

Sharia Law & Modern Universal Values

A Comparative Case Study of Saudi Arabia and
Malaysia

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Chapter 1 – Introduction

1.1 – Background

In the contemporary world of today, the religion of Islam has been placed under increased scrutiny. The event which specifically perpetuated this negativity surrounding the religion is the September 11th attacks which struck the United States of America in 2001. Ever since this act of terrorism, there has been an increased feeling of Islamophobia spreading across the globe. Furthermore, the rise of Islamic jihadist groups such as ISIS has amplified the extent to which Islam has been placed under the microscope. Images and accounts of hostages being tortured and killed by these terrorist groups have become engrained in the minds of civilians all around the world, and the resulting harboured frustration has often been directed at Islam. Subsequently, since these terrorist groups claim they are operating under the name of Islam, whether or not Islam has a place in modern society is a question asked and debated all around the world today. Additionally, a significant portion of the political regimes around the Islamic world are perceived as being out-dated. Nations across the Arabian Gulf such as Saudi Arabia and Qatar are ruled by absolute monarchies, giving absolute power to leaders and little voice to citizens. These factors have led to the essence of Islam being questioned, in a world in which the protection and safeguarding of human rights is increasingly essential.

Therefore, the legal framework applied in Muslim countries has become the source of ample debate. This underlying legal structure of Muslim states is called sharia law, and is applied in most Muslim-majority nations. The manner in which it is applied is decided by the state in question, as there is no singular fixed sharia law practiced throughout Muslim nations. Therefore, this has led to states applying sharia law in a rather extreme manner which does not comply with universal norms and human rights today, while other nations have applied it with modern norms accounted for. This has proven to be problematic, as when sharia law is applied in a manner incompatible with modern values, this is often generalized as an issue pertaining to the whole legal framework and Islam in general. The influence Muslim states have over the sharia law

applied in their countries is often overlooked, and this will be the central theme of this thesis.

Subsequently, this thesis will focus on the extent to which states determine the compatibility of its nation with universal norms and human rights. State laws and policies can be judged as being compatible with universal human rights according to the extent these laws do not infringe on universal norms. Therefore, this method allows for the compatibility of sharia law with these universal human rights to be assessed. Consequently, the research conducted in this thesis will be guided by the following research question: What are the social and political factors which influence the extent to which Muslim countries comply with modern universal values and human rights? In order to answer this question, the political factors which will be examined in this thesis include the structure of states as well as the influences leaders within the nation have over the laws applied in the countries examined. Furthermore, social factors such as the history and background of the states in question will be discussed in order to answer the aforementioned research question.

Previous research on the topic mainly focuses on the inherent compatibility or incompatibility of Islam with modern values. This would involve the inspection of the Quran and religious sources to find arguments related to one of the two standpoints. On the other hand, when sharia law has previously been examined as a legal framework, it has never been in the form of a comparative case study which will be the methodology used in this thesis. Previously, the sharia law applied in one country would be examined and conclusions would be drawn according to the research conducted pertaining to that one nation. This method ignores the fact that sharia law is applied differently across the Islamic world. So the fact that this thesis is a comparative case study fills an essential gap in the literature regarding sharia law and modernity. Therefore, by conducting an analysis of this nature, this thesis will contribute to the ongoing debate on the subject by highlighting this gap in existing literature. By focusing on the effects leaders in Muslim states have on the sharia law applied in their nations, this thesis will provide a new perspective to existing literature in the field.

1.2 – Methodology and Structure

As previously mentioned, the type of methodology used for this thesis will be that of a comparative case study with Saudi Arabia and Malaysia being used as the two cases. These are both nations in which sharia law is applied, but the perception surrounding the laws of each nation are rather different. On one hand, Saudi Arabia is rather infamous for its adherence to universal norms and human rights, while on the other hand Malaysia does not have such a negative record. Therefore, picking these nations as case studies allows for the investigation of the mechanisms behind these perceptions by examining the social and political factors influencing the human rights situation of each country. Furthermore, these two states have various differences making their comparison increasingly interesting. Saudi Arabia is the historical epicentre of Islam and the Arab world, while Malaysia does not have the same historical impact from Islam while being located in Southeast Asia. Furthermore, the political structure of the two states is different with Saudi Arabia being ruled by an absolute monarchy, while a constitutional monarchy is in place in Malaysia. These inherent differences will help in pinpointing the underlying factors influencing the adherence to modernity and universal values of each state.

In terms of the types of data to be used, this thesis will entail the use of both qualitative as well as quantitative data. Qualitative data is useful for the undertaking of this research due to the importance of public opinion in this thesis. For example, chapters four and five will analyse the opinions of citizens in Saudi Arabia and Malaysia respectively concerning sharia law and the political structures implemented in the nations. Furthermore, other sources that will be used throughout this thesis include articles and books contributing to this research which emphasizes the importance of qualitative data for this research. On the other hand, the use of quantitative data is also essential for the completion of this thesis. As part of this research, the quantitative data provided by the CIRI Human Rights Database will prove to be essential for this thesis and will be analysed in a qualitative manner. This database provides statistics regarding the degree to which human rights are protected all around the world. Therefore, the use of this data is useful for this study as it will help in detailing the factors underlying the human rights situations of Saudi Arabia and Malaysia. Consequently, both

qualitative and quantitative data will be utilized throughout this comparative case study, although both sets of data will be analysed qualitatively.

In terms of the structure of this thesis, the subsequent chapter will consist of a literature review. The works of scholars who have published literature regarding the compatibility of sharia law with universal norms and human rights will be examined. The writings of these scholars will be observed and engaged with in order to describe the current state of literature pertaining to this topic as well as highlighting the gap in the literature which this study will fill. Chapter three will provide essential contextual information regarding sharia law. Firstly, the manner in which this legal framework is formed will be discussed by underlining the religious mechanisms which contribute to the formation of sharia law. Subsequently, the application of sharia law in Muslim countries will be discussed by providing a historical overview as well as the different ways the law has been applied throughout the Muslim world. This chapter is vital as it provides essential contextual information for the rest of this thesis. Chapter four will be the first case study, namely Saudi Arabia. Firstly, a brief background of modern Saudi society will be given followed by an examination of the Saudi political system. This section is important as it will highlight the difference between the surface of the Saudi political system, and actual practice within the country. Subsequently, public attitudes towards Saudi society and governance will be examined in order to establish local opinions towards the current state of affairs in the nation. Finally, the extent to which Saudi Arabia protects the human rights of its citizens will be reviewed through the use of the CIRI Human Rights Database. Chapter five will deal with the case study of Malaysia, which will be structured similarly to that of Saudi Arabia. Firstly, the Islamic insurgency which rose throughout the state will be discussed in order to provide background information regarding the place of Islam in Malaysia. The political system in the nation will then be examined in order to ascertain the role of the state with respect to the application of sharia law. Subsequently, local attitudes in Malaysia will be reviewed to establish commonalities and differences between the state and the public with regards to their perception of Islamic law. The protection of the human rights of Malaysian citizens will then be examined by studying data provided by the CIRI Human Rights Database. Lastly, chapter six will summarize this thesis and include a discussion

section relating this thesis to the bigger picture by analysing the main takeaways of the research conducted in this study.

Chapter 2 – Literature Review

The current state of the literature on this topic can be divided into two groups. The first group of scholars defend the view that Islam and subsequently sharia law are immovable and fixed, leaving no room for flexibility or adaptation to modern times and subsequently modern human rights values. Meanwhile, the second group holds an opposing view by defending the position that room should be left for flexibility in Islam and sharia law in order to evolve as time passes, therefore allowing for sharia norms to adapt to modern universal human rights. Scholars dealing with this topic can generally be attributed to one of these two groups, which not only shows the current state of research on the topic, but also how this thesis can contribute to the ongoing debate. Therefore, this literature review will discuss the views of certain scholars pertaining to each group in a representative capacity of the general arguments of each group. This thesis will provide a novel outlook by not necessarily identifying with one of these two existing groups, but by combining the two and presenting a new stance which has features evident in both existing groups of scholars. But first, it is important to provide a more in-depth overview of these two groups of scholarly research.

Regarding the group which leaves no room for compatibility between sharia law and modern universal human rights and values, one of the main arguments is that there is a lack of will on the part of Islamic states to leave room for universal values to have a role within the states. Therefore, an argument seen throughout this group of scholars is provided by Gilani et al., who explain that this fear stems from a fear of neo-colonialism on the part of Muslim states (2014). This is because they see the application of universal values in their states as an imperialist agenda by Western powers (Gilani et al. 2014). Furthermore, if universal values such as universal human rights were to have a role within Muslim states, there is a sense among the Muslim nations that this would imply that Islamic culture is inferior to Western culture. This stems from the view that universal human rights are predominantly Western in nature, and if Islamic norms were to be affected by these universal norms, the implication would be that this is due to the superiority of one over the other (Gilani et al. 2014). There is also a theological element to the perception of incompatibility of universal human rights with sharia law. Gilani et al. explain that sharia law is based on the word of Allah, making it fixed and unchangeable. Meanwhile, universal

human rights are man-made and can consequently be subject to alterations. Subsequently, these differences mean that the two systems are intrinsically different making them incompatible with one another (Gilani et al. 2014).

