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Shams Al Din Al Hajjaji, Islam and Reform of Authoritarianism: The Case of Muslim Majority Government, 8 I.J.L.D.L.R. 3 (2019).

ALWD 6th ed.

Shams Al Din Al Hajjaji, Islam and Reform of Authoritarianism: The Case of Muslim Majority Government, 8 I.J.L.D.L.R. 3 (2019).

APA 6th ed.

Al Din Al Hajjaji, S. (2019). Islam and reform of authoritarianism: The case of muslim majority government. International Journal of Legislative Drafting and Law Reform, 8(1), 3-24.

Chicago 7th ed.

Shams Al Din Al Hajjaji, "Islam and Reform of Authoritarianism: The Case of Muslim Majority Government," International Journal of Legislative Drafting and Law Reform 8, no. 1 (November 2019): 3-24

McGill Guide 9th ed.

Shams Al Din Al Hajjaji, "Islam and Reform of Authoritarianism: The Case of Muslim Majority Government" (2019) 8:1 Intl J of Legislative Drafting & L Reform 3.

MLA 8th ed.

Al Din Al Hajjaji, Shams. "Islam and Reform of Authoritarianism: The Case of Muslim Majority Government." International Journal of Legislative Drafting and Law Reform, vol. 8, no. 1, November 2019, p. 3-24. HeinOnline.

OSCOLA 4th ed.

Shams Al Din Al Hajjaji, 'Islam and Reform of Authoritarianism: The Case of Muslim Majority Government' (2019) 8 IJLDLR 3

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ISLAM AND REFORM OF AUTHORITARIANISM: THE CASE OF MUSLIM MAJORITY GOVERNMENT

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There is always a common connection between Islam, on the one hand, and authoritarianism and totalitarianism on the other. This connection is drawn from the Islamic countries' governments, and the application of their regime. More than 63 countries around the globe identify as Islamic. Each of these countries has its own understanding of Islamic governance. They base their governmental practices on their understanding of modern and Islamic laws. These countries struggle to find the best form of government that follows either authoritarian or totalitarian regimes.

Some contemporary Islamic governments lack the Quran and *Sunnah* understanding of public participation and enumerated executive powers.¹ The current Muslim regimes are either authoritarian or totalitarian. These systems lack not only any form of transparent public participation in good government, but also any form of enumerated powers, like Turkey.² Election fraud takes place in many Islamic countries, like Egypt.