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Saudi Law Coming of Age*

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Abstract: This article introduces the sources of Saudi law, and the legal documentation made available in the last decade to conduct serious scholarship in a hitherto understudied field. It posits that the country embarked since the turn of the 21st century on a large legislative and judicial 'normalization,' understood as the production of both norms and of normalcy. It shows how the publication by the Saudi justice ministry of court decisions since 2007 allows, for the first time in the history of the country, a scholarly appreciation of the reality of law as applies to Saudi citizens, an appreciation based on binding, or quasi-binding, precedents. The article introduces the most significant sets of law reporters produced by ordinary courts and by Dīwān al-Maẓālim (the administrative court, known in English as the Board of Grievances). It discusses the arguments of the ministry of justice in defense of their systematic publication.

Keywords: Kingdom of Saudi Arabia, law, *sharī'a, fiqh, qānūn, niẓām,* case-law, law reporters, precedents, justice and judges, norms, normalcy, normalization

المستخلص: تَعرض المقالة مصادر القانون في المملكة العربيّة السعوديّة، والوثائق التي باتت في العقد الأخير متاحة لدراسة قانونيّة معمَّقة لهذا الحقل الذي لم يأخذ حقّه من البحث حتّى اليوم. وتشرح كيف أقدمت البلاد منذ بداية القرن الحادي والعشرين على إصلاح تشريعيّ وقضائيّ واسع، فتمّ إنتاج قواعد وضوابط قضائيّة ثابتة. وتُبيّن كيف أنّ نشر وزارة العدل السعوديّة لقرارات المحاكم منذ العام ٢٠٠٧ صار يسمح – وللمرّة الأولى في تاريخ البلاد – بتقدير علميّ لواقع القانون كما يُطبَّق في حياة المواطنين السعوديّين، موفِّرًا سياقًا في التحليل يستند إلى اجتهادات أو سوابق ملزمة أو شبه ملزمة. ويعرض البحث أهمّ المجموعات القانونيّة التي تصدرها المحاكم العاديّة وديوان المظالم، كما يناقش حججَ وزارة العدل لنشرها المنهجيّ لاجتهادات المحاكم.

الكلمات المفتاحيّة: المملكة العربيّة السعوديّة، قانون، شريعة، فقه، نظام، اجتهادات المحاكم، سجلّات ومجموعات، سوابق، العدالة والقضاة، قواعد، ضوابط، إصلاح

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For the hundred or so years since the emergence of a Saudi State, the law was mum. At the turn of the 20th century, a minor principality with a kingly ambition emerged from the victory of a tribe led by ʻAbd al-ʻAzīz ibn Saʻūd in the strategic city-oasis of Riyadh (*Riyāḍ* in Arabic is plural for *rawḍa*, garden, meadow). In this qualification of the city-oasis as 'strategic,' our approach is retrospective. At the time, it was just another raid in the middle of the Arabian desert, which went unnoticed in the region – the *ghazwa*, tribal conquest of time immemorial. The raiders were local protagonists, according to Saudi lore some sixty members of the followers of Ibn Saʻūd battling out their Rashīd rivals whom they dislodged from the oasis and its surroundings.[1] This was just another small, insignificant tribal war.

Benign neglect soon descended again on a resourceless, backward, sparsely populated and poor part of a forlorn desert. A generation later, the obscure leader who conquered Riyadh appeared on the world radar for the first time. ʻAbd al-ʻAzīz ibn Saʻūd led his supporters to the world famous cities of the Hijaz, hundreds of kilometers west of Riyadh, and occupied Mecca and Medina with little or no military resistance. This was in late 1924. Consolidation of his victory over the whole of the Hijaz, however, proved more difficult. The conquest of the larger city, the commercial port city of Jeddah on the Red Sea, required an almost year-long siege. It was finally overrun in late 1925.[2]

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1 In a celebration of the centenary of Saudi rule (in *hijrī* terms), then London-based daily *al-Ḥayāt* listed the names of those considered as 'pioneers' (*ruwwād*) for participating with then Emir ʻAbd al-ʻAzīz in the conquest of Mecca from Rashīd rule on 14 January 1902 (5 Shawwāl 1319). *Tarājim al-63 rajulan alladhīn shārakū al-Malik ʻAbd al-ʻAzīz fatḥ al-Riyāḍ,"* ('The biography of the 63 men who joined King ʻAbd al-ʻAzīz in the liberation of Riyadh'), *Al-Ḥayāt*, January 28, 1999. They are also listed in Manṣūr al-ʻAssāf, *'Kayfa ijtamaʻa maʻ al-malik ʻAbd al-ʻAzīz 63 rajulan?* ('How did 63 men join King ʻAbd al-ʻAzīz?'), *al-Riyādh*, September 22, 2012, along with a brief account of the event. The information comes from a book published by the ʻAbd al-ʻAzīz Foundation on the occasion of the centenary of the conquest of Riyadh, *al-Ruwwād*, (The pioneers), Riyādh: Dārat ʻAbd al-ʻAzīz, 1418/1999, translated to English by the Foundation as *King AbdulAziz and His Loyal Men: Who Restored Riyadh on the 5th of Shawwal 1319H 14th January 1902.* The book does not otherwise reference its sources. For a critical appraisal of the Saudi historiography of an obscure event, see Madawi al-Rasheed, "The Capture of Riyadh Revisited: Shaping Historical Imagination in Saudi Arabia," in *Counter Narratives: History, Contemporary Society and Politics in Saudi Arabia and Yemen*, eds. Madawi al-Rasheed and Robert Vitalis (New York: Palgrave, 2004), 183-200.

2 On the history of the period, see the almost contemporaneous Arabic account in Amīn al-Rīḥānī, *Najd wa mulḥaqātuh: Sīrat ʻAbd al-ʻAzīz Ibn ʻAbd al-Raḥmān Āl Faiṣal Āl Saʻūd, malik al-Ḥijāz wa Najd wa mulḥaqātihimā* (Beirut: Dār al-Rīḥānī, 1964; 1st ed. 1928). Hijaz conquest at 355-426; Ḥāfiz Wehbe, a close aide of ʻAbd al-ʻAzīz, *Khamsūn ʻāman fī Jazīrat al-ʻArab* (Cairo: Ḥalabī, 1960), Hijaz conquest at 57-66. More recent sources include Gary Troeller, *The Birth of Saudi Arabia: Britain and the Rise of the House of Saʻud* (Oxford: Routledge, 2003; First published 1976), Hijaz conquest at chapter 7; Madawi al-Rasheed, *A History of Saudi Arabia* (Cambridge: Cambridge University Press, 2001; 2nd ed. 2010), Hijaz conquest at 42-46.

Hijaz, the Western part of the Arabian Peninsula, had for several centuries constituted a highly symbolic trophy of the majestic Ottoman Empire because of the two Holy Cities, Mecca and Medina, so much so that their first occupation by a raid from the Sa'ūd tribe in 1803-4 triggered a major military campaign to return them to the control of Istanbul.[3] The 'first Saudi state,' as it came to be called, did not survive for long in the Hijaz. Mecca and Medina returned to the Ottoman fold in 1811. While a 'second Saudi State' was established in the mid-19th century, the Ottomans ensured that the Holy Cities remained firmly under their control. By the time the first World War broke out in 1914, an established and relatively sophisticated legal system was in place. Tribal law governed much poorer and backward Najd, but there is little trace of how it worked and how it interacted with the Islamic tradition. In the cosmopolitan Hijaz, in contrast, the law was as sophisticated as anywhere else in the Ottoman Empire, where the monumental Majalla had provided a codified corpus of the Islamic law of civil transactions for over half a century.[4]

Mecca had even known elections and legislation as an expression of popular will.[5] Legislative power was vested in the Majlis al-Mab'ūthān (the Ottoman Parliament) between 1908 and World War 1. It included elected representatives for Taef, Jeddah and the two Holy Cities. The most famous amongst the Hijazi representatives in the Ottoman capital was the son of the Sharīf of Mecca, 'Abdallāh, who became a member of the proto-federal Majlis in 1910.[6] For almost a decade, the Istanbul-based

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3 David Commins, *Wahhabi Mission and Saudi Arabia* (London: I.B.Tauris, 2006), is a remarkable account of the Wahhabi-Saudi dynamic from its start in the mid-18th century until the early 21st century, here cited in the Kindle Edition.

4 According to Frank Vogel, citing Lawrence's *Pillars of Wisdom*, the Ottoman Majalla was abolished by Sharif Husseyn of Mecca in 1915. *Islamic Law and the Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), 284. The separate cultural identity of the Hijaz remains to date, and has been underlined anthropologically by Mai Yamani, *Cradle of Islam: The Hijaz and the Quest for an Arabian Identity* (London: I.B. Tauris, 2004).

5 The Ottoman Constitution of 1876, suspended in 1877 and reinstated in 1908, established an appointed Senate and an elected Chamber of Emissaries/Deputies (*Majlis al-Mab'ūthān* in Arabic, *Meclis-i Meb'ūsān* in Turkish) which voted on laws initiated by government or by them (Arts. 53, 54). The ca 300 deputies were elected in two turns from all over the Empire, 'one deputy for every 50.000 males belonging to the Ottoman nationality.' (Art. 55) Competitive elections took place in 1908 and 1912. See Hasan Kayalı, "Elections and the Electoral Process in the Ottoman Empire, 1876-1919," *International Journal of Middle East Studies* 27 (1995), 265–286.