Meanwhile, Michael Curtis exemplifies the main arguments of this group regarding the rights of women with regards to the compatibility of sharia law with universal human rights. He argues that the system of sharia law treats women as inferiors and denies women the rights which they have gained over the past two centuries in democratic states (Curtis 2012). The examples which he cites proving the mistreatment of women stem from his claim that women are handicapped in issues such as marriage, inheritance and apostasy in sharia law (Curtis 2012). While Curtis also sees sharia law as a system which impedes men from living a life which includes basic human rights, he explains that it is even more extreme and difficult for women hence his particular focus on them. Therefore, Curtis centres his criticism on a more detailed look at the actual laws which result from the application of sharia law. While Gilani et al. provide insights based on the general system of sharia law and its implications as a legal system, Curtis looks at the specific laws and their perceived discriminatory nature.

The main issue with this stance provided by Curtis is his generalization of sharia law as one uniform system which does not change throughout Muslim states. For instance, he uses adultery as an example and explains that this can result in the offender being stoned to death (Curtis 2014). However, this is only looking at the punishment which is applied in certain states, and is not a sharia-wide punishment applied in all Muslim states. Meanwhile, in Malaysia, this is the punishment for women who commit adultery as cited in The Criminal Offences Act of 1997:

“Any woman who performs sexual intercourse with a man who is not her lawful husband shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof” (CEDAW 2012)

This shows that the law of women being punished to death under sharia law is not applied in all sharia states, which was the implication of the argument provided by Curtis. This distinction in the sharia law applied throughout countries will be explained further in

chapter three, which will provide insights regarding the composition and application of sharia law throughout Muslim states.

Therefore, regarding this group of scholars who see sharia law as a fixed system leaving no room for the accommodation of universal human rights, the main arguments are centred on views which do not correspond to the reality of sharia law. The first argument discussed is based on the view that sharia law cannot be changed since it is the result of the word of Allah, while the second argument generalizes sharia law as a system which applies throughout Muslim states. The basis of these arguments will be contested throughout this thesis, which will subsequently raise questions regarding the stance of scholars who see sharia law as incompatible with universal human rights.

Moving onto the second group of scholars, these are the academics that leave room for flexibility and adaptability in Islam and sharia law in accordance with modern norms and values. The chief factor at the core of this group is that they place importance in interpretation, an aspect overlooked in the group previously discussed. The importance placed on interpretation is shown in the following quote by Heiner Bielefeldt:

“One can hardly deny that the relationship between Islam and human rights is complicated and raises a number of problems. These problems do not derive from Islam per se but have to do with the Islamic shariah, or more precisely, with traditional or fundamentalist interpretations of the shariah by which the latter is rendered a comprehensive system of politically enforceable normative regulations” (Bielefeldt 2000).

This quote sums up the primary argument of this second group of scholars in a clear and concise manner. It shows that Bielefeldt views Islam and sharia law as two separate entities. So if sharia law is seen as problematic in terms of its relationship with human rights, these problems are not necessarily a result of the effect of Islam on sharia law as there is another mechanism in play, which is interpretation. He explains that traditional and fundamentalist interpretations of Islam by states are at the root of the complications regarding sharia law and human rights, as these interpretations create the sharia law of a country (Bielefeldt 2000). Therefore, by separating Islam and sharia law, Bielefeldt shows that sharia law is indeed flexible according to the interpretation of the state, and this is a main differentiating factor between the two groups of scholars.

Bielefeldt continues his argument by expressing the importance of context. He indicates that the only situation in which Islamic laws stated in the Quran could be enacted in their entirety would be in the original Muslim community present during the inception of Islam (Bielefeldt 2000). Subsequently, Bielefeldt explains that the religious elite today need to have an active role in formulating a sharia law which is suitable for the Muslim community today, which shows the flexibility he perceives in sharia law (2000). So his argument is based on the fact that we live in an entirely different world today compared to the first Muslim community. For example, there are various laws and institutions of non-Islamic origin that were not present previously which play a significant role in the active lives of Muslim communities today. Therefore, these factors need to be taken into account and placed into the overarching framework of Islam when creating a sharia law suited to modern times. By giving religious elites an active role in constructing a sharia law suitable for Muslim communities today, Bielefeldt shows that sharia law can indeed be altered and adapted. He is not claiming that Islam is inherently incompatible with modern human rights and norms, but his argument is that it is not possible to abide by the religion in the exact same manner as the first Muslim community due to the vast contextual differences of the two periods. So the framework of Islam can still be used in sharia law, but religious elites have an important role in adapting this framework to modern times.

This view is echoed by Abdullahi Ahmed An-Na'im, who is a respected scholar when it comes to dealing with this topic and is frequently mentioned in literature concerning sharia law. He shares the aforementioned argument provided by Bielefeldt, and even takes it one step further. According to An-Na'im, the Quran was released in different stages, circumstances and locations. More specifically, some chapters of the Quran were released in Medina, while others were released in Mecca. This is a fact known throughout the Muslim world, but the centrepiece of the argument by An-Na'im is that he differentiates between the verses released in Medina and Mecca. He states that the verses released in Mecca contain the main theological message of Islam, while those released in Medina were only directed at the Muslim community at the time (An-Na'im 2005). This can be related to the argument previously mentioned by Bielefeldt, who claims that only the original Muslim community can fully enact the laws stated in the Quran. However, the stance of An-Na'im takes the argument one step further as he states that parts of the Quran were not even

intended for Muslim communities today. This is what makes his stance unique, as he questions the fixed nature of not only sharia law, but the actual Quran by stating that parts should not be applied to Muslim societies today. This point will be argued against throughout this thesis, as this thesis will argue that sharia law can indeed be flexible and adaptable, but this does not apply to the essence of Islam and its holy book. Overall, this argument by An-Na'im can be linked to that of Bielefeldt as they both leave room for the modernization of Islamic law in order to adapt to modern times, which is the predominant argument by scholars who form this group.

This literature review has distinguished between two groups of scholars. The first group, including scholars such as Michael Curtis and Gilani et al., argue that sharia law is a fixed legal framework which cannot be altered, subsequently making it incompatible with modern norms and universal human rights. The second group contains scholars such as Abdullahi An-Na'im and Heiner Bielefeldt, who argue that sharia law is flexible and can indeed be modernized in accordance with universal norms and human rights. The fact that scholars dealing with this topic can be allocated one of the two groups has evidenced a gap in the literature which this thesis will contribute to by combining elements of the two groups. The premise which will be held throughout this thesis is that Islam as a religion is indeed fixed, which is in accordance with the first group of scholars. Meanwhile, sharia law is open to modernization due to its reliance on the notion of interpretation, which is a component of the argument provided by the second group of scholars. Therefore, by combining these two groups and providing this new outlook, this thesis will prove to be a valuable contribution to the current state of literature regarding the compatibility of sharia law with universal values, norms and human rights.

Chapter 3 – Sharia Law: Contextual Framework

3.1 – The Formation of Sharia Law

Sharia has had a role in Muslim religious life ever since the beginning of the Islamic era dating back to the start of the seventh century (Hefner 2011). However, it was not until the pre-modern period when the majority of Middle Eastern states and various countries in Asia gave sharia a central role in their legal systems (Hefner 2011). Nonetheless, sharia law was never the only normative corpus with a role in the legal system of the state. For example, the Ottoman Empire applied sharia law alongside the law of the ruler, while tribal populations applied customary law in conjunction with sharia (Hefner 2011). Therefore, the time and place in which sharia was applied dictated how and to what extent it was applied.

Moving onto the nineteenth and early twentieth centuries, Muslim states began to eradicate sharia-based law. As explained by Hefner, these countries witnessed the emergence of European powers and drew the conclusion that their rise in power was partly due to their centralized and codified legal systems (2011). Since sharia law was mainly a decentralized legal system, it was eliminated in favour of standardized and state-authorized legal codes in order to emulate the successful legal systems of the emerging Europeans. Eventually, the enforcement of sharia law was completely halted in many states, but not all. The states in which sharia law was not halted provide an indication of those which apply it in a stricter manner with no regards to flexibility (Hefner 2011).

Subsequently, the 1970s and 1980s saw significant social movements emerge throughout the Muslim world calling for the reimplementation of sharia law. This led to constitutional amendments being introduced in many Muslim states in which state law would now have to conform to sharia norms (Hefner 2011). Therefore, while sharia has always been a part of Islam, its role in the legal system of Muslim states has not been as consistent and stable. Its status would vary according to context, which led to its eradication and subsequent reimplementation at several points throughout history.

In terms of the elements which form sharia law, the Quran is the primary source it relies on. However, extracting legal content from the holy book proved to be an arduous task. Hefner explains that out of the 6,235 verses which constitute the Quran, only 350 were

of direct legal relevance (2011). Therefore, a secondary source is also relied on by sharia law, which is the use of hadith narratives. These are derived from the words spoken by the Prophet Muhammad throughout his lifetime, as he is regarded to have perfectly personified the ideals of the Quran throughout his life (Hefner 2011). Subsequently, while hadith narratives may not hold the same importance as the Quran since the holy book is the direct word of Allah, these two sources constitute the basis of sharia law (Hefner 2011). This Islamic law does not only deal with matters of law, but is a guide to leading the Islamic way of life (Hefner 12). It offers prescriptions regarding aspects such as diet, commerce, prayer and dress. Therefore, the essence of sharia law is not a legal system, but rather a form of guidance for Muslims to lead a life in accordance with the norms of Islam.

