá* was subsequently transformed into a binding legal regulation through Royal Decree No. 8/1849, issued on 5 June 1982.[73] The legal procedure of the prescribed punishments was specified in the *fatwá,* which established the court as an authority in identifying the classification of the offense and then prescribing the corresponding punishment in accordance with the gravity of crimes. It also endorsed the king's authority in determining the final decision regarding the application of punishment. Under this procedure, the *sharīʿah* court initially issued its judgment, after which cases including severe penalties –particularly execution and corporal punishments– were submitted to the king as the ultimate authority, who either confirmed the punishment or returned the case to the court to review or reconsider.[74]

In the realm of health, an amendment regarding the law of fertilization, utero-fetal, and infertility treatment units was issued through Royal Decree No. M/76 in 2004. In the Royal Decree, Article 3 states, "In carrying out their activities, Fertilization, Utero-Fetal and Infertility Treatment Units shall abide by the *fatwá* issued by the Council of Senior Scholars in the Kingdom".[75] In consolidating the authority and influence of the Dār al-Iftāʾ, all the fertility treatment centers were obliged to pursue and obey the relevant *fatāwá* issued either previously or subsequently. All the relevant *fatāwá* were to be compiled by the Supervisory Committee and distributed to every fertilization, utero-fetal, and infertility unit in the country. These

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[72] The *ḥadd* crimes are known as the crimes whose penalties were already established in the Qurʾān and the Sunnah. Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge: Cambridge University Press, 2005), 38-66.

[73] Royal Decree No. 8/1849 (1982).

[74] Royal Decree No. 85 (1981).

[75] Royal Decree No. M/76 (2004), Article 3.

compiled *fatāwá* were to be provided to all employees who operate in these units, and each unit was required to maintain a dedicated file including the relevant *fatāwá*. In entrenching the binding aspect of these *fatāwá*, Article 3 also specifies that "All workers in the Fertilization, Utero-Fetal and Infertility Treatment Units shall read, understand, and abide by the *fatwá*s issued by the Council of Senior Scholars in the Kingdom."[76] The Royal Decree No. M/76 constituted a substantial legal regulation that conferred binding authority on relevant *fatāwá* issued by the Dār al-Iftāʾ not only retroactively but also prospectively. In this regard, the *fatwá* regarding oocyte cryopreservation, issued in 2019,[77] fell within the scope of prospective incorporation into a Royal Decree.

The *fatwá* was a product of coordinated institutional deliberation of the CRLO, the BSU, and the Islamic Medical Consultative Committee. Following a review of the research prepared by the CRLO and the report presented by the Islamic Medical Consultative Council, the BSU grounded its reasoning primarily in the protection of lineage, one of the highest objectives of Islamic law (*maqāṣid al-sharīʿah*), and the legal principle of blocking illegitimate means. The *fatwá* confined permissibility strictly to the retrieval, preservation, and future use of oocytes, ovarian tissue, and whole ovaries from cancer patients receiving gonadotoxic treatments.[78] It further revealed that the preservation of cryopreserved oocytes, sperm, or embryos for reproductive purposes after the completion of cancer treatment is illicit. For the preserved samples, two unequivocal rulings were articulated. In the first instance, the implantation of such samples into a uterus other than that of their original owner is categorically prohibited on the basis of the legal principle of blocking illegitimate means, as such implantation would lead to the mixing of lineages. In the second instance, the preserved samples must be exterminated in cases of treatment failure or impossibility, on the grounds of lineage protection.[79]

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76 Royal Decree No. M/76 (2004).

77 Cryopreservation means the retrieval, freezing, and storage of gametes and zygotes for future fertilization or implantation.

78 The Board of Senior ʿUlamāʾ, Decision No. 245 (2019).

79 The Board of Senior ʿUlamāʾ, Decision No. 245 (2019).

Despite the fact that the application of *fatāwá* is restricted only to cancer patients whose therapeutic courses may result in infertility, the decision represents a substantial advancement in the regulation of assisted reproductive techniques in Saudi Arabia. The limitation of permissibility to only cancer patients precludes any extension of the ruling to others who include patients receiving gonadotoxic medications for nononcological conditions, individuals suffering from infertility because of congenital factors, or indeed those seeking cryopreservation for so-called social reasons, namely, to mitigate the natural, age-related decline in fertility. In considering the evolving status of women in Saudi Arabia, an expansion of the scope of *fatwá* to additional categories of patients is, as Muaygil states, legally conceivable in the context of Saudi Arabia's transformative development strategy, Vision 2030, which explicitly seeks to enhance the status and rights of women.[80]