6 Timothy Paris, *Britain, the Hashemites and Arab Rule: The Sherifian Solution* (London: Frank Cass, 2003), 17. Faiṣal, 'Abdallāh's brother, was elected to the Mab'ūthān in 1912 for the city of Jeddah. On the Majlis, see Khaled Barazi, "The Majlis Mebusan (Meclis-i Mebusan): The Ottoman Parliament (1908-1912)" (PhD diss., University of London, 2002). Both Faiṣal (d. 1933) and 'Abdallāh (d. 1951) would later become kings, the first in Iraq and the second in the Transjordan Emirate which is now the Kingdom of Jordan.

legislature worked seriously as a parliament. The First World War brought a dramatic end to an extraordinary and little-known experience. There has been no national election in Saudi Arabia since.

Najd-dominated Saudi Arabia was a poor country, with pilgrimage its main cash resource. In 1938, oil was discovered in the territory ruled by ʻAbd al-ʻAzīz, who had been acclaimed ʻKing of Saudi Arabia' six years earlier.[7] Nothing after this would be the same in the country, or in the world, but the dominance of Saudi oil in the Middle East, where it was a latecomer, took another few decades to materialize.[8]

Oil was one tangible element that changed Saudi Arabia and the world. Another material discovery was no less momentous. Around the time black gold was found in Saudi Arabia by American companies, air conditioning systems had become widespread technology in the United States.[9] Increasingly sophisticated and increasingly affordable, air conditioning slowly gave life to the vast desert expanse in central Arabia. The modern history of the Middle East could hardly have been the same without the unexpected conjunction of these two discoveries that put Saudi Arabia on the world map. Oil provided increasingly important revenues, and air conditioning allowed life in the desert cities. There were a few thousand residents in

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7 A brief life résumé of Ibn Saʻūd by Amīn al-Rīḥānī shows his ascent as a 'conqueror' in the relevant title as his power extended:

> ʻAbd al-ʻAzīz ibn ʻAbd al-Raḥmān Āl Faiṣal Āl Saʻūd surged out of Kuwait as a conqueror [*ghāzī*] in winter 1318 AH (1901 CE) [and] acclaimed [*būyiʻa*, from *bayʻa*] the following year in Riyadh as Imam of the Wahhabis and the Emir of Najd. In summer 1339 AH (1921 CE) held a congress in Riyadh, which the scholars [*ʻulamāʼ*] of Najd and the chiefs of the tribes attended, and was named [*nūdiya*, literally called on] as Emir ʻAbd al-ʻAzīz, Sultan of Najd and its territories [*mulḥaqāt*, literally appendages]. On 25 Jumādā 2 1344 AH (15 January 1926), chosen in Mecca as the King of Hijaz. On 25 Rajab 1345 AH (19 January 1927 AD) the people of Najd named him, in a meeting held in Riyadh, King of Najd and its territories.

Amīn al-Rīḥānī, *Najd wa mulḥaqatuh,* as above in footnote 2. Formally uniting his kingdoms of Najd and Hijaz, he became officially 'King of Saudi Arabia' on 23 September 1932.

8 The first oil boom took place in 1973-4, when the price of a barrel of oil jumped from less than 20 USD in May 1973 to over 50 USD in January 1974. Over the past seventy years, it has fluctuated from 15 USD to 150 USD. See chart at http://www.macrotrends.net/1369/crude-oil-price-history-chart.

9 For a history of air conditioning in the United States, see Gail Cooper, *Air-Conditioning America: Engineers and the Controlled Environment, 1900-1960* (Baltimore: Johns Hopkins University Press, 1998); Salvatore Basile, *How Air Conditioning Changed Everything* (New York: Fordham UP, 2014). Engineer Willis Carrier is credited with the invention of the system in 1902, and Stuart Cramer was the first to use the term 'air conditioning.' It became widespread in the US after the second world war, See Basile, *How Air Conditioning Changed Everything*, 88-94.

Riyadh in the early 20th century.[10] It boasts over six million inhabitants in the early 21st century. Without air conditioning, it would have remained uninhabitable. This is also true for the country at large. From a million inhabitants in 1920, most of whom lived in the Ottoman Hijaz, the Najd-Hijaz combination counted over 30 million nationals in the second decade of the 21st century.[11] Without oil and air conditioning, Najd would have remained as empty and marginal as Antarctica or the Australian outback.

The country as we know it owes its existence to this odd and serendipitous combination. This dual facilitation of life in the vast Arabian Peninsula commanded its own unique logic. Money and technology kept law mum, and were better silenced since the King did not need to tax his subjects to govern. Executive power vesting in the absolute monarchy was not interested in rules that could bind it when expressed in writing. Nor did the traditional corps of the judiciary like the idea of seeing its diffuse power undermined by modern codes and statutes with which it was uncomfortable. The alliance of the Sa'ūd family in the executive with the Sheikh family in the judiciary, function of a revival of the first Saudi state in the 18th century in connection with the Wahhabi movement, made the issuance of laws a rarity and the reporting of court decisions inexistent.

The alliance between the Sa'ūds and the Sheikhs is special. It finds its root in the so-called Wahhabi call, a fundamentalist revival akin to some Protestant sects during the Reformation. The revival developed in the 18th century around Muḥammad ibn 'Abd al-Wahhāb (d. 1792). Ibn 'Abd al-Wahhāb's writings are numerous, and they were associated from early on with a minor Islamic school of law, the Hanbali school. There

[10] For figures of Riyadh population growth, see Majd Sultan Saad Ashwan, *The Population Growth of Riyadh City in Saudi Arabia* (PhD Diss., Durham University, 1990), 206, https://core.ac.uk/download/pdf/108360.pdf. The author's estimate of the Riyadh population in 1900 was 8,000. By 1930, it was still only 27.000, id., 207. See also next note for more figures.

[11] In 2017, the population stood at 32.7 million people, with Riyadh at nearly seven million. For data and projections, see www.worldometers.info/world-population/saudi-arabia-population. In 1970, the country's population was 5.8 million, in 1960 only four. The population of the Hijaz in 1928 was estimated at 1,000,000 people. In Najd, it was estimated at 300,000. Report on Ibn Saʿūd addressed to a 'Mr. Shaw' (possibly John H. Shaw), Division of Near Eastern Affairs, U.S. Department of State, 25 October 1928. The report breaks down the populations of the various regions, then under Ibn Saʿūd's domination, as follows: Hijaz, 1,000,000; Najd, 300,000; Shammar, 38,000; al-Hasa, 157,000; Asir, 1,000,000. Cited by Jeff Eden, "Did Ibn Saud's militants cause 400,000 casualties? Myths and evidence about the Wahhabi conquests, 1902–1925," *British Journal of Middle Eastern Studies* 46.4 (2019), footnote 22. The article also gives rich details on the conquest of the Hijaz and a rigorous assessment of the casualties in 'Abd al-'Azīz ibn Sa'ūd conquests, which Eden estimates at between 10,000 and 25,000.

are no Hanbalis extant outside Saudi Arabia and two adjacent countries, Qatar and some of the states of the United Arab Emirates.

The history of Hanbalism is even more obscure than that of Wahhabism.[12] Both are still awaiting their dedicated historians. On the strength of an increasingly well-researched field, leading Western historians and lawyers concur on the fact that the main contribution of ʻAbd al-Wahhāb was theological rather than legal.[13] One thing is certain in Saudi lore, and persists to the present: a structural alliance between the Saudi ruling family, that is the Saʻūd tribe, and the progeny of Muḥammad ibn ʻAbd al-Wahhāb, the eponymous Sheikh, whose descendants have become known as Āl al-Sheikh, the Sheikh's family, and staff the most important legal and judicial positions of the country to date. Some of the polemics between Wahhabis and non-Wahhabis are known, but they are theological-political rather than legal in nature.[14] For law as applied in the daily life of people, a different approach is needed.

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[12] For general discussion of Hanbalism as school of law and references, see Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: OUP, 2007), 112-3, 258-60. (Hereinafter *IMEL*) An annotated bibliography on classical Hanbalis can be found in Livnat Holtzman, "Ḥanbalīs," in *Oxford Bibliographies in Islamic Studies,* ed. Andrew Rippin (New York: Oxford University Press, 2015), http://www.oxfordbibliographies.com/view/document/obo-9780195390155/obo-9780195390155-0210.xml?rskey=e2phQD&result=1&q=hanbalis#firstMatch.

[13] Ibn ʻAbd al-Wahhāb's most famous tractate, *Kitāb al-Tawḥīd*, "[t]he Book of God's Unity, contains 67 brief chapters. This brief essay is of tremendous significance for the Wahhabi mission and the subject of enduring controversy between supporters and detractors. It represents the core of Sheikh Muḥammad's teaching and the foundation of the Wahhabi canon. The essay deals with matters of theology, ritual and the impact of actions and speech on one's standing as a true monotheist. It has nothing to say on Islamic law, which guides Muslims' everyday lives. This is a crucial point. One of the myths about Wahhabism is that its distinctive character stems from its affiliation with the supposedly 'conservative' or 'strict' Hanbali legal school. If that were the case, how could we explain the fact that the earliest opposition to Ibn ʻAbd al-Wahhāb came from other Hanbali scholars or that a tradition of anti-Wahhabi Hanbalism persisted into the nineteenth century? As an expert on law in Saudi Arabia notes, 'Ibn Abd al-Wahhab produced no unprecedented opinions and Saudi authorities today regard him not as a *mujtahid* in *fiqh* [independent thinker in jurisprudence], but rather in *da'wa* or religious reawakening... The Wahhabis' bitter differences with other Muslims were not over *fiqh* [jurisprudence] rules at all, but over *aqida*, or theological positions'." Commins, *Wahhabi Mission and Saudi Arabia*, above n.3, 12, citing Frank Vogel, above n.4, and Natana Delong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (London: I.B.Tauris, 2004).