With the two main sources of sharia law being the Quran and hadith narratives, this has led to an ongoing debate surrounding its applicability to modern times. This discussion has emerged due to the fact that these two core elements of sharia law date back several centuries, thus placing in doubt its suitability and relevance today. Therefore, to bridge this gap between past and present, the use of fiqh has been implemented in the Islamic world. These are interpretations provided by Muslim scholars today to answer new questions which may arise, in accordance with the Quran and hadith narratives (Bassiouni 2014). It is therefore important to make the distinction between sharia law and fiqh, as sharia is immutable due to the fact that it is based solely on the Quran and hadith narratives, while fiqh is based on human understanding and interpretation making it fallible (Bassiouni 2014). This distinction is critical as it shows that there is a place for debate and reasoning when it comes to the application of Islamic laws in modern times. The interpretations and law-making of Islamic scholars may be significant due to their vast knowledge and understanding of Islam and its sources, but they can never be deemed as completely correct interpretations. This is because Islamic legal theory explains that humans can never be completely certain and correct in their interpretations, as they can never provide certain answers to questions not answered in Islamic sources (Bassiouni 2014). This difference between unquestionable, certain Islamic laws and imperfect, fallible human interpretation is critical when considering sharia law today.

This leads to the ongoing discussion today surrounding the capacity of Islam to adapt and evolve according to modern times. As explained by Bassiouni, this is a debate which has

proved to be one of the major issues throughout Muslim societies and conversations over the past century (2014). On one side of the spectrum, Muslims see the juxtaposition of the words 'Islam' and 'modernity' as an unthinkable atrocity (Bassiouni 2014). On the other hand, there are Muslims who urge progressive theological and legal interpretations of Islam and the norms which make up sharia law. People who make up this group are seen as heretics and even unbelievers by those who have their vision of Islam fixated on the time in which its sources were written several centuries ago (Bassiouni 2014). This distinction between fixed and flexible is one that has already been mentioned in this thesis, in the discussion surrounding the difference between fixed Islamic laws, and flexible human interpretations. Nonetheless, the information previously discussed shows that each argument has an element of correctness, meaning that one common understanding can result from these debates. This common ground which uses each argument is that Islam and the laws dictated in its holy book and hadith narratives could indeed be deemed as concrete and fixed. But the interpretations and applications of Islam today in questions not answered by its two primary sources can indeed evolve and adapt according to modern times.

3.2 - The Application of Sharia Law

The legal systems of Muslim states generally do not have any unique factors which stand out in comparison to other non-Muslim countries. Developing states, which include most Muslim countries, generally have the same institutions and similar laws as developed states (Otto 2010). This includes institutions such as ministries, executive agencies and supreme courts which are present in both developing and developed countries, and both Muslim and non-Muslim nations. However, it is only after examining the legal systems of developing states more closely that their fragmentation becomes evident. This fragmentation derives from the fact that colonial law, religious law and customary law all contribute to the legal structure of these nations (Otto 2010). For example, countries such as Pakistan and Malaysia are members of the Commonwealth, meaning they share legal roots and information with other Commonwealth countries. Furthermore, former French colonies such as Morocco still have the effects of their colonizers evident in their legal systems. Subsequently, this results in the fragmentation of the legal systems in developing states, particularly Muslim states since sharia law also forms a part of the legal system.

Focusing on sharia law, its place within the legal system of Muslim states has been a contentious topic ever since the nations in the Muslim world gained independence between the 1920s and 1960s. These conflicts started as upon gaining independence, leaders had to decide on the place of religion within their national policies and laws. This led to one uniform stance by Muslim leaders throughout all Muslim states, which was that the priority was to be given to their own authority, laws and decrees (Otto 2010). Religion and sharia law would have to be incorporated within the framework set by the ruling elite, which is how state interference with sharia law started (Otto 2010). With each Muslim state applying sharia law in accordance with national interest, this led to a vastly fragmented Muslim world in terms of the extent and manner in which sharia law was applied. For example, the leaders of Saudi Arabia have declared the Quran and the Sunnah (the practices and deeds of the Prophet Muhammad) as the constitution of the state while giving significant power to religious scholars. On the other hand, religious scholars do not have the same power in Iran, while Egypt has incorporated a modernised version of Sharia law to its constitution (Otto 2010). Therefore, while sharia law has been incorporated into the state systems of several states, the extent to which this has taken place differs significantly. This is due to the fact that it has been implemented into state systems according to their political agenda, leading to sharia law having several faces across states. This has also led to the ambiguity surrounding what constitutes sharia law, and which laws result from national policies as these lines have been blurred since the incorporation of the former into the latter.

Chapter 4 – Case Study: Saudi Arabia

This case study deals with the association of Saudi Arabia with sharia law. Firstly, background information pertaining to modern Saudi society will be provided in order to examine the societal roots of the modern states and how this can affect the manner in which sharia law is applied. Subsequently, the Saudi political system will be discussed in order to study the effects the political structure and policies of the state have on the application of sharia law. Local attitudes towards the Saudi state and society will then be examined to ascertain the views of the public towards the policies and structure of the state, as this will link state politics and society. Lastly, quantitative data regarding Saudi state protection of human rights will be studied in order to observe how Saudi policies and governance affect the human rights of its citizens.

4.1 – Background of Modern Saudi Society

The 1970s oil boom marked the start of a new era in Saudi society. This period marked the decline of the traditional merchant class of Saudi Arabia and the beginning of the modern Saudi societal system of today (Moaddel 2006). The country underwent vast urbanization, demographic growth and significant economic growth among various structural changes felt throughout the country and shaping the modern Saudi state. The population of the country grew from 5 million people in 1974 to 12 million in 1992, and reached 24 million in 2002 (Moaddel 2006). In terms of urbanization, the urban population of the country formed 16% of the total population in 1950. This percentage grew to 49% in 1970, and even reached 80% in 1990 (Moaddel 2006). These figures show the rapid growth which took place in Saudi Arabia over the span of a few decades in terms of its demographics. However, the main consequence the oil boom of the 1970s had on Saudi Arabia was the significant economic growth it brought the country. In 1970, the gross domestic product of Saudi Arabia was 23 million Saudi riyals (SR). This number reached an incredible 547 million SR in 1997, which shows the unprecedented economic growth Saudi Arabia underwent in less than three decades (Moaddel 2006). These figures regarding the demographic and economic development of Saudi Arabia are significant as they demonstrate the formation and core of the modern Saudi state today.

In terms of the increased development of Islam throughout the state, this stemmed from an incident which took place in Mecca in 1979, in which Muslim militants forcibly took control of the sacred mosque, the centrepiece of Islam (Moaddel 2006). As a result of this incident, as well as the economic growth taking place in the nation, large sums of money were allocated to religious institutions, the reinforcement of Islamic content forming school curricula, as well as the empowerment of religious police (Moaddel 2006). By the early 1990s, one in four university students in Saudi Arabia were studying in religious institutions as a result of this reform (Moaddel 2006). Consequently, this reform led to the rise of a new generation of Islamic professors and scholars, who now form a major part of Saudi society and politics (Moaddel 2006). This shows the role of the state in the radicalization of Islam in Saudi Arabia. By adopting these structural changes which place Islam at the forefront of the education system and Saudi society, the natural consequence is increased Islamic sentiment throughout the nation as well as an abundance of Islamic scholars. Furthermore, it is also important to note that Saudi Arabia is at the core of the Islamic world. The nation is home to the sacred mosque called the Kaaba, located in Mecca which was also the birthplace of the Prophet Muhammad. Subsequently, the historical significance of Saudi Arabia coupled with the structural organization of Saudi society have contributed towards the formation of the modern Saudi state system, which places radical importance on Islam being the principal feature of Saudi society.

4.2 – The Saudi Political System

The Saudi political system consists of a multifaceted structure ruling Saudi society. At first glance, it is known to be an absolute monarchy due to the presence of a royal family and the absolute power and authority of state leaders (Cavendish 2006). Saudi Arabia is currently ruled by King Salman bin Abdulaziz Al Saud, taking over from his half-brother King Abdullah bin Abdulaziz Al Saud following his death in 2015. This process of succession is dictated in the Basic Law of Saudi Arabia, which states that upon the death of a ruling king, his successor must be chosen from the sons of the deceased who is then approved by the religious leaders (also known as the ulama) of the country (Kechichian 2001). The fact that the Saudi religious leaders are required to approve the heir to the throne already shows the significant role they have in the Saudi political system, and this power that they have will be continuously shown throughout this section.

While this seems like a regular structure pertaining to a monarchy at first, it is only after this political system is examined in more depth when its various mechanisms and features come to the fore. The core of this political system is in its doctrine of 'siyasa shar'iyya', which translates to 'governance in accordance with sharia' (Vogel 2012). This doctrine divides the system of governance into two, with each system governing legal issues according to their nature. The first mode of governance, known as 'fiqh', is placed in the hands of religious leaders and scholars, and is applied in religious-legal courts (Vogel 2012). When a legal issue is brought to these courts, opinions are formulated by the religious scholars according to their interpretation of religious texts, followed by rulings and laws being applied based on these opinions (Vogel 2012). The issues delegated to this mode of governance are individual cases met with individual rulings based on the opinions of the religious scholars (Vogel 2012). Meanwhile, the second system of governance, named 'siyasa', concerns the legal issues brought to the ruler and his political establishment. Issues are brought to this system of governance when decisions and rulings are required to be made serving general public interest, rather than specific issues related to sharia (Vogel 2012). There is still a religious linkage to this system as the ruler is deemed to have his power to govern delegated by sharia. Furthermore, the laws and rulings made under this system are required to not contradict basic sharia principles (Vogel 2012).