Certain legal regulations were produced by reciprocal cooperation and efforts between the Dār al-Iftāʾ and the Saudi government. In consideration of the inseparability of religion and law in Saudi Arabia, this cooperation evidenced consistency in the establishment of legal regulations. In particular, the consistency between royal decrees and *fatāwá* prevented potential discrepancies within the Saudi legal system during the precodification period. In the absence of legally binding statutory sources, the Saudi government appears to have sought to avoid legal dualism or normative conflict by ensuring uniformity and stability by means of transforming some *fatāwá* into royal decrees. Despite the fact that the role of the Dār al-Iftāʾ was obscured in the process of legislation, it conferred religio-legal legitimacy upon regulatory measures, either through its issued *fatāwá* or by issuing *fatāwá*. In considering Dār al-Iftāʾ's recognized status as the official religious authority among Saudi governmental institutions during that period, it functioned as a guardian against the enactment of legal regulations perceived as non-Islamic.

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[80] Ruaim Muaygil, "Motherhood, Fairness, and Flourishing: Widening Reproductive Choices in Saudi Arabia", *Cambridge Quarterly Healthcare Ethics* 32/2 (2023), 276-277.

Conclusion

Within the framework of the doctrine of *siyāsah sharʿiyyah*, an Islamic government is regarded as necessary for the implementation of Islamic law, the protection of religious values, and maintaining justice in the community. Consequently, governance and religion constituted inseparable components of the Saudi polity before the codification period. A defining characteristic of the Saudi legal system was the unification of religion and law, a feature that was sometimes explicitly and sometimes implicitly reflected in the legislative process. In considering the doctrine of *siyāsah sharʿiyyah*, authority was both historically and legally structured around the two principal actors (the *ʿulamāʾ* (religious scholars) and the *umarāʾ* (the Saudi ruling family). From the establishment of the Saudi state until the 1950s, these two loci of authority mutually shaped legal and political governance. Following the discovery of oil, the Saudi state experienced economic prosperity, which in turn catalyzed the process of institutionalization and modernization in the country. In this context, the Saudi government consolidated its position as the dominant representative of the *umarāʾ,* while the Dār al-Iftāʾ emerged as an official religious institution through which the *ʿulamāʾ* were formally organized and integrated into the state structure.

Despite the fact that the institutionalization of the *ʿulamāʾ* in the structure of the Dār al-Iftāʾ incrementally curtailed their autonomy and transformed them into an increasingly state-dependent institution, the official *ʿulamāʾ* functioning in this institution exercised considerable influence in the area of legislation prior to the codification period. In considering the religious foundations of the Saudi legal system, the Dār al-Iftāʾ, the highest religious authority in the state, exerted an obscure but operative authority in the legislative process. The transformation of *fatāwá* into binding legal regulations through royal decrees clearly attests to the substantive role of the Dār al-Iftāʾ in Saudi legislation. Certain royal decrees related to social and legal regulations can be traced directly back to the *fatāwá* issued by the Dār al-Iftāʾ.

The transformation of *fatāwá* into royal decrees was pursued in two different ways. In the first instance, the existent *fatāwá* could be directly transformed into legal regulations through royal decrees. This approach was most commonly employed in the context of legal regulations concerning social, ethical, and ritual issues. In the second

instance, the Saudi government could formally request the issuance of a *fatwá* from the Dār al-Iftāʾ with the intent of making a legal regulation. This second way was generally pursued in the formulation of royal decrees addressing controversial issues that required explicit religious legitimization.

Although the Saudi legislative process was characterized by a degree of opacity and that the Dār al-Iftāʾ was not formally designated as a regulatory (legislative) authority in the Basic Law of Governance, the derivation of some royal decrees from the *fatāwá* uncontrovertibly evinced the Dār al-Iftāʾ's de facto legislative authority. Given the central role of religion in both Saudi legislation and society, the Dār al-Iftāʾ and its *fatāwá* functioned, prior to the codification period, as both an active prelegislative mechanism and a legitimating authority within the Saudi legal system.

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