[14] For an early polemic between Muḥammad ibn ʻAbd al-Wahhāb and his brother Sulaymān, see Commins, *Wahhābi Mission and Saudi Arabia*, above n.3, 22-28. Ḥusayn ibn Ghannām (d.1810) is the earliest chronicler of the Wahhabi movement, see for a lively polemic between Ibn ʻAbd al-Wahhāb and Sulaymān ibn Suḥaym, *Tārīkh ibn Ghannām* (known as *Rawḍat al-afkār wa-l-afhām li-murtād ḥāl al-Imām wa-taʻdād ghazawāt dhawī al-Islām*), ed. Sulaymān al-Khurāshī, 2 vols (Riyadh: Dār al-Thalūthiyya li-l-Nashr wa-l-Tawzīʻ, 2010), 388-401.

'Saudi Citizen Lambda' and the Law, ca 1926-2000

You are in legal distress, a Saudi citizen lambda – to use the expressive French expression *citoyen lambda*, meaning the average, ordinary citizen. To better appreciate the meaning of Saudi law for you in the last hundred years, imagine a dispute in 1920, in 1940, in 1960, in 1980, and in 2000. You were unable to amicably solve the dispute with your landlord, your associate, your spouse, or the government or one of its agencies or representatives. You turn to family, tribe, or friends for advice, possibly intercession and mediation. You know someone who is powerful, or so you think, since usually you know someone who knows someone. In theory you can go to the Emir of the region where you live, or even to the King. And you do so whenever you can, for this is the most powerful port of call for redress. But you are not the only one in the dispute who thinks he is plugged into power. Your landlord, associate, or husband also have access, and know someone, or someone who knows someone. Both of you make a plea to your respective power-plugged contact. If you are lucky, your someone prevails over the other party's someone. How, and how long the dispute goes on, you do not know.

A dispute in the last hundred years, be it with a landlord, a business partner, or the law, if not resolved amicably, would require that each party resort to his/her powerful connections, the Emir of the region where one lives, or even to the King. Both parties would make a plea to the respective power-contact. No rules govern how and how long the dispute lasts. Turning to severe judges may exacerbate the problem and the legal profession is not regulated.[15] Moreover, the decidedly lawyer-adverse Saudi judges dislike lawyers standing between them and the litigants, partly because they believe that such a parasitic profession did not exist in the classical world of Islam.[16] In fact, the judge may be right: lawyers are argumentative, and litigants are sometimes better served in simplicity.

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[15] The profession was not officially recognized until the enactment of Niẓām al-muḥāmāt, Law of the legal profession (literally law of lawyering), of 28.7.1422/15.10.2001. In this article, laws/statutes are not italicized, with capital only on the first word in English translation. Also, the footnote numbers in the text are not italicized for regular footnotes, but are italicized when the footnote provides the original Arabic word, as this helps the non-Arab reader from being constantly distracted by alien Arabic terms. For sources and citation of laws, see also below n. 27.

[16] It is the commonly received view that there was no profession of legal attorneys in pre-modern Islam, but it is wrong. The archival record shows that lawyers represented clients as a socially recognized expert group at some moments of the long history of Middle Eastern societies. For evidence of lawyers representing clients in court at the time of jurist Ibn Abī al-Dam (d.1244), see Mallat, *IMEL*, 407-8. The presence of lawyers as members of an established guild or profession is not attested, however, throughout history. In contrast to the testimony of Ibn Abī al-Dam in the 13th century, see on the absence of professional counsel in light of the 17th century court register in Tripoli-Syria, Mallat, *IMEL*, 83.

Yes, there is a judge, but do you know which judge you can go to? Judges have courts in sometimes nice buildings, but they are dour, and you hesitate to get a finger into a machine which you fear might pull you whole over. So how about turning to a lawyer? You have heard of lawyers of course, but the profession has not yet been regulated,[17] so the local self-described quack is as good as the heavily diploma-laden legal counsel. And you know that Saudi judges do not like lawyers.[18] The prevailing atmosphere in the country shows a decidedly lawyer-adverse Saudi judge. The judge may have a point: lawyers are argumentative, and litigants are sometimes better served in simplicity.[19]

Yet excessive animosity towards professional lawyers perceived as parasites and sharks is unreasonable. Slowly and surely, the profession grew, and it made increasing sense for peace of mind and for economic reasons to invest in the expert services of a lawyer rather than attend to the generally unpleasant, time-consuming, and elusive process in court. For issues that bear a whiff of international flavour, your foreign counterpart in some large venture, or the accountant you hired from New York or Kuala Lumpur, look at you with a puzzled eye when you say that the country works better without lawyers. Plus, you travel, as do your children, and you watch television, including American series which assail you with law, lawyers, police and district attorneys at the heart of quick-paced plots. Law matters immensely in the most powerful country on earth, which is also the historical protector of the Kingdom. Paid recourse to lawyers becomes necessary. As documents pile up and cases become ever more complex, even despondent judges slowly discover what their colleagues elsewhere experienced decades and centuries earlier: namely that expert legal counsel simplifies the life of busy judges by doing the ground work far more effectively than they have time for.

Distraught Saudi citizens in search of a solution that avoids taking the law in hand against their landlord, business partner or husband, quickly realize that the problem is not over by hiring the services of the newly regulated legal profession. Even the lawyers have little to rely on to advise their party.

Until 2007, lawyers could cite government regulations called *Niẓām*s, the closest equivalent to Arab and Western 'laws.' Saudi regulations or statutes are published pell-mell in the Official Journal, *Umm al-Qurā*. A few antiquated texts mention

17 See above n.15.

18 See above, n.16. See also my entry, "Attorney," *EI3*, online.

19 The 2001 law of the legal profession (above n.15) recognizes the right of any person to represent himself/herself in court (Art. 1). Non-lawyers may not represent clients in courts, but there are exceptions in a few cases, including 'spouses, sons in-law, brothers in law, and relatives to the fourth degree.' (Art. 21).

'Emiri piasters' and 'guineas,'[20] while modern statutes increasingly adopt the Anglo-American style of defining words at the outset followed by the articles. Until 2007 there were no published cases one could turn to, in a context where judges by and large were hostile to lawyers. The recently recognized lawyers had to rely on their own experience exclusively, for they simply could not find a precedent to read, save those highly sought, rare reports that established law firms paid court registrars to photocopy for them. They could not normally cite them in his arguments before the court. The system was hermetically sealed to law reporting *qua* precedents.

There was a fleeting exception. A set of court decisions by the most famous court in the Kingdom, entitled after its medieval counterpart the 'Court or Board of Grievances, Dīwān al-Maẓālim,' appeared briefly in large oblong volumes.[21] The 20th century Saudi Dīwān is definitely a court, and it pioneered law reporting in the Kingdom.[22] Still, the Dīwān law reports published between 1977 and 1981 were a short-lived exception, and the experience was quickly discontinued.

We do not have a documented explanation for the publication and abrupt cessation of the reports. Yet in these early Dīwān reports, we have an intriguing but limited set of judgments, professionally and competently published by its secretariat. Someone inside the Dīwān must have thought that it was a good idea to publish the judgments. Judges emulate judges elsewhere, and it is a human foible that a judge shares his best opinions with colleagues, and enjoys seeing his hard work recognised by the public, the members of the legal profession in particular. Eight centuries after

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20 Commercial Law of 1350, full citation below n.22, e.g. Art. 588 (*qursh amīrī*), Art. 601 (*guinea*), probably in reference to the Egyptian currency of the time.

21 '*Dīwān*,' princely court, and '*maẓālim*' plural of *maẓluma*, a single act of injustice. The collection available for the early decisions of Dīwān al-Maẓālim consists of ten volumes, all published by the secretariat of the Dīwān. It includes a first series of seven volumes, *Majmūʿat al-mabādi' al-sharʿiyya wa-l-niẓāmiyya* (Collection of Legal and Statutory Principles), covering 1397–9 (1977–9, four vols.), 1400/1980 (two vols.), and 1401/1981 (one vol.). This series includes miscellaneous, mainly administrative, disputes and features full decisions. The second series is 'criminal' and includes three volumes. It is entitled *Majmūʿat al-qarārāt al-jazā'iyyā* (Collection of Criminal Decisions). Part one is on *qaḍāyā al-tazwīr* (Cases of Forgery) in 1400/1980 and part two is on *qaḍāyā al-rashwa wa-muqāṭaʿat Isrā'īl* (Bribery Cases and Cases of Boycott of Israel) also in 1400. A third volume covers *qaḍāyā al-rashwa wa-l-tazwīr* (Bribery and Forgery Cases), again, for 1401/1981. For the Dīwān and its more recent decisions, see below, section entitled *Majmūʿa.*

22 The reference of the 11th century scholar Māwardī was the main source of information on the Dīwān for lawyers. In the more discerning legal scholarship, have no judicial archive on the work of the classical Dīwān al-Maẓālim. For a comparative discussion, see my "A Middle Eastern tradition," in *The Oxford Handbook of Comparative Administrative Law*, eds. P. Cane et al., forthcoming (Oxford: UP, 2020).

the manuscript law collections of the Anglo-Norman tradition, four centuries after the structured dissemination of printed law reporters of the common law, 200 years after Jean-Baptiste Sirey and the Dalloz brothers started relaying the decisions of the French courts authoritatively and systematically, over one century after the emergence of Ottoman court decisions applying Ottoman codes across the Empire, including the not-yet-Saudi Hijaz, we have the first set of Saudi case-law, released by the Dīwān in ten large volumes. Even though these were not exciting reports, dealing mostly with minor administrative corruption and crime matters, it was the first tangible reference Saudi lawyers and citizens could refer to so that they compare it with similar precedents. The experience lasted four years; then case reporting by the Dīwān stopped. The law went back to being mum for another two decades.