Therefore, the two systems which form the core of the legal structure of Saudi Arabia are completely distinct in terms of application, as fiqh is applied to individual cases while siyasa tends to collective needs and issues which involve the general public. They are also different in terms of the actors who run these two systems, with religious leaders and scholars governing the former, while the ruling authority is the primary actor in the latter. The fact that there are two inherently distinct systems in play at the same time has led to inevitable tensions between the two. For example, siyasa relies on fiqh for legitimacy as fiqh is the religious authority of the country. But on the other hand, fiqh is dependent on siyasa for worldly power, as siyasa is the major political authority of the system which gives it more global power (Vogel 2012). Subsequently, the juxtaposition of these two systems running concurrently seems to lead to inevitable legal issues. However, Vogel explains that the system is still intact in modern Saudi Arabia with surprising force and consistency (2012). Fiqh deals with the majority of the legal issues in the state with siyasa administering the

minority, which further emphasizes the importance of the religious elite in the ruling of the Saudi state (Vogel 2012).

The importance of fiqh and religious scholars in the legal realm of Saudi Arabia is especially significant as it results in state laws being outside of the control of the state (Vogel 2012). So as explained by Vogel, the general civil and criminal law is currently uncodified by the state due to the fact that cases are dealt with on the basis of the understanding of scholars regarding sharia (2012). Subsequently, it is difficult to clearly establish a concrete basic and common law in Saudi Arabia due to these factors placing it outside state control and the case-by-case method of dealing with issues. For example, the ban on women driving automobiles in Saudi Arabia was not based on any law or regulation. It was solely based on the opinions of scholars and was enforced on the basis of these opinions (Vogel 2012). It was only after a demonstration in 1990 that the ban reached a more official legal status, but the fact that the law was enforced solely based on the sharia interpretation and opinions of scholars show their power in the legal sphere of Saudi Arabia.

Therefore, it is important to distinguish between the surface of the Saudi political system and actual practice within the system after examining it in more depth. While the state appears to be run by an absolute monarchy, subsequently giving unchecked power to the ruler, there are many other mechanisms at play. Primarily, fiqh and the opinions of religious scholars are of great relevance to the political system of Saudi Arabia. Vogel even states that legislation provided by the king can be deemed irrelevant and can subsequently be overlooked if the scholars oppose this piece of legislation (2012). This provides an idea of the power structures within the Saudi political system, which can be deceiving at first glance. This is also evident in the Ministry of Justice in Saudi Arabia, which appears to be similar to those in every other country in the Middle East with an extensive system of judicial appointment, promotion and discipline (Vogel 2012). However, in practice, the Ministry of Justice in Saudi Arabia habitually ignores state legislation in favour of scholarly interpretation and opinion. In sum, religious scholars and their understanding of sharia forms the core of the political system of Saudi Arabia, making sharia the primary source of political legitimacy in the state (Vogel 2012).

4.3 – Local Attitudes towards Saudi Society and Governance

Given the established gap between the Saudi political system in theory and in actual practice, it is important to determine the view of the Saudi public towards the way the country is being run, while examining the effects of the importance placed on religious scholars. Due to religion and sharia being such a central element of Saudi society, along with this significant role of religious scholars, citizens of the state are expected to be significantly religious, with Islam forming the basis of their daily life. As previously explained, Saudi Arabia underwent a social revolution starting in 1979. This led to increased funding and importance being placed on religious institutions, scholars and education with a more prominent role being given to Islam in the state. This also implied that future generations were to have Islam form a central piece of their life from a young age. So after reviewing the role of the state in adopting this transformation of Saudi society, it is important to note the actual effects this has had on the attitudes of the Saudi public towards religion and the state. Using other Muslim countries as modes of comparison will be useful to examine whether the religiosity of Saudi citizens is intensified following the social reforms of the nation. Lastly, reviewing these local attitudes will aid in establishing whether the legal practices adopted by Saudi Arabia which affect the human rights of its citizens are supported by the people of the nation, or if it is really a matter of the state acting on its own terms without the support of the public.

Firstly, respondents to this survey highlighting local attitudes towards religion and the state shows that 99% of Saudis stated that they are Muslims (Moaddel 2006). This was the highest percentage compared to other Muslim nations, although none scored below 94% (except Iran who scored 79%) so there were no significant differences in this aspect. But a striking result was the fact that only 62% of Saudis described themselves as being a religious person (Moaddel 2006). This is the lowest percentage pertaining to the countries surveyed, as this number reached 82% in Iran, 85% in Jordan, 98% in Egypt and even 81% in the United States of America (Moaddel 2006). So not only was the Saudi percentage the lowest, but it was the lowest by a fair distance compared to all the other states. However, Moaddel explains that the meaning of being religious could differ across borders especially taking the United States into account due to its distance from the other states. But more statistics regarding the religiosity of the public in Saudi Arabia strengthen this view that

religious sentiment is not as strong as expected in the nation. According to Moaddel, 13% of Saudi citizens indicated that they attend mosques more than once a week. This statistic is compared to 28% in Jordan and 22% in Egypt. This emphasizes the point that religiosity in Saudi Arabia is not as strong as state policies would lead to believe

The survey results provided are rather eye-opening. Bearing in mind the measures taken by the state to place Islam at the centre of society, the Saudi public would not be expected to score as the least religious, under any definition or conception of the term. These results can be deemed as an indication of failure of the Saudi state policies promoting and supporting Islamic institutions, scholars and practice. Furthermore, it shows significant distance between the Saudi state and society. While the state places religion before everything, the aforementioned statistic shows that the people of Saudi Arabia do not share the same sentiment to the same extent as the state. This distance between state and society isolates the state significantly concerning its Islamic and sharia policies. It shows that the state (including religious scholars) adopt policies according to their own interpretation of what is required, rather than adopting policies representative of public will. Hence, in issues such as universal human rights in Saudi Arabia, the policies adopted which may infringe on these rights are primarily down to state interpretation rather than sentiment on the part of the Saudi public or indeed Islam in general.

In order to further investigate public attitudes in Saudi Arabia, it is useful to review their opinions regarding governance. As previously mentioned, the Saudi political system is rather complex, but is officially seen as an absolute monarchy. Meanwhile, a democracy is generally perceived as the most advanced, fair and modern form of governance, especially when dealing with issues such as universal human rights. This attitude is proven by the adoption of democracies by the majority of developed countries throughout the world. Subsequently, Saudi attitudes towards democracies have been reviewed and the results can show the extent of satisfaction in Saudi society towards the system of governance adopted by their state. As explained by Moaddel, a clear majority of 58% of respondents in Saudi Arabia agreed with the view that democracy is the ideal system of governance (2006). Additionally, it is important to note that a significant number of respondents refused or did not know how to reply to the question. After only taking into account the respondents who

expressed their opinions, this number would rise to a noteworthy 71% of Saudi citizens who saw democracy as the best system of governance (Moaddel 2006).

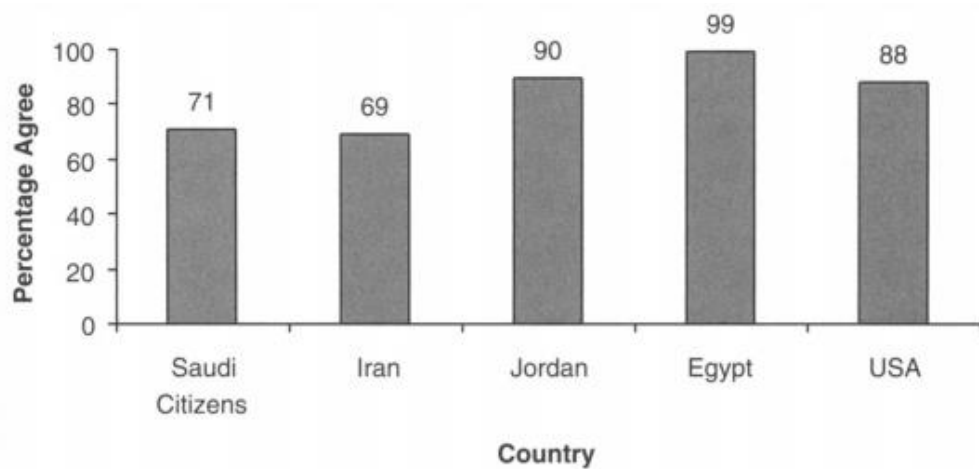


FIGURE 1. Democracy is the best form of government. [A color version of this figure can be viewed online at www.journals.cambridge.org]

Figure 1: Democracy is the Best Form of Governance (Moaddel).

It is important to take into account that this survey question has a significant flaw. This is regarding the fact that the conception of what constitutes a democracy differs not only across countries, but also within a country. Consequently, the majority of Saudi citizens that saw democracy as the best form of governance would have not all had the same idea of democracy in mind. However, the results of this survey question are still very eye-opening and rather unexpected. Even if there may be differing ideas of what forms a democracy, one aspect that is clear is that there is no democracy in place in Saudi Arabia. Therefore, this majority who view democracy as the best form of governance all collectively share an opposition towards the current system of governance in Saudi Arabia. This shows dissatisfaction towards the current state of Saudi society, the manner in which it is structured and a longing for change and improvement. This general dissatisfaction throughout Saudi society also creates additional distance between the state and the citizens. As seen in the previous survey question discussed, this distance isolates the state and exposes it as the sole mechanism behind the structure of Saudi society without the support of the public. Therefore, when it comes to adherence to universal human rights and the application of sharia law, the Saudi state is the sole actor in play. This shows the

importance of the manner in which it interprets sharia law, and creates a distance between this interpretation of sharia law and that of other Muslim countries. Consequently, this also created a distance between Saudi sharia law and the Muslim religion in general, due to the isolated nature in which the state applies its laws according to its interpretation.

This distance between the Saudi state and its citizens is proven by the fact that the nation experienced its largest and longest protest movement in its modern history (Matthiesen 2012). This movement was inspired by the 'Arab Spring' protests which were felt throughout the Middle East, which led to the Saudi protest movement being designated as the 'Saudi Spring'. Initially, while the Arab Spring swept through the Middle East toppling dictators in Tunisia and Egypt, Saudi Arabia stood out due to the lack of mass protests in its urban centres (Matthiesen 2012). It seemed as if the Saudi rulers were able to survive the Arab Spring and block any chance of country-wide protests taking place. However, the Saudi Spring protests were started by Shi'a Muslims in the east of Saudi Arabia from February 2011 and turned into the most significant protest movement in the modern history of the nation. Shi'a Muslims have historically suffered from state-led discrimination in Saudi Arabia, thus making the eastern region of the country a hotspot for opposition and conflict as it is primarily made up of Shi'a inhabitants. Therefore, drawing inspiration from the Arab Spring, the Saudi Spring adopted a similar discourse in its protests as the rest of the Middle East. The three aspects which were focused on were dignity, freedom and rights. While these protests were centred on the eastern part of the country and did not spread across the nation, the demonstrations are still noteworthy due to the fact that the nation had never experienced such significant opposition in its modern history. Furthermore, the Saudi Spring serves as proof that a significant portion of the Saudi population expects the state to guarantee citizens certain rights, and that these expectations are not being met. Therefore, the Saudi Spring exemplifies the distance between the Saudi state and its citizens and the dissatisfaction felt by civilians towards the manner in which the state is run.

4.4 – Saudi State Protection of Human Rights

The Cingranelli-Richards (CIRI) Human Rights Database provides quantitative data regarding the extent to which the government of a country complies with internationally recognized human rights. This data is provided by giving each country a score in each human

right measured to demonstrate state adherence to these human rights. By measuring these internationally recognized human rights, this database can provide an indication regarding the degree to which the human right situation of a country is compatible with universal human rights. Furthermore, in the case of Saudi Arabia, this database will show the role of the state in guaranteeing the human rights of its citizens. This is significant as in the previous section, it was established that there is general dissatisfaction by Saudi citizens towards the state. Therefore, if this database shows that the Saudi state generally fails in guaranteeing the human rights of its citizens, this can be seen as a possible source regarding why the Saudi people have voiced their discontent towards the state. The previous section demonstrated that there are portions of the Saudi population who feel that the Saudi state is not meeting their expectations regarding the provision of rights and freedoms. Consequently, this section will help in showing whether or not these grievances are justified.

The first out of four human rights to be examined is freedom of speech and press. The database defines this human right as the extent to which freedoms of speech and press are affected by government censorship, including ownership of media outlets. This includes the prevention of the ability of citizens to challenge the policies of the existing government using media such as the internet or television broadcasts (CIRI 2014). There are three possible scores for this category. A zero dictates that the government in question owns all of any one aspect of the media in a country, such as all the television stations or all the radio stations (CIRI 2014). Scoring a one means there are some restrictions placed by the government, yet there are still limited rights to freedom of speech and the press (CIRI 2014). Finally, a two means that citizens have the freedom to speak and publish their opinions without fear of prosecution (CIRI 2014). This thesis will use data from the last five years in which data was collected. Since data collection stopped in 2011, the scores from 2007-2011 will be used to demonstrate the extent to which the Saudi state protects the freedom of speech and press in the nation.

The scores of Saudi Arabia in this category was a zero in each of the last five years (CIRI 2014). This shows a consistent lack of adherence on the part of the state regarding the human right to freedom of speech and press. This score implies that there is a fear on the part of citizens in the nation to publish their personal views towards the state, which emphasizes the point made in the previous section regarding the distance between the

state and its citizens. This fear felt by citizens can also be seen as a cause of their dissatisfaction towards the state. So this consistent score of a zero shows the absolute power of the state and leaders in Saudi Arabia. This absolute power solidifies the argument that state actors act according to their beliefs and interpretations including matters pertaining to sharia law.

The second human right to be examined is freedom of religion. The CIRI Human Rights Database defines this as the extent to which the freedom of citizens to exercise and practice their religious beliefs is subject to government restrictions (CIRI 2014). This human right is scored in the same manner as freedom of speech and press. Scoring a zero would indicate a complete lack of freedom of religion, while scoring a one means the state places restrictions on freedom of religion but not to the same extent as the countries which score a zero. Finally, a two indicates that all citizens enjoy complete freedom to practice their religion without fear of state repercussions.

Once again, Saudi Arabia scores a consistent zero in this category over the past five years. However, concerning this human right, the context of Saudi Arabia should also be taken into account as it is the central nation of the Islamic world. Furthermore, the previous section indicated that 99% of respondents indicated that they were Muslims which shows a lack of religious diversity in the country. This is not an attempt to justify the lack of religious freedom in the state, but just shows that it is not as problematic in Saudi Arabia compared to other countries containing citizens of a vast diversity of religions. Nevertheless, it is still an infringement on the part of the Saudi state to take away the right to religious freedom from its citizens. As dictated by the Universal Declaration of Human Rights, all humans have the right to freedom of religion, and this right is taken away from Saudi citizens by the state. Although Islam and Saudi Arabia are interlinked in terms of both historical and present aspects of the religion, this restriction felt by citizens can contribute towards the distancing and dissatisfaction of citizens towards the state.

The third human right to be discussed is the political rights of women. These rights include the right to vote, the right to run for political office and the right to run for political office (CIRI 2014). When measuring these human rights, the CIRI Human Rights Database focuses on two aspects. Firstly, the effectiveness of laws pertaining to the political rights of

women is examined by the database. Secondly, the effectiveness of the government in enforcing these laws is taken into account (CIRI 2014). The scoring for this human right is from zero to three, making it different from the previous human rights discussed in which the scores ranged from zero to two. On one hand, scoring a zero means that no political rights of women are guaranteed by law, and that there are specific laws restricting the participation of women in politics (CIRI 2014). While on the other hand, scoring a three means that the state guarantees equal political rights for women both by law and in practice (CIRI 2014).

Regarding the score of Saudi Arabia, the nation scored zero in the years 2007 and 2008, while obtaining a score of one in ensuing three years (CIRI 2014). Compared to the previously discussed human rights, the scores pertaining to the political rights of women is more favourable as the previously discussed human rights scored zero in all five years. Furthermore, the fact that Saudi Arabia scored a one in the last three years shows that there has been improvement in this aspect. According to the CIRI Human Rights Database, countries with a score of one guarantee political equality by law. However, there is a gap between law and practice in these countries with women not enjoying political equality in reality (CIRI 2014). This is insightful information to keep in mind when examining sharia law in Saudi Arabia. This is because the data shows that sharia law in Saudi Arabia does treat women equally in the political sphere. However, it is the responsibility of the Saudi state to apply these laws in practice, and this is where the state fails as the data provided has proven. Therefore, sharia law, even when interpreted by the Saudi state, is indeed compatible with the universal human right guaranteeing political equality for women. However, the Saudi state fails to ensure this human right is respected in practice, which shows that the issue does not lie with sharia law but with the manner in which it is applied by the Saudi state.

The last human right to be measured and discussed in this section is the economic rights of women. When measuring this human right, the CIRI Human Rights Database takes into account factors such as equal pay for equal work, free choice of employment without requiring consent from a husband or male relative and non-discrimination in the workplace (CIRI 2014). Likewise to the measurement of the political right of women, the database measured both the laws guaranteeing equal economic rights for women as well as the

extent to which these laws are put into practice by the state (CIRI 2014). Also in the same light as when the political rights of women were measured, the scoring ranges from zero to three. A zero indicates state tolerance towards systematic discrimination against women regarding their economic rights, while a three score signals that the economic rights of women are guaranteed by a state in both law and practice (CIRI 2014).