Norm, Normal, Normalization

In 2007, the scene changed dramatically. A set of three volumes of law reports was published by the Ministry of Justice: the *Mudawwana*.[23] This collection of law reports marks a special moment in the legal history of Saudi Arabia. Its publication broke the deafening silence on a large scale, for reports came from the general courts on all kinds of disputes, and not from the administrative court like the Dīwān over a marginal collection of limited topics. By breaking the taboo, Saudi law started on the long path of normalization. I use the terms 'normalize' and 'normalization' in this article as derivation of both 'normal' as the ordinary, usual, expected course for a court to adjudicate and solve a conflict, and 'normative' as the expression of social norms. Norm is common to both normal and normative. 'Normalize and normalization' derive from the first meaning, as the thin, simple expression of normalcy. The second use refers to rules by which society lives, close to 'normative' in a thicker sense. With Saudi cases made available to the public and to the professionals of the law, judges, lawyers, law professors and notary-publics, norms emerged that created precedence, and, therefore, more order, more regularity, more stability, and more accountability. With established norms, citizens could rely on a solid framework of reference for their affairs, both normal and normative.

The two meanings complement each other. Normalization as used here means making an abnormal situation normal, and it also means the effective congregation of norms as common values expressed first and foremost in the rule of law. Saudi Arabia as a nation-state lived most of the 20th century with few laws and no public expression of how the judiciary worked simply because judgments were not published. This does not mean that it lacked norms in the absolute; no society on earth ever does. But a

[23] See below, section on *Mudawwana*.

modern nation-state must pass written laws, and it must provide its citizens with a point of steady reference for the application of their rights under the law before an independent judiciary. Enactment of laws is the normal and normative expression of a modern state, an everyday function which it took the Saudi government a long time to adopt.

Something more happened in Saudi Arabia in the first decade of the new century. Rule of law was lacking because no ordinary person knew where to find a precedent when s/he felt unjustly treated. Our lambda Saudi citizen was increasingly unable to find redress in traditional informal recourses. By publishing its court records, Saudi Arabia normalized the law which Saudi judges applied to solve everyday conflicts. This included Islamic law.[24]

This article documents the Saudi journey to the rule of law by studying, in tandem, these two necessary functions of the modern nation-state: legislation in all public walks of life and published court decisions. Their cumulation offers what is known as the rule of law.

Normalization by Legislation

The very first law was passed in 1350/1931 just before the regions of Najd and Hijaz were united officially as the Kingdom of Saudi Arabia. This law was the Law of commercial courts, also known officially as the Commercial code, consisting of 633 articles.[25] Another law was passed in 1360/1941, a Code on buildings and roads in 160 articles.[26] It was yet another decade before the next law was enacted in 1370/1950.[27] Between 1371/1950 and 1391/1970 only 20 laws were adopted. In the decade that

[24] See the section entitled 'Courts, judges, case-law' in Mallat, *IMEL*, above n.15, 61-85, for the argument of the normalization of law in the classical age when studied from the perspective of the judge dispensing justice. The availability of court decisions in the classical age is no less portentous for the whole field. Through the prism of the pre-modern courts, in the argument developed in part one of *IMEL*, Islamic law becomes 'normal,' in other words similar in essence to other legal systems in the world.

[25] Al-Niẓām al-tijārī (Commercial law or Commercial code), also officially entitled Niẓām al-maḥākim al-tijāriyya, Law of commercial courts of 15.1.1350/18.5.1931. *Umm al-Qurā* is the official journal of the Kingdom of Saudi Arabia (www.uqn.gov.sa), which is authoritative for the text and date of publication of laws. Part of it is now searchable, but the more useful site for Saudi legislation is organized in the Bureau of Experts at the Council of Ministers (*Hay'at al-khubarā' bi-majlis al-wuzarā'*), at www.boe.gov.sa, under *Majmū'at al-anẓima al-sa'ūdiyya* (Collection of Saudi Laws). Unless otherwise mentioned, all laws are cited as they appear on the site of the Bureau of Experts.

[26] Niẓām al-mabānī wa-l-ṭuruq, Law of buildings and roads, 1360/1941 (no precise date other than the year). It consists of 160 articles.

[27] Niẓām jibāyat al-zakāt, Law on collecting the zakāt tax, 21.1.1370/1.11.1950. (Three articles).

followed, 1391-1400/1970-1980, the process accelerated, with 33 laws passed. The next two decades witnessed the enactment of fifty laws, at a pace of two laws every year.

In 1412/1992, a qualitative breakthrough took place when the King promulgated three basic laws: the Law of governance, the nearest one to a constitution; the Law of the regions; and the Law establishing an appointed parliament.[28] The 1992 breakthrough should not be underestimated, even if mostly 'ornamental constitutionalism.'[29] Thereafter legislating became a normal feature that would accelerate and reinforce the commanding power of the rulers while responding to increasing societal needs for precise norms embodied in legislation, with an average of ten laws passed every year. In 2013-14, corresponding to Hijra year 1435, twenty-two laws were passed. Eighteen laws were enacted in 1436, and sixteen in 1437, as opposed to the total of twenty laws in the decade preceding 1990, and very few earlier.

Why did rulers traditionally averse to legislation accept a near constitutional revolution in 1992? Why was the time-honoured argument that 'Islamic law is our constitution' no longer sufficient?

Islamic law had resisted codification for centuries, but not for lack of technical expertise. In fact, abstract legal rules of a binding nature stood well within the social and cultural horizons even before the Arabs of the Hijaz set out on the conquest as Muslims under the leadership of Prophet Muḥammad and his successors. Not only had Byzantium become the heart of the Roman Empire, but Constantinople had also become the city where the legal tradition flourished most spectacularly in Justinian's Corpus Juris Civilis (529-34). In the North-Western Arab part of the Empire, present-day Syria, a 'Syro-Roman Code' operated for the local Christian majority in a deep-rooted Middle Eastern legal tradition. Codification was rooted almost two millennia earlier in Hammurabi.[30] It was not a technical issue which prevented early codification of the revealed law of Islam. We must seek the explanation elsewhere.

According to received scholarship, the Arab polymath Ibn al-Muqaffa' (d.756) proposed codification to Caliph al-Manṣūr (r.754-775) who rejected it.[31] The account is sparse, and even if we suppose that the Caliph opposed, for mysterious personal reasons, an idea which would have strengthened his rule and clarified

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28 Al-Niẓām al-asāsī li-l-ḥukm, Basic Law of governance (hereinafter "Basic Law") was decreed by King Fahd on 27.8.1412/1.3.1992, together with two other laws, the Law on the Consultative Assembly (Niẓām majlis al-shūrā), and the Law on provinces (Niẓām al-manāṭiq).

29 'Abdulaziz Al-Fahad, "Ornamental constitutionalism: The Saudi Basic Law of governance," *The Yale Journal of International Law* 30.2 (2005), 376-96.

30 For discussion of early Middle Eastern codes, see Mallat, *IMEL*, above n.15, 16-32, 239-43.

31 Ibn al-Muqaffa', *Risāla fī l-ṣaḥāba*, in *Āthār* (Works) (Beirut: Maktabat al-Ḥayāt, 1966), 354.

the law to commoners, the question remains: if Manṣūr was blindsided then, why did codification not happen anywhere in the world of Islam in the 10th, 15th, or 18th centuries? Was the end of the 19th century codification of Islamic law in the various statutes known as Tanẓīmāt (derivation from *niẓām*), including the famous Ottoman Majalla, just another wholesale adoption of European law in the Middle East, in the case of Majalla the Napoleonic Code? And a late one at that?

One answer to the quandary is factual. The 'total absence' of codification is not an accurate statement of the history of Islamic law. Scholars of the Mamluk period, mid-13th to early 16th century, studied decrees and orders that prefigured fiscal and land laws.[32] In the 16th century the first Ottoman *qānūnāmeh*s, some of which elaborate texts on a wide range of issues, including criminal law, were decreed by the Sultan.[33] This comforts the idea that codes required state centralization, even though the pre-Ottoman sultanates and caliphates may not have lasted long enough for state institutions to produce binding legislation, disseminate it, and organize a judiciary to apply it. The question remains not quite fully answered. Despite the lure of codification, the law remained in the hands of classical jurists, who wrote the law treatises, including treatises that resembled legislation in the form of collections of maxims forming a genre known as *Ashbāh wa naẓā'ir*, 'similarities and precedents,' many of which were integrated in the 1876 Ottoman Civil Code. The genre included a famous early text by the Hanbali jurist Ibn Rajab (d. 1393), tellingly entitled *al-Qawā'id*, or maxims, rules.[34] *Ashbāh* and *Qawā'id* are two names for the same genre, what we would call in modern American legal parlance a 'restatement.'

In other counter-factual scholarship, a large book by a historian versed in Greek and Arab legal scholarship produced in 2007 a new explanation to the absence of codification in the formative period of Islamic law, albeit one which stands on its head.[35] *Islamic Imperial Law* suggests that the *Ur-fiqh* scholar Muḥammad al-Shaybānī (d. 804), who was the foremost disciple of Abū Ḥanīfa (the eponym of the largest Sunni school, the Hanafi school, d. 767), wrote a series of treatises directly inspired by Roman law in its Byzantinian garb. In other words, in this theory, codification did happen but in the shape of a core set of legal books by Shaybānī, providing the platform of code-like works on which the whole edifice of Hanafi law was erected.

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32 See for examples the pioneering work of Sato Tsugitaka, *State and Rural Society in Medieval Islam: Sultans, Muqta's and Fallahun* (Brill: Leiden, 1997).

33 See Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V.L. Ménage (Oxford: OUP, 1973).

34 Ibn Rajab, *al-Qawā'id*, ed. Ṭāhā Sa'd (Beirut: Dār al-Kutub al-'Ilmiyya, 1988; 1st ed. Cairo, 1971). The most famous *Ashbāh* for Hanafis is by Ibn Nujaym (d. 1563).