Saudi Arabia scored zero over the past five years, barring 2008 when it was given a score of one (CIRI 2014). This score indicates that in four out the last five years measured, there have been no economic rights for women under law, while discrimination based on sex could be built into the legal structure of the state. Furthermore, the score of zero indicates that the Saudi state has tolerated high levels of discrimination of women when dealing with the topic of economic rights (CIRI 2014). When Saudi Arabia had a score of one, this indicated that there were some economic rights for women under law, but these rights were not enforced by the state in any way (CIRI 2014). However, not only did Saudi Arabia score one once over the past five years, but prior to 2008, Saudi Arabia scored zero every year dating back until the year 2000 when it had a score of one again (CIRI 2014). This data shows that Saudi Arabia has consistently failed to guarantee the economic rights of women. Once again, this can be seen as a problem with the state and their application of sharia law because the data shows that there have been instances when the economic rights of women were legally guaranteed. This shows that these rights can fit into the legal framework of sharia law, but the consistent issue has been the manner in which the state applied its laws

	Freedom of Speech and Press	Freedom of Religion	Women's Political Rights	Women's Economic Rights
2007	0	0	0	0
2008	0	0	0	1
2009	0	0	1	0
2010	0	0	1	0
2011	0	0	1	0

Table 1: Saudi State Protection of Human Rights (CIRI 2014)

Therefore, this case study has shown data has shown the importance of the state and the effect it has on the application of sharia law. In terms of the historical background of Saudi Arabia, its historical importance to the Islamic world along with state policies reinforcing the place of Islam in society have proven to have an effect on the application of sharia law in the country. Meanwhile, the structure of the state giving absolute power to the interpretations of religious scholars without checks by the state has also contributed to the legal structure of the nation. This has isolated the nation as the views of these scholars are not always shared by the majority, and this isolation is also exemplified by the surveys analysed in this case study. Finally, the result of these aspects is shown by the data analysed in the final section, which shows the lack of adherence of the Saudi state to various universal human rights.

Chapter 5 – Case Study: Malaysia

This case study will take a similar structure to the previous case study regarding Saudi Arabia. Background information regarding the place of Islam in Malaysia will be provided first in order to understand the history of Islam in the nation and how this can affect the present. Subsequently, the Malaysian political system will be examined in order to determine the effect its structure and policies have on the application of sharia law in the nation. Malaysian attitudes towards the state will then be observed in order to establish the extent to which the state has public support regarding its policies regarding sharia law. Finally, quantitative data provided by the CIRI Human Rights Database will be studied to observe how the Malaysian application of sharia law affects the human rights situation of the nation.

5.1 – Islamic Insurgence in Malaysia

In chapter four, this thesis described how the Saudi Arabian state underwent a social revolution which saw Islam placed as the centre of its society with more importance than ever. According to Peletz, these policies and state policies around the Muslim world fuelled the emergence of Islam in the 1970s (2013). This emergence in Malaysia saw Malays increasingly express their piety and religiosity, including factors ranging from smaller aspects such as the styles of dress and greetings, to broader aspects such as behaviour and comportment (Peletz 2013). In terms of the ways in which the country felt this growth of Islamic sentiment, Peletz indicates that the architecture of the capital city, Kuala Lumpur, saw the Islamization of its impressive architecture (2013). Furthermore, there were growing campaigns around the country building mosques and Islamic monuments, while this emergence of Islam also saw the creation of an Islamic banking system and an international Islamic university (Peletz 2013). This shows that the Islamization that was taking place throughout the Muslim world instigated an emergence of Islam felt in all aspects of Malaysian society including architecture, citizen behaviour and the creation of Islamic institutions.

Approximately one decade after this rise of Islam started, its effects started to be felt in the political sphere. In 1988, the Federal Constitution of Malaysia was revised to include an amendment, known as amendment 121 (1A). This amendment states the following:

“The courts referred to in Clause (1) [civil courts] shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah [Sharia] courts” (Malaysian Federal Constitution 2010).

This amendment indicates that civil courts would no longer have the power to amend rulings of the Islamic courts, which were ruled by sharia law. This subsequently implied that sharia law was no longer checked by the federal constitution, giving full reign to the actors who interpret and apply sharia law in the Islamic courts. This growing influence of Islam in the political sphere of Malaysia continued into the start of the 21st century, when the prime minister at the time Mahathir Mohamad declared Malaysia to be an Islamic state in 2001 (Peletz 2013). This affirmation was especially significant due to its timing, as it came directly following the 9/11 attacks and the widespread anti-Islamic sentiment felt throughout the world. Therefore, this emergence of Islam was not only felt within Malaysia, but was also transferred to the global sphere. The state sent a message to the rest of the world indicating its posture towards Islam regardless of the turmoil and controversy surrounding the religion. So this period dating back to 1970 was an era which saw an Islamic emergence that built the foundations for the religion to be built into the core of state politics and law. Similarities can be drawn between this emergence and that of Saudi Arabia which was previously discussed, as they both started in relatively similar timeframes and both saw a revolution within their societies, as well as state policies.

5.2 – The Malaysian Political System

The structure of the modern Malaysian state has its roots in its colonial history. Malaysia was under British rule by the 19th century, but the British did not rule the territory known today as contemporary Malaysia as one single entity. According to Farid, most matters were indeed governed by English common law, but family law was administered by Islamic law (2012). Bearing in mind that this was still done by colonial courts and presided over by British judges, it is still noteworthy that parts of the legal system was ruled by Islamic law while the majority was governed by colonial law. This is especially significant

because the political system in place during the Malaysian colonial era can be seen in political system in place in modern Malaysia. Today, most matters are governed by a uniform body of federal law enforced by the national courts (Farid 2012). However, the federal constitution states that each of the thirteen Malaysian states has the power to apply Islamic law in matters specified in the constitution. These matters range from aspects of personal law to family law while also including the ability to enforce Islamic criminal law. Furthermore, each state is granted the possibility of creating sharia courts to govern over Muslims and oversee these matters under Islamic law (Farid 2012). Subsequently, each of the thirteen states in Malaysia have used these possibilities granted by the federal constitution and have established sharia courts to preside over matters pertaining to Islamic law (Farid 2012). Therefore, this system is relatively different to that of Saudi Arabia since Islamic law rules in tandem with the federal law of Malaysia, while in Saudi Arabia Islamic law is the sole legal entity adjudicating all affairs.

So the sharia courts in place in Malaysia only have jurisdiction over Muslims within the state, while the federal law presides over the non-Muslims. This can lead to complications in cases which involve both Muslims and non-Muslims. In these cases, the Muslim will be judged according to Islamic law while the non-Muslim would be ruled by the federal law (Farid 2012). One example Farid describes which exemplifies the complications which may arise from this prospect is if a Muslim is married to a non-Muslim. Firstly, marriage between Muslims and non-Muslims is prohibited in Malaysia. However, citizens do have freedom of religion. Therefore, it is a possibility for non-Muslims to get married, and then one of the partners could convert to Islam (Farid 2012). If matrimonial issues arise from this marriage, each spouse would be ruled by a different court which could become a significantly complicated affair (Farid 2012). Farid does not describe specific issues that may arise, but one can imagine that disputes and complications could arise if a child is involved in these affairs in custodial battles. Therefore, Malaysia has a legal system in place that could seem fair and reasonable at first glance, with Islamic law only applicable to Muslims. However, having two legal structures in place at the same time with each applicable to a portion of the population can lead do conflict complications between the two.

Having these two systems of governance present in the political system of Malaysia makes it a rather unique case, and its implications are not solely negative. Having a secular

legal system run in parallel to Islamic law has resulted in the modernization of Islamic law in Malaysia, and the subsequent isomorphism of the two systems (Mohamad 2010). This is seen in the symmetrical manner in which the institutions of the two legal systems run, the similarity in the forms and procedures that take place in each system as well as the rights and obligations pertaining to each legal system (Mohamad 2010). Subsequently, the result is a closing of the gap between secular law and Islamic law in Malaysia, with a significant convergence of the two evident in the Malaysian legal system (Mohamad 2010). An important factor to note throughout this process is the reaction of the Islamic legal officials to the modernization and secularization of Islamic law. According to Mohamad, this process was embraced rather than resisted with modernity and divinity seen as two factors that can be fused together (2010). This is important as it shows that modernity can indeed be compatible with sharia law as long as the state allows for modernity to have a role in its Islamic framework.

This motivation to adapt Islam with modernity within the Malaysian political system is seen with the establishment of JAKIM (Jabatan Kemajuan Islam Malaysia, which translates to Department for Islamic Advancement in Malaysia). Essentially, as previously mentioned, each state in Malaysia has jurisdiction over its own Islamic law and courts. However, the establishment of JAKIM saw the coordination of Islamic law and affairs. The institution focuses on the development and coordination of Sharia law between states (Mohamad 2010). Mohamad states that the institution is provided with resources for training, education, research and policy consultation regarding sharia and Islamic affairs (2010). With these resources, it is able to focus on the constant development of sharia law according to modernity by making sure that these laws evolve according to the modern state of affairs, and of course, in accordance with Islam. Along with the establishment of this organization, the centralization of the Islamic bureaucracy also demonstrates the effectiveness of the state in ensuring the development of Islam. Since Islamic affairs are under the jurisdiction of each state in Malaysia, this could have led to a disjointed and fragmented role for Islam throughout the nation. Subsequently, centralization has led to the federal government taking overarching control of the structure of Islamic authority, while jurisdiction still remains with the individual states (Mohamad 2010). The significance of this centralization is that the state of Islamic affairs in the nation could develop in a coordinated manner, and

could also be funded by the state (Mohamad 2010). Therefore, the establishment of JAKIM along with the centralization of Islamic bureaucracy shows the importance the Malaysian state places on the development of Islam in accordance with modernity. This shows that in Malaysia, modernity does have a role to play in Islamic affairs and sharia law due to the manner in which the state allows the two to merge and combine with one another.