35 Benjamin Jokisch, *Islamic Imperial Law: Harun-al-Rashid's Codification Project* (Berlin: De Gruyter, 2007).

The problem in this elaborate theory is that Shaybānī's works hardly read like a code. Nor did the vast Sunni corpus allegedly built on them read like a running comment on civil codes originating in Byzantium and Arabized by Shaybānī and his successors. Shaybānī's works are profoundly different from what lawyers see in the civil codes tradition as we recognize it today, namely a comprehensive set of abstract legal rules meant to bind the judge. They cannot be described as 'codes,' or even 'restatements.' Shaybānī's books are *fiqh* works. *Fiqh* books are nearer to textbooks than to statutes, so the alleged filiation is at best a hard-to-track derivation.

The argument of *Islamic Imperial Law* is intriguing and innovative, but it ultimately fails. Shaybānī is no Cambacérès, so there is another puzzle in the response to what will always be a difficult, negative question of why there is no Arab or Muslim code before the modern period. Why is an intellectual genre or an institution missing for centuries? Why was there no novel in Europe before *Don Quixote* in Spain or *Moll Flanders* in England? Why was there no Parliament legislating anywhere in the world before the Enlightenment? *Mutatis mutandis*, why was there no codification in the Islamic legal tradition?

Formulated in the negative, questions of such massive scope are frustrating. As in other negative questions, the explanation of why a particular legal genre did *not* exist is naturally elusive. In an earlier work, I had concluded that a single explanation was insufficient.[36] Some other explanations could be the stubbornness of a caliph; the power of the legal scholars who were jealous of their prerogatives and stifled codification; or, if we were to adjust it to *Imperial Law* and accept its conclusions, Islamic law was a late Roman law Arabized codification, translated and *transformed* into the works of Shaybānī. The fact remains that no significant codification emerged in the Middle East before the 'reception' of European private law in the form of codes, ordinances and statutes. This is why codification is correctly associated with the colonization process in the 19th century, thence my characterization of this distinctly new period as 'the age of codification' in the history of Islamic law.[37]

Whatever the response to this elusive question, the Middle East followed European suit in the middle of the 19th century in terms of codification. Istanbul and Cairo started passing laws and codes massively, with a much stronger Islamic law flavour in the Ottoman Empire than in an Egypt occupied and traversed by foreign domination. Legislating became part of the modern State. For Arab and Middle Eastern countries, laws enacted by the government, irrespective of whether it represented the people, became the norm.

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36 Mallat, *IMEL*, above n.15, 239.

37 Id., 123-5; 240-3.

In Saudi Arabia, we have a counterfactual entry point to the puzzle of the missing codification. Legislation took a hundred years to become the norm in Saudi Arabia. To the daunting question, 'why did Islamic law not produce codes over a full millennium of sophisticated jurists?' 21st century Saudi Arabia offers an unprecedented live experiment to historians and comparatists. Systematic legislation in Saudi Arabia emerged decisively as a set of rules expressed by the government to bind society only in the last decade of the 20th century. The codification of law in the modern Saudi state gives us an active laboratory for the negative question of why codes were missing for so long. The epiphany of Saudi law is upon us.

What triggered it? Taking stock empirically of the absence of legislation for the long stretch separating the unification of the Kingdom in the late 1920s through the last decade of the twentieth century, I can propose one pivotal date for our enquiry. In 1992, the closest to what we recognize as a constitution was passed. It emerged as a governmental response to two major shocks to society. The first shock was occasioned by the Iraqi invasion of Kuwait in the summer of 1990 and the subsequent defeat of Saddam Hussein by a large coalition mainly based in Saudi Arabia. 'Desert Storm' freed Iraqi-occupied Kuwait in March 1991. The three basic laws that stood for the constitutional organization of the current Saudi state were enacted soon afterwards, in March 1992 for the main one, the Basic Law of governance. Domestic and international pressure opened up Saudi society to what, in a negative formula, the 1789 French Declaration of the rights of man said a constitution had done to France: 'A Society in which the guarantee of Rights is not secured, and the separation of Powers determined, has no constitution.'[38]

However decorous the 1992 Saudi constitution on 'Rights' and the 'separation of Powers,' the enactment of a symbolically momentous law broke a taboo carried through centuries, a taboo which was reinforced by the resistance of the Hanbali-Wahhabi corps of scholars in Saudi Arabia to the executive branch sharing their law dispensation job. Enacting the three basic laws on governance was the expression of the ruling family's power. The Saudi rulers did not intend them to be a trigger for democracy as representative government or to see decision-making shared by the three branches. But it opened a breach in the Saudi reluctance to legislate. Law enactment as the central function of government had become normalized.

In sum, normalization, understood as regular enactments of laws by government, followed from the dyke breaking with the three basic laws in the post-Desert Storm trauma. Codification was still halting in the last decade of the 20th century, but the legislative pace accelerated further after the second shock.

[38] Art.16, Déclaration des droits de l'homme et du citoyen (1789).

The second shock was of course 9/11. The disruption caused by the first Gulf War was followed by another major trauma, an even more characteristically global one. On September 11, 2001, the involvement of fifteen Saudi nationals in the hijacking of four civilian planes used as missiles against a mostly civilian population in mainland America, brought the Middle East to the heart of the United States. In Saudi Arabia, the legislative floodgates opened under the impulse of King ʿAbdallāh (r. 2005-15). Law as statute became a key tool for governance. In the decade and a half that followed 9/11, major statutes were passed, changing forever the Saudi legal system. Some were large, expansive codes, covering important subjects such as civil and criminal procedure. Others were more limited in scope. Even when the field appeared circumscribed, such as the law regulating the legal profession, legislation read more as civil law codification than as a statute in the English style. The 2001 Law of the legal profession, for instance, was meant to be comprehensive, with forty-three articles running over twelve full pages. It compared well with similar laws regulating the profession elsewhere in the Arab world, from where it was obviously adapted. But it also included an 'Executive list' in over fifty pages of didactic and sometimes redundant commentaries. Saudi *niẓām*s were often accompanied by an 'Executive list,'[39] a relatively detailed commentary on every article. The Law on lawyering and its Executive list reinforced the need for the establishment of common norms for the profession of lawyers who were finally recognised as *bona fide* part of the larger world of the rule of law, until then confined mostly to judges.

Normalization here is as thin as it is basic and takes place over two hundred years after the Enlightenment revolutions in the West and one hundred and fifty years after the first codes of the Ottoman Empire. The Kingdom of Saudi Arabia was no longer what it had been for a century, *a sui generis* island in the sea of nation-states. The Saudi citizen was finally served by his rulers with the equivalent of 'laws' and 'codes' common in the rest of the world.

Normalization by Law Reporters

The enactment of new laws is insufficient for normalization of the law as lawyers understand it. A curious citizen, a legal practitioner, or even a judge, does not have enough material to rely on even if laws proliferate. S/he needs judicial precedents to understand how they apply in daily disputes, and Saudi Arabia had only the short and frustrating set of reports of Dīwān al-Maẓālim of the late 1970s to go by. Moreover, these early reports were old, fragmentary, and generally insignificant.

When the interdiction of law reporting broke in 2007 with a first series of

[39] *Lāʾiḥa tanfīdhiyya*, which could also be translated as Executive note.

published reports called the *Mudawwana*, the breach in the interdiction for the courts to publish decisions was the official doing of the High Council of the Judiciary, with material help from the Ministry of Justice. By all concurring accounts, King ʻAbdallāh was also behind the move. Publication would be inconceivable had he not spearheaded the push. Despite a strong injunction by the first Law of the judiciary as early as 1975 to see court decisions published,[40] courts and commercial reporters had been effectively prohibited from doing so. In all likelihood, law reporting by Dīwān al-Maẓālim for a brief period did not sit well with the government. A decade later, the caution collapsed. Suddenly, in 2007, came the Mudawwana.

Mudawwana

In 2007, a ʻGeneral directorate for recording and publishing judgments,'[41] created inside the Ministry of Justice, published three volumes of Saudi case-law, about 1000 pages in total, under the title *Mudawwanat al-aḥkām al-qaḍāʾiyya* (Reporter of Judicial Decisions).[42] The first pages of the first volume mention a slew of distinguished judges and scholars as participants in the effort and include a general description of the collection as "a selection of judicial decisions and judgments issued by the courts, which have become final and effective."[43]

The next front page explained the ʻobjectives of recording and publication of the decisions:

1. Contributing to serving Islamic law[44] and its rules[45]
2. Rooting the proper application of Islamic law[46] to streamline jurisprudence[47] in like cases[48]

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40 Art. 89 of *Niẓām al-qaḍāʾ* (Law of the judiciary) of 14.7.1395/23.7.1975.

41 *al-idāra al-ʻāmma li-tadwīn wa-nashr al-aḥkām.*

42 Citation here is M., followed by volume number and page. The Mudawwana can be found on several sites, including islamfeqh.org. Note that *mudawwana* simply means notebook, register, here reporter. (Mudawwana is also the official name of the Family law of Morocco, passed initially in 1958 and significantly revised in 2004. See Mallat, *IMEL*, above n.15, 400-2.)The most famous *Mudawwana* in the Arab legal tradition is the mostly hadith-based compilation of the eponym of the Maliki School, Mālik ibn Anas (d. 795), whose *Muwaṭṭaʾ* was edited by his student Saḥnūn (d. 854) under the name *al-Mudawwana al-kubrā*, Sixteen vols, Cairo: 1906 and later editions.

43 *ʻal-ikhtiyār min al-qarārāt wa-l-aḥkām al-qaḍāʾiyya al-nihāʾiyya – muktasibatan al-qaṭʻiyya – al-ṣādira ʻan al-maḥākim,'* M.I.8.