5.3 – Local Attitudes towards the Malaysian State and Governance

So it has been established that the manner in which the Malaysian political system is set up allows for flexibility in the application of sharia law, given the importance placed on its development and evolution with modern times. This means that, contrary to the previously discussed case of Saudi Arabia, the religious leaders (also known as the ulama) do not hold as much power in their opinions and interpretations of Islam. This can be inferred after examining the flexible manner in which sharia law is applied, which subsequently weakens the strict interpretations of religious leaders as the Malaysian state is always seeking to evolve and adapt its Islamic laws. This inference can be tested by reviewing local attitudes in Malaysia regarding the significance of the interpretations and opinions of religious leaders. Reviewing these opinions would provide insight into the value the opinions of the religious leaders hold amongst the Malaysian public, which would provide an indication regarding how strict their legal opinions are perceived to be.

The first statement tested in a survey conducted by Moustafa states: *“Because the ‘ulama are imperfect humans, their views on some issues may be wrong”* (2012). 75.7% of the respondents surveyed agreed with this statement, which constitutes a vast majority. This implies that the religious elite in Malaysia are not seen as providers of infallible knowledge, but rather as providers of guidance and human interpretation of Islam. Therefore, their opinions do not hold divine value as religious leaders are humans, and humans do not have perfect access to the will of God (Moustafa 2012). Furthermore, respondents were asked to answer the following question: *“Are fatwas [laws and rulings by religious elite pertaining to Islamic law] something used to advance political interests?”* 53.8% of the respondents answered the question affirmatively, which shows a degree of scepticism towards the purity and perfection of Islamic law in Malaysia (Moustafa 2012). This survey question once again emphasizes the status of religious leaders as humans who

provide their opinions on Islam according to not only their interpretations, but also their goals and interests. Subsequently, their opinions and resulting laws are not seen by the Malaysian public as infallible and divine in nature, but rather they are seen as the understandings of scholars.

These survey results provide noteworthy results regarding the nature of Islamic law and how it is applied in Malaysia. These results support the claim that Islamic law is perceived as flexible by the majority of the Malaysian public. This is an overarching theme which links to the Malaysian political system which emphasizes the importance of adaptation to modernity in matters regarding Islamic law. At the same time, these results refute the view that sharia law is singular and fixed as seen by the scepticism of the Malaysian public towards the laws that derive from the opinions of religious scholars. Therefore, the Malaysian state and public are relatively aligned in the manner in which they perceive sharia law. They both emphasize the importance of flexibility and adapting to modernity, which subsequently creates an ideal environment in which universal norms and human rights can have a role to play.

5.4 – Malaysian State Protection of Human Rights

In the same manner as depicted in chapter four, the CIRI Human Rights Database will be used to describe the protection of human rights within the Malaysian state using quantitative data. This will help in providing directly comparable data between Malaysia and Saudi Arabia regarding state protection of human rights. The same human rights will be examined over the same time period in order to ensure complete similarity between the two sets of data pertaining to both states. Furthermore, the human rights measured are defined in the same manner and the methods of data collection are also identical since the same dataset is being used. Likewise to chapter four, the human rights to be measured are freedom of speech and press, freedom of religion, the political rights of women and the economic rights of women which will be examined throughout the period between 2007 and 2011. This data will be specifically significant in the case of Malaysia as this chapter has established the willingness of the state to integrate modernity with its Islamic legal framework. Subsequently, the data provided will show if this inclination towards modernity has had a positive effect on the human rights of its citizens. Furthermore, positive results

would also show that sharia law can indeed be applied in a manner which adapts to universal human rights and norms.

The first human right to be examined in the case of Malaysia is freedom of speech and press. This measurement focuses on the extent to which government these freedoms are restricted by government censorship (CIRI 2014). According to the CIRI Human Rights Database, Malaysia scored a consistent zero throughout the five years measured, and this score equates to 'complete government censorship of the media' (CIRI 2014). This is a rather surprising result due to the apparent significance the Malaysian state places on evolving and adapting to modern times. It is important to note that the CIRI Human Rights Database focuses on government practice rather than solely law. Therefore, if a state does have laws providing freedom of speech and press but the government does not respect these laws in practice, this country will score a zero (CIRI 2014). Subsequently, this could be a possible explanation regarding the poor score of Malaysia regarding this human right, as its legal structure corresponds to modernity but actual state practice may still be distanced from modernity. Furthermore, it is also noteworthy that states generally do not score high in this human right. Developed states such as Germany and Spain had a score of one over the same time period, which shows that results in this category can be rather surprising. This shows that governments around the world generally place restrictions on freedom of speech and press to some extent, even in developed states where this human right would be expected to be respected

The second human right in question is freedom of religion, which takes into account state restrictions placed on the freedom of its citizens to exercise and practice their religious beliefs. Once again, Malaysia scored a zero over the period between 2007 and 2011, and this score indicates 'severe and widespread government restrictions on religious practices' (CIRI 2014). Once again, the CIRI Human Rights Database emphasizes in this section that these scores are based on government practices, rather than laws which protect freedom of religion (CIRI 2014). Therefore, a similar argument can be used as seen when freedom of speech and press were measured regarding the fact that Malaysia may be placing importance on modernity within its legal framework, but this does not mean government practices are on the same wavelength. However, these results are still surprising given the political system in place in Malaysia. The fact that there are sharia courts adjudicating affairs

of Muslims, while running in parallel to this are federal courts with jurisdiction over non-Muslims means indicates that the state system is not only centred on one religious belief. At the same time, the religious freedoms of citizens were also proven to be limited earlier in this chapter when the fact that Muslims are prohibited from converting religion was mentioned. Consequently, these results do not prove the will of the Malaysian government to adhere to contemporaneousness and universal human rights when it comes to freedom of religion.

Meanwhile, the next human right in question pertain to the political rights of women in Malaysia. This measurement takes into account the extensiveness of laws regarding the political rights of women, as well as government practice and enforcement of these laws (CIRI 2014). Throughout the period between 2007 and 2011, Malaysia scored a two over all five years which is a rather positive result. Scoring a two in this measurement indicates that political equality is legally guaranteed in the state, while women hold over 5% of seats in the national legislature or other high-ranking government positions (CIRI 2014). This indicates that the political rights of women are protected both legally and in practice. This data strengthens the argument that the willingness of the Malaysian state to account for modernity within its legal structure has contributed to the protection of the human rights of its citizens. This result also shows that a state in which sharia law is applied can also adhere to universal norms and human rights by showing that these two factors are compatible with one another. So when it comes to political rights, this data has shown that women are not discriminated against and can be treated equally within the framework of sharia law.

The last human right to be discussed is the economic rights of women in Malaysia. In this section, the CIRI Human Rights Database accounts for the laws and government practices which protects the economic rights of women such as the right for equal pay and free choice of profession (CIRI 2014). Throughout the five year period being dealt with in this analysis, Malaysia scored a three in 2007, while this score dropped to one between 2008 and 2011 (CIRI 2014). Even though it was just in one of the years examined, the fact that Malaysia scored a three is certainly noteworthy as this is the highest score possible for a country to obtain in this section. According to the database, countries with a score of three guarantee the economic rights of all women by law, and these laws are fully and vigorously enforced by the state. Furthermore, nations with this score have no tolerance

towards the discrimination of women (CIRI 2014). So this score means that in 2007, while sharia courts were in place in Malaysia, the state was able to protect the rights of women within the framework of its legal system, and in practice. This is a strong exemplification of the fact that universal human rights do have a place in the sharia law applied in states. This example shows that if a state places importance of flexibility and adaptation to modernity, then sharia law can be compatible with universal norms and human rights. The database does show that the score of Malaysia has dropped in recent years, and indicates that while there are legal economic rights for women in the country, these laws are not enforced effectively (CIRI 2014). But these results are still solid proof of the effectiveness of modernity and universal norms being placed within the framework of sharia law.

	Freedom of Speech and Press	Freedom of Religion	Women's Political Rights	Women's Economic Rights
2007	0	0	2	3
2008	0	0	2	1
2009	0	0	2	1
2010	0	0	2	1
2011	0	0	2	1

Table 2: Malaysian Protection of Human Rights (CIRI 2014)

This case study has shown the effects the Islamic background of Malaysia has on its current application of sharia law, highlighting the significance of the Islamic resurgence and how this affected state policies. The Malaysian political system was then discussed, showing the involvement of the state in guaranteeing the modernization of sharia law thus making it more compatible with modern values. Local attitudes were then proven to share the views of the state regarding the importance of flexibility in sharia law, which helps in creating an environment that can adapt and evolve in conjunction with modernity and universal values. Finally, the CIRI Human Rights Database showed that these aspects have helped the Malaysian state guarantee universal human rights in various areas. This has proven that sharia law can be compatible with universal human rights according to the policies and structure of the state in question.