44 *fiqh.*

45 *qawāʻid.*

46 *sharīʻa.*

47 *taqrīb al-ijtihād.*

48 Similar facts, *al-waqāʾiʻ al-mutamāthila.*

3. Enriching judicial work and helping those who work in it to figure out decisions which agree with legal rules[49]
4. Helping experts and those concerned to draw comfort in court decisions[50] by putting judicial cases within their reach
5. Explaining and presenting the achievements of the judiciary to the public to spread the rule of law[51] (M.1.9)

All the keywords can be found in this lapidary set of objectives. The Minister of Justice, flanked by the top judges, was releasing judicial decisions that "together, represent a classical and modern legal judicial treasure which is priceless."[52] The expected reference to Islamic law both as *sharī'a* and *fiqh* doubled up with the more technical *qawā'id*, rules, maxims, another word for the aforementioned *ashbāh* genre within the field, and *ijtihād*, a loaded word historically used here in its modern, Western understanding as case-law or French 'jurisprudence.'[53]

The fifth objective of the Mudawwana editors was creative in vocabulary. "Spreading judicial awareness for the public," as the literal translation would have it, is an awkward formulation. Rule of law in its good-old fashioned Diceyan English sense is the result of the consistency of judgments in the real life of the law. The publication of case-law is an essential condition to achieve it. Publication of law reports, in which top officials were involved, is an essential condition to achieve consistency and normalization of law.

The Ministry of Justice was directly involved in the massive law reporting effort. It helped choose the cases selected in the Mudawwana's three volumes in 2007-8, whose general editor was the Minister himself.[54] The selection, covering cases decided over four decades, is telling of what the editorial team saw as the most important judgments in the Kingdom for that period. With the exception of the decisions of Dīwān al-Maẓālim, which did not figure in the Mudawwana, the general courts were well represented, and the compilers gave special attention to the opinions that

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49 *al-qawā'id al-shar'iyya.*

50 *Li-l-isti'nās bi-aḥkām al-qaḍā'.*

51 *basṭ wa-'arḍ mukhrajāt al-qaḍā' li-l-'umūm bughyat nashr al-wa'ī al-qaḍā'ī.* Literally: 'Exposing and presenting the achievements of the judiciary to the public with the goal of spreading judicial awareness.'

52 *mā yaṣdur 'anhā min aḥkām qaḍā'iyya innamā yushakkil fī majmū'ih tharwa fiqhiyya wa-'adliyya lā tuqaddar bi-thaman.* M.1.10.

53 Elsewhere in the Arab Middle East, *ijtihād al-maḥākim* simply means the courts' judgments, the exact equivalent of case-law in the Anglo-American tradition, and *jurisprudence* in France.

54 'Abdallāh ibn Muḥammad ibn Ibrāhīm Āl al-Shaykh (author of the *Taqdīm* (presentation) to the Mudawwana, M.1.10), and the son of a key figure of the modern Saudi state.

reached the High Judicial Council.[55] The Mudawwana provided a unique sampling of the workings of Saudi courts over a meaningful period. It was no longer sufficient, however. Two other massive Saudi law reporters helped define the rule of law in its normalized expression as case-law.

Majmūʿa

The cases decided by Dīwān al-Maẓālim are of paramount importance for commercial and administrative law.[56] These are important fields by any measure, but there is also a unique history for the Dīwān.[57] Having paved the way for law reporting forty years earlier, Dīwān al-Maẓālim could not remain too far behind those provided by the editors of the Mudawwana. The law reporters made available by the Dīwān were substantial.[58] Over three decades after releasing a first set of law reports in 1977-81, it published series upon series of administrative, commercial, and criminal law reports (Hereinafter Majmūʿa).[59] Some of these volumes were over 1000 pages long,

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55 *Majlis al-qaḍāʾ al-aʿlā*.

56 On the Dīwān, in classical law and in Saudi practise, see the two chapters on administrative and commercial law in *The Normalization of Saudi Law*.

57 Dīwān al-Maẓālim is referred to as 'DM' or 'Dīwān' hereinafter. In English 'Board of Grievances,' or 'BG.'

58 In the present article, the decisions are cited as DM, then the case number (also the reference that guides the reader to precedents when occasionally mentioned in the Dīwān's judgments), followed by the date mentioned in the Majmūʿa as '*tārīkh al-jalsa,* the date of the session,' the volume when available, and the page numbers of the decision. The date of the session is not necessarily the date when the judgment is issued, or even when it is final, for there is the appeal process for 'verification' (*tadqīq*) before the decision is final. The date mentioned by the Dīwān allows the reader to reference the decision precisely enough in terms of the day it was issued, but not when it was final. All these mentions appear on the front page of the report. For example, the first case of the Dīwān cited below n. 68, is as follows: DM, case 5894/2/q of year 1427, Majmūʿa 1428, (*idāriyya*, *ikhtiṣāṣ),* 7.3.1428, 1, 55-60, refers to: Dīwān al-Maẓālim, the case number of year 1427, the Reporter year, the set in the collection of administrative (*idāriyya*) decisions (as opposed to the commercial and the criminal sets, published separately), and the subdivision within the set (here *ikhtiṣāṣ*, competence), the date of the session, the volume number, and the first and last page of the report. The citation of the DM cases is cumbersome, but I have not found a simpler way for the reader.

59 *Majmūʿat al-aḥkām wa-l-mabādi*' (Collection of Decisions and Principles). They were published in book form, and can also be consulted on the Dīwān's internet site, www.bog.gov.sa. At the time of writing, the collection covers nine years (1427-1435/2006-2015), in addition to a compendium of twelve volumes, covering 1408/1987 to 1423/2002. The following set covering 1434/2012-3 was published in 1437/2015-6. For year 1435/2013-4, the collection available on the internet does not include the front page, but it was probably published in 1438/2016-7. The first year, 1427/2006, includes five volumes, with eleven rather haphazardly arranged subsections. The following years are more coherently arranged, with each including three large volumes for, respectively, administrative, commercial and criminal cases.

providing a wealth of cases for practitioners and researchers.[60] The Dīwān had also established an upper chamber within it, *hay'at al-tadqīq* (council of verification) as the Dīwān's court of appeals, and it also published its decisions.[61]

What was not expressly said in the Dīwān's massive effort to disseminate its judicial decisions surfaces in a particularly useful feature of its law report headings. In the Mudawwana, the heading included the subject of the case,[62] its type,[63] and a few lines summarizing the main legal points in the case.[64] While both classical and modern Saudi law do not formally recognize precedent, the Saudi judicial system increasingly operated like courts in the civil law system, where higher court decisions are not formally judicially binding, but where practice shows great deference to them by litigators and judges. Nonetheless, the Dīwān occasionally cited precedents and its decisions were innovative in this added rubric. In some of these decisions, the report indexed 'similar decisions,' a surprising indication of the importance that the court gives to its previous judgments.[65]

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60 The introduction available on the Dīwān's official site notes that need for publication was mentioned in the Law of the Dīwān (Art.21 of Law of Dīwān al-Maẓālim, 19.9.1408/1.10.2007). In a brief text, the president of the Dīwān mentions in particular the support of King 'Abdallāh in the push to normalize law reporting. DM, '*kalimat ma'ālī al-ra'īs*' (a word by His Highness the president of the Dīwān), 'updated' 10.7.1436/29.4.2015. The president of the Dīwān until 16.6.1436/6.5.2015 was Sheikh 'Abd al-'Azīz Muḥammad al-Naṣṣār. He was followed by Sheikh Dr. Khālid ibn Muḥammad Yūsuf.

61 The decisions of the *hay'at* are usually published together with the Dīwān's original decision, but they were collected and published in 1435 in one volume, *Qarārāt hay'at al-tadqīq mujtami'atan* (Decisions of the Council of Verification Meeting in Plenary Session), Riyadh: Ministry of Justice, 1435/2013, which mentions in its introduction that the Council meeting as plenary issued 1600 "verification opinions."

62 *mawḍū' al-ḥukm.*

63 *taṣnīf.*

64 *mulakhkhaṣ.*

65 The 'similar decisions' section is illustrated in DM, case 5894/2/q of year 1427, Majmū'a 1428, (*idāriyya, ikhtiṣāṣ*), 7.3.1428/26.3.2007, 1, 55-60. The report lists four 'similar decisions' and their case-number. (at 57) The case is about the competence of the Dīwān in a dispute over a bill due to a commercial company by a hospital the status of which is unclear. After an investigation which did not show that the hospital had an 'administrative' character, the Dīwān rejected its competence to adjudicate the dispute. It relied mainly on the legal rule '*al-aṣl fī l-umūr al-'āriḍa al-'adam*' (the principle is for ad hoc (*'āriḍ*) issues is not to matter) (Id., at 69). The court explained that "any party connected with the government presents an ad hoc (*'āriḍ)* issue which needs to be proven." (id.) Here the hospital was not proven to have an administrative character, so the Dīwān declined its competence.

For our purposes, this mention in the Dīwān's decisions of "like cases"[66] was unusual in Islamic law and is not found in cases extant from the pre-modern period.[67] Even if one notes effective deference to precedents in the classical age, this was never acknowledged, and none of the other Saudi courts made a formal reference to precedents. The other unusual feature in the 'similar reports' section in the Dīwān's reporters was that the four judgments mentioned were not even formally cited in the judgment but appeared under separate heading to draw the reader's attention to consistency sought by the court through listing cases 'similar' to the case at hand. The Dīwān reporter was not shy to assert its care for consistency with previous decisions.

Aḥkām

Normalization of law in Saudi Arabia in the release of court decisions since 2007 was a conscious, assertive and self-paced process. It was not the product of commercial reporting, but the work of the courts' administration with the support of the Minister of Justice.[68]

In 1436/2014-5, a new level of normalization was reached. The Ministry of Justice published a large set of law reports from the normal courts of the Kingdom, *Majmūʻat al-aḥkām al-qaḍāʼiyya* ('Collection of Judicial Decisions,' hereinafter Aḥkām).[69] This was a remake of the Mudawwana, except that it covered one year only, 1434/2012-13, and was massive. Its thirty volumes, including two volumes of useful indexes on sources, brought an extraordinary wealth of material to the understanding of Saudi law in the daily life of the citizen. Regardless of the pace of subsequent publication of law reports, normalization by 'judicial awareness,' to borrow the term from the introduction to the Mudawwana, was made irreversible by the Aḥkām. After the present article was completed, another set of nation-wide decisions was published in

66 *aḥkām mushābiha*, 'similar reports,' at 57.

67 Mallat, *IMEL*, above n.15, 61-86 and literature cited.

68 Some Saudi internet sites started paying legal services, and fora for lawyers proliferated. This might have been an additional reason for the government to step in with a professional, official point of reference with which private sites can hardly compete. The Dīwān site provides also a search engine.

69 *Majmūʻat al-aḥkām al-qaḍāʼiyya* (Collection of Judicial Decisions), thirty volumes, all of which are available on the internet at the website of the Saudi Minister of Justice, www.moj.gov.sa. I use Aḥkām, or A. for first citation (to differentiate this Majmūʻa from the DM's), followed by the date, and the page numbers at the beginning and end of the report. Textual citations, however, are formatted as A., the volume number, and the page cited. For example, A.2.112 refers to Aḥkām, volume 2, page 112.

fourteen volumes.[70] It is clear that a system of law reporting was being put in place. The published decisions provide inexhaustible research and litigation material for scholars and practitioners. It will be years before the forty-four volumes of the first and second year of Aḥkām are digested.

In the introductory page of the first set of Aḥkām appear the names of the most important judges of the realm.[71] The list is followed by a thoughtful and elegant presentation[72] written by the Minister of Justice doubling up as the head of the High Judicial Council.[73] The Minister of Justice's presentation of Aḥkām is bound to become a classic for those interested in the aggiornamento of Islamic law. It may well be quoted by future generations in the way we still quote, two centuries after their release, Portalis and his colleagues for the Preliminary Discourse on the French Civil Code of 1801[74] and Jawdat Pasha and his colleagues' seminal preface to the Ottoman Majalla of 1876.[75]

As in all such exercises where the presenter realizes he is introducing a legal landmark, there is an element of generality and superlative rhetoric associated with a keen sense of innovation and the firm belief in a future rooted in law. Justice Minister 'Īsā's Presentation is deliberately literary and erudite. It includes a reflection on the state of law in the Kingdom with special attention to classical law and the 'precedents' established in the general courts, and an unexpected comparative dimension.

Naturally Islamic law lay at the centre of the preface, which starts with a mild criticism of those who oppose publication of court decisions on the pretext of preserving the legal tradition:

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70 *Majmū'at al-aḥkām al-qaḍā'iyya* (Collection of Judicial Decisions), fourteen volumes, published by the Ministry of Justice in 1438/2016-7 for judicial year 1435/2013-4, released on the internet in early 2018, also fully downloadable at www.moj.gov.sa.

71 The list includes the names of ten judges sitting in general (*'āmma*) and criminal (*jazā'iyya*) courts in the Kingdom, and two civil servants (A.1.7-8). Separation with the Dīwān, whose judges do not appear on the list, is clear.

72 '*taqdīm*' (Presentation), A.1.11-19, hereinafter Presentation.

73 Sheikh Dr. Muḥammad ibn 'Abd al-Karīm ibn 'Abd al-'Azīz al-'Īsā, signing also as the *ra'īs hay'at al-ishrāf al-'adlī li-majmū'at al-aḥkām al-qaḍā'iyya* (President of the council for the judicial overseeing of the collection of judicial decisions), A.1.19.

74 Portalis, Tronchet, Bigot-Préameneu, and Maleville, "Discours Préliminaire du Premier Project du Code Civil, " in *Motifs et discours prononcés lors de la présentation du Code Civil* (Paris: Firmin Didot, 1855), 1-23. Original text published in French revolutionary calendar 'an ix' (year nine), corresponding to 1800-1.

75 Aḥmad Jawdat, Sayf el-Dīn, Al-Sayyid Khalīl, and Aḥmad Khalūṣī, Preface in Arabic in Salīm Rustum Bāz, *Sharḥ al-Majalla* (Commentary on the Majalla), 3rd ed. (Beirut: al-Maṭba'a al-'Arabiyya, 1923) (original 1889), 9. The Preface is dated Muḥarram 1286/April 1869. The Majalla was promulgated seriatim between 1869 and 1876. See Mallat, *IMEL*, above n.15, 248-9.

> The houses of justice[76] teem with the rules of the compelling *sharīʿa*. Perfection in the matter[77] comes from its dissemination for all to benefit from. All will benefit in the way you will see [in these reports]. Court registers[78] have stood still[79] for years, because of a justification that had some value then. (A.1.12)

Not any longer, he promptly added.

> These law registers mirror by judicial interpretation the rules of the *sharīʿa*. The judgments are detailed and [are now] available. If some constitutions[80] have taken pride in refusing to publish judgments by arguing that constitutions are above getting written down, that they are superior, and that they take root in the national spirit, our judiciary finds its legitimacy in our constitution. In that it is more respectful and loftier. (A.1.12)

We need to decode these texts. The Presentation includes two criticisms, one against those who oppose publication on the pretext of somehow preserving Islamic law, the other against those who suggest that a constitution is sufficient to instill a national spirit for the rule of law without the need to make court decisions public. Against the first criticism, the Minister explains that publication of judgments strengthens Islamic law. Against the second criticism, he probably means that the availability of a constitution (here the three Basic laws of 1992) does not diminish the importance of published judgments. As he establishes the foundation for official law reporters and puts them under his wing, the Minister purports to write as a universal man, both in terms of fundamental values, and as the bearer of a comparative set of laws made in Saudi Arabia for the world to assess. In the register of basic values, the Presentation insists on the equality of all, even 'citizens and residents,' before the courts:

> Every party takes guidance from under the canopy of our general courts,[81] citizens and residents alike. Our courts have produced over the course of an honourable history a judicial wealth striking root in the sciences of the law,[82] and

[76] '*ṣurūḥ al-ʿadāla*,' i.e. the courts.
[77] i.e. understanding the universal portent of the *sharīʿa.*
[78] Registers, *sijillāt.*
[79] '*ẓallat turāwiḥu*,' lit. remained spinning (i.e. closed on themselves), and therefore unknown.
[80] *dasātīr.* This should probably be a reference to countries rather than to constitutions.
[81] *qaḍāʾunā al-sharʿī.*
[82] *ʿulūm al-sharīʿa.*

> the understanding of its objectives,[83] with judicial knowledge and trust guided by God and reason, without duplicity in criteria, neither for the difference in religion, or sect, or preference, or hatred, or proximity, or distance. All are equal before the justice of the law.[84] (A.1.11)

'All are equal before Islamic law.' The reality, we know, is less rosy, and Sheikh 'Īsā's equanimous words may not stand up to serious scrutiny: the Islamic law which applies to Buddhists and Christians, and the Sunni Hanbali law which applies to Saudi Shi'is or even Shafi'i or Hanafi Najdis, is not theirs in the first place. But his yearning for universalism sounds genuine. From his perspective, Saudi law must equally serve citizens and residents.

How is Islamic law to be applied in his view? In addition to some general verses of the Qur'an advocating fairness in judging,[85] the Minister cites a hadith traded by 'Abdallāh ibn Mas'ūd:

> From now on, the judge to whom is submitted a case must decide on the basis of the Book of God; if the issue is not addressed in the Book of God, he must decide according to the way his Prophet decided; if the issue is neither addressed in the Book of God nor in the decisions of the Prophet, let him judge in the way the Good People[86] have judged. And if the issue is not addressed in the Book of God, or in the decisions of the Prophet, or in the way Good People have judged, let him judge[87] in accordance with his own opinion. (A.1.17)

The hadith is well-known, but the Minister's understanding of 'the Good People' unusual. Traditionally these are understood as Companions of the Prophet, including the first four Caliphs whose daily practices are sometimes referred to as precedents. Instead, the passage that follows builds an elaborate architecture with judges and courts issuing precedents. 'Abdallāh ibn Mas'ūd's hadith, the Minister continued,

> orders the person who judges to stick to the decisions of the Good People – in the principles and the precedents they set, adapts his decisions[88] to it in the

83 *maqāṣid.*
84 *fa-l-jamī' amām 'adl al-sharī'a 'alā ḥaddin sawā'.*
85 Citing Qur'an 5:8, 4:58-9, at A.1.11.
86 *al-ṣāliḥūn.*
87 *yajtahid*, decides creatively.
88 *ijtihād.*

> discretionary area,[89] and establishes in these decisions innovative principles and precedents. (A.1.17)

This remarkable passage concludes the central argument in the Presentation on the role of the judges as establishing precedent, and through precedent, 'the idea of a 'judicial record,'[90] also described as 'the legislation of the judiciary.'[91] (A.1.18) Both the Council of senior scholars[92] and the King had called for it, the Minister hastened to add in his preface. (id.)

The legitimacy sought is not only internal. By defending support of the judiciary by way of the written constitution, and, in segue, support by the judiciary of written, public, case-law; and by anchoring the process politically by reference to the King and a council of well-established scholars, the Presentation closes the full loop of the Saudi establishment's internal consensus. This, in turn, allows the Minister to go beyond the internal tradition by breaking the strangest of taboos in the centralized Kingdom and by linking current endeavors to the world of comparative law.

Breaking the taboo appears towards the end of the Presentation in the following, extensive passage:

> When there is a legislative text, the judiciary is bound by what it says. In its absence the judiciary decides creatively,[93] forming precedents and principles,[94] each of them taking its course, and all entering the battle scene of terms-of-art and concepts,[95] each [judge] bringing his contribution, doctrinally and judicially, especially to modern law.[96] Legal doctrine has flights of thought[97] which are hard to encompass and bring to order. The sum total of these concepts, whether precedents or principles or legislation,[98] -- and a similar orbit for the different degrees of jurisdiction--, are necessary for the norms of a modern state.[99] (A.1.18-9)

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89 *minṭaqat al-farāgh*, literally the void areas which, for jurists from across the modern Middle East, is a key concept for governance in matters considered outside the ambit of classical law. For the concept as developed by the leading Iraqi Shi'i jurist Muḥammad Bāqir al-Ṣadr (d. 1980), see my *Renewal of Islamic law* (Cambridge: CUP, 1993), 124-5.

90 *al-mudawwana al-qaḍā'iyya*

91 *taqnīn al-qaḍā'*.

92 *hay'at kibār al-'ulamā'*.

93 *yajtahid.*

94 *sawābiq wa-mabādi'*.

95 *mu'tarak muṣṭalaḥāt wa-mafāhīm.*

96 *fiqhan wa-qaḍā'an, wa-lā siyyamā al-fiqh al-qānūnī.*

97 *subuḥāt fikr*.

98 *sawābiq aw mabādi' aw tadwīn*.

99 *min mustajiddāt nuẓum al-dawla al-ḥadītha*.

The judicial marketplace of competing ideas is as plain a novelty in Saudi Arabia as can be. So are 'precedents and principles.' 'This reality,' the Presentation continues, is, 'incontrovertible.'[100] It entails a positive mention in the Presentation of another taboo, federalism:

> We even find today what is known as 'federal state'[101] which, through local courts, renders different judgments in the various states.[102] Without this scientific dialogue and the diverse applications, such beneficial variety and all the options it offers would not have been possible. Let the explorer[103] take what he finds useful; another will not rob him by remaining trapped in his opinion, or school, or concept, with the idea that there is only one way.[104] The dissenter will not escape from the dominant view under any pretext.[105] The door of interpretation is only closed by strange and rueful understanding, for there is a huge difference between 'creating' and 'fabricating.'[106] (A.1.19)

This lyrical passage comes at the end of the Justice Minister's Presentation. The whole Presentation tends to be literary, written in an elegant and studied style, but this passage is particularly sophisticated, and I have taken some liberty in the translation to render some of the original nuances. In the presenter's many departures from conservative and traditionalist rhetoric, least expected is the panegyric of the federal system as laboratory of law. This should not read, of course, as a political agenda for federalism. Still, this Presentation turns at this stage into a telling moment, where the topic of federalism, a taboo in the Kingdom, is addressed by a high official of the law in public and in a positive way as a field worthy of exploration. The mention in the same breath of federalism and the open gate of *ijtihād*, is surely a first in Middle Eastern law.

There are more windows that the presenter opens. Writing as a comparative lawyer, Sheikh 'Īsā expressly mentions both the Anglo-Saxon and Civil law 'schools.' Reference to the Anglo-Saxon school is double-edged. He seems to distance himself from it, on account of "'what had been established,' or 'the stability of the judiciary'," [107]

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100 *wa-l-ḥāl 'alā mā bayyannā fīhā min annahu lā mushāḥḥa 'alā mithlihā.* (A.1.19)

101 *'al-dawla al-fidirāliyya'* (Quotation marks as in original).

102 *aqālīm*, regions.

103 *mustaṭli'*.

104 *minhā mā lā yasa' fīh illā maslak wāḥid.*

105 *laysa li-l-mukhālif al-khurūj 'an al-sā'id al-muttafaq 'alayh taḥta ayy dharī'a.*

106 *wa-bāb al-ijtihād yusadd 'an al-gharīb wa-l-mustankar, wa-farqun bayn al-ibdā' wa-l-ibtida'* (Quotation marks as in original).

107 *"al-mustaqarr 'alayhi' aw 'istiqrār al-qaḍā'"* (A.1.15) (Quotation marks as in original).

and compares it with the concept of rule of law as practice, the Maliki *'amal*. (A.1.15) Both references may be problematic in the way he writes about them. Maliki *'amal*, which is generally considered in scholarship as customary law, and the amalgamation of the civil and common law traditions, are left unexplained. Regardless of the distance painted between Saudi practice and the Anglo-Saxon-cum Maliki schools, the central message in the Presentation rests firmly on the key role of precedent in modern Saudi law:

> This Majmū'a includes a series of decisions which are binding precedents.[108] He who looks into them will not miss the interpenetration of rules, and further examination will show differences in facts. What is shared in the chains linking [the judgments in] the Collection needs to be published, out of commitment to the principle of publication, and as a record for the history of the judiciary. It is a right we owe to all.
> (...)[109]
> All these judgments acquire the qualification of precedent even if they are later reversed. The first judgment is precedent per se, whereas the corresponding facts in the judgment - which you can see in this Collection - is precedent by derivation, and 'derivative rule is decided in the same way as the original from which it derives.'[110] The subsequent judgment is precedent in what it brings anew, in the same way that the previous judgement it cancels was a precedent when first laid down. Its description remains true in the judicial history which delivered it as precedent for judicial principles. All judicial principles need to be published so that publication includes the principles that have been altered. In this case, these principles will be described as 'previous,' so as to keep with judicial memory, provide benefits to scholars and students, and prevent confusion. (A.1.16)

This long passage is elaborate but its meaning elusive.[111] The bottom line, however, is clear. Norms are to be derived from case-law. The judgments which courts produce are precedents:

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108 *wa-tashmul hādhih al-majmū'a jumlatan min al-aḥkām bi-sawābiqihā al-mulzima*.

109 This next sentence, noted here as '(...),' is unclear, '*lākinnahu mansūkh bi-lāḥiqatin 'alā mā dhakarnā wa-man abṣara 'alima*.' It translates as: 'but this right (to be informed) has been cancelled by an addendum to what we just mentioned, [namely] he who observes knows.' The argument may be that publication has been slow because of hesitations of various types discussed in the Presentation at A.1.14-5, such as traditional reluctance or the differences between the supreme court and the courts of appeal.

110 In reference to a classical legal maxim, '*al-tābi' lahu ḥukm al-matbū'*.'

111 Another passage in the Presentation strengthens the argument about normalization by law and normalization by case-law when Minister 'Īsā distinguished between *mabādi'* (rules, to be understood here as laws) and *sawābiq* (precedents, here case-law), A.1.14. But the idea is not further developed in the Presentation.

> The decisions contained in this collection and its successors, which will be published with the help of God, are described in the current language of the law[112] as *binding judicial precedents*.[113] (A.1.13, my emphasis)

In Saudi law, publication of the Aḥkām marks the ultimate breakthrough in the slow process of normalization. Despite the rarefied abstractions of the Minister and the elaborate literary language, the main point of his Presentation to the thirty volumes of cases is straightforward. There is no better way to know about the law than to study how judges apply it.

As alluring as any philosophy of law may be, it is not what the judges say they do, but what the judges do that matters. Lawyers, judges and scholars now need to study court decisions to understand how the rule of law works in Saudi Arabia in an effort similar to how serious study of law operates anywhere else in the world.

Conclusion

Around the turn of the 21st century, Saudi law started coming of age both on the legislative and, more importantly, on the judicial fronts. The internet worked its own disseminating magic. The law normalized.

Normalization of the law operated on three levels.

The first level was revealed in the palpable increase of statutory legislation. A full codification of Saudi law has been apace since 1992 and we are catching it in mid-flight.

The next level was the publication of court decisions. Legal scholarship, informed practice, and judicial consistency are all contingent on the availability of case-law in any system. This second, more important dimension of the normalization of Saudi law first emerged in the Mudawwana, then in the Majmūʿa of the Dīwān, and now in the massive sets of Aḥkām. At last, Saudi law is no longer an abstraction for scholars nor a smattering of occasional decisions for practitioners, litigants, and even judges. The country no longer holds out on the aberration that the rule of law can be ascertained without examining how courts apply justice to daily disputes between citizens and between citizens and government.

A third level of normalization accompanied the centrality of Islamic law in the system. Scholars, lawyers, and judges need to henceforth examine the application of Islamic law by the Saudi judges in every day conflicts that come to them in court. Saudi courts refer regularly to classical Hanbali texts. Islamic law formally binds the

112 *qānūn*.

113 *sawābiq qaḍāʾiyya mulzima*.

judges, who defer to it even when applying a statute.[114] The regular and determined use of classical *fiqh* texts, alongside Qur'an and hadith, may appear as the most alluring aspect of the normalization of Saudi law. For it is what judges do, not what judges say they do, that matters. We can no longer take at face value that the judiciary in Saudi Arabia, or the other branches of government, apply Islamic law. Acts of faith can now be tested, and the image is far richer than we ever imagined.

[114] For my efforts to provide a substantive treatment of Saudi court decisions, see "The Normalization of Saudi family law," *Electronic Journal of Islamic and Middle Eastern Law* 5 (2017), 1-27; "Property law in Saudi Arabia: A reconstruction," *Yearbook of Islamic and Middle Eastern Law* 19.1 (2018), 300-33; "'Riyadhology' and Muhammad bin Salman's telltale Succession," *Lawfare*, 2018 (online); "Mapping Saudi criminal law," *American Journal of Comparative Law* (2019), forthcoming.