Chapter 6 – Conclusion

6.1 – Summary

This thesis has shown that sharia law is a legal framework which is much more complex than perceived in previous literature. It is applied differently across the Muslim world according to the interests and Islamic interpretations of the nation in question. Therefore, referring back to the research question mentioned in the first chapter, the social factors which influence the extent to which Saudi Arabia comply with modern universal values include the history and background of the nation. While the country is the most historically significant nation in the Islamic world, other social factors have contributed to its lack of adherence to universal human rights and values. This includes the reinforcement of Islam as the centrepiece of Saudi society following an incident in 1979 in which Muslim militants took control of the sacred mosque in Mecca. Meanwhile, political factors which contribute to the extent to which Saudi Arabia abides by universal norms and values are mainly centred on the political structure of the state. Religious leaders in the country are heavily empowered, which gives them freedom to apply sharia law according to their opinions and interpretations of Islam. Therefore, Saudi society is ruled by the interpretations of these religious scholars which can be significantly extreme and fixed. This subsequently plays a role in the lack of adaptability of sharia law in Saudi Arabia to modernity.

In terms of referring the Malaysian case study back to the proposed research question, the factors which influence the extent to which the country abides by modern universal values are primarily political in nature. This is because Malaysia does not have the same history linking the nation with Islam as Saudi Arabia does. However, the manner in which Malaysian society distinguishes between Muslims and non-Muslims can be deemed as both a social and political factor. Sharia law in Malaysia is only applied to Muslims in the nation, while the non-Muslims are placed under the jurisdiction of the federal law of the state. The fact that the two run parallel with one another has led to the modernization of sharia law as it is run in a significantly similar way to the federal law in terms of method and procedure. Furthermore, the establishment of JAKIM in Malaysia is an indication of the importance of the state in determining the status of human rights and modernity within a state. This institution focuses on the advancement of sharia law in Malaysia, which shows

the importance the Malaysian state places on the extent to which its laws adhere to universal human rights and norms.

Both case studies were supplemented with surveys examining local attitudes towards their respective states and societies. The main takeaway from the results pertaining to Saudi Arabia is the lack of effectiveness of the state policies in placing religion as the centrepiece of society. This is shown by the fact that only 62% of the respondents described themselves as being a religious person, which was the lowest percentage out of the countries surveyed. Furthermore, Saudi attitudes towards the system of governance in the state are also noteworthy, as 58% of respondents stated that a democratic system is the ideal governmental system. Given the fact that the nation is ruled by an absolute monarchy, this places significant distance between the Saudi state and its citizens. With regards to Malaysia, the surveys showed more support and uniformity between the state and its citizens. The results showed that sharia law is perceived as a flexible system by Malaysian citizens, which supports the political system and involvement on the part of the state which focus on the advancement of sharia law. Consequently, while the Saudi system regarding sharia law remains fixed and left behind by its citizens, the Malaysian system is advancing in accordance with modernity and in unison with its civilians.

Finally, the CIRI Human Rights Database was used to examine the human rights situation of each country. This was done in order to further establish the effectiveness of the state systems in place in each nation in guaranteeing the human rights of its people. Saudi Arabia scored significantly low in the vast majority of the data collected, while the outlook was more positive in the case of Malaysia. This data showed that, as shown by the case of Malaysia, sharia law can be applied in a way that is compatible with universal human rights. This is proven by the fact that over the five years examined, Malaysia scored consistently well with regards to the guaranteeing of the political rights of women. Furthermore, the nation obtained the highest score possible in 2007 regarding the protection of the economic rights of women. While the scores of Malaysia were not always positive, the fact that the nation scored positively in various areas shows that there is place for modernity and universal human rights within the framework of sharia law.

6.2 – Discussion

In terms of the significance of this study and the bigger picture which it is linked to, this thesis has shown that sharia law in itself cannot be criticized as failing to comply with universal human rights, which was a perspective taken in the majority of previous research. This is because there is no singular sharia law applied across the Muslim world, but it is applied according to the interpretations and interests of each individual state. The differences between the manner in which sharia law is applied in Saudi Arabia and Malaysia prove this point, as the latter has been proven to comply with universal human rights in more areas than the former. This is mainly due to the influence of the Malaysian state and the fact that they deem it important to modernize sharia law according to the evolving world of today, while Saudi Arabia still bases its laws on the opinions of individual religious scholars with no input from the state or institutions to check the laws deemed appropriate by these scholars. This shows that the state has great influence in determining the compatibility of sharia law with universal human rights, and the significance of political factors that should be accounted for when assessing this compatibility.

Meanwhile, social factors must also be kept in mind when determining the extent to which sharia law complies with universal norms. One cannot ignore the influence of the history of a state along with major events which took place in a nation influencing its society and consequently its laws and policies of a nation. Some countries, particularly Saudi Arabia, have a deeper historical linkage with Islam than states such as Malaysia, and this has been shown to affect the manner in which sharia law is applied. Furthermore, events such as the 1979 attack on Mecca cannot be ignored as they instigate a chain of events influencing the application of sharia law. This incident led to increased Islamization across the nation on all levels, including education and law enforcement which has led to a stricter application of sharia law in Saudi Arabia. Subsequently, social factors cannot be ignored when studying the compatibility of sharia law with universal human rights in a nation.

The common takeaway from both the political and social factors which influence the application of sharia law is that this legal framework cannot be generalized across states. Each state is unique in terms of the social and political mechanisms at play within each nation, thus requiring each state to be studied individually in order to assess the

compatibility of the sharia law applied within the nation with universal norms and modernity. Furthermore, the fact that sharia law cannot be judged in itself must be emphasized, as this is a common mistake committed by previous literature surrounding this topic. Sharia law can be compatible or incompatible with universal human rights only according to the manner in which it is applied in each state. This is shown by the fact that the case studies mentioned in this thesis provide very different results and conclusions regarding their compatibility with sharia law. Subsequently, the extent to which sharia law is compatible with universal human rights can only be determined on an individual level across states, rather than on a general level for states which apply this legal framework. Therefore, future research regarding this topic should not focus on one specific form of sharia law applied in one country, but rather the different implementations of sharia law across Muslim nations. The Muslim world is vast and diverse, and this thesis has only covered two nations within this realm, so there is still a wide array of research possibilities to be conducted regarding the application of sharia law in Muslim countries. This would aid in drawing further conclusions regarding the role of the state in ensuring that this legal framework is applied in compliance with universal human rights and values.

Bibliography

- An-Na'im, Abdullahi A. 2005. *Toward an Islamic reformation civil liberties, human rights, and international law*. Syracuse, N.Y.: Syracuse University. Press.
- Bassiouni, M. Cherif. 2014. *The Sharī'a and Islamic criminal justice in time of war and peace*. New York: Cambridge University Press.
- Bielefeldt, H. 2000. "Western" versus "Islamic" Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights". *Political Theory*. 28: 90-121.
- Cingranelli, David L. and David L. Richards. 2014. *The Cingranelli-Richards (CIRI) Human Rights Data Project Coding Manual Version 5.20.14*.
<http://www.humanrightsdata.com/p/data-documentation.html>
- Cingranelli, David L., David L. Richards, and K. Chad Clay. 2014. "The CIRI Human Rights Dataset." Version 2014.04.14. <http://www.humanrightsdata.com>.
- Curtis, Michael. 2013. *Jews, antisemitism, and the Middle East*. New Brunswick: Transaction Pub.
- Farid, Sufian S. 2012. *The Islamic Legal System in Malaysia*. Seattle: University of Washington, School of Law.
- Gilani, Syed Raza Shah, Hidayat ur Rehman, and Bahaudin G. Mujtaba. (2014) Islam, Shari'a Laws and International Human Rights Compatibility for Expatriate Business Managers. *Journal of Business Studies Quarterly* 6: 98–109.
- Hefner, Robert W. 2011. *Shari'a politics: Islamic law and society in the modern world*. Bloomington: Indiana University Press.
- Kechichian, Joseph A. 2001. *Succession in Saudi Arabia*. Palgrave Macmillan
- Marshall Cavendish. *World and its Peoples. Bahrain, Oman, Qatar, Saudi Arabia, UAE, Yemen*. 2007. Tarrytown, NY: Marshall Cavendish.

- Moaddel, Mansoor. 2006. "The Saudi Public Speaks: Religion, Gender, and Politics". *International Journal of Middle East Studies*. 38 (1): 79-108.
- Mohamad, Maznah. 2010. "The Ascendance of Bureaucratic Islam and the Secularization of the Sharia in Malaysia". *Pacific Affairs*. 83 (3): 505-524.
- Matthiesen, T. 2012. "A ``Saudi Spring?": The Shi'a Protest Movement in the Eastern Province 2011-2012". *Middle East Journal*. 66 (4): 628-659.
- Moustafa, T. 2013. "Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia". *Law And Social Inquiry*. 38 (1): 168-188.
- Otto, Jan Michiel. 2010. *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*. Leiden: Leiden University Press.
- Peletz, M. 2013. "Malaysia's Syariah Judiciary as a Global Assemblage; Islamization, Corporatization, and other Transformations in Context". *Comparative Studies in Society and History*. 55 (3): 603-633.
- Vogel, Frank E. 2012. "Shari'a in the Politics of Saudi Arabia". *The Review of Faith & International Affairs*. 10 (4): 18-27.
- Women's Aid Organization (WAO). (2012) CEDAW & Malaysia: Malaysian non-Government organisations' alternative report assessing the government's progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Petaling Jaya, Selangor, Malaysia: Women's Aid Organisation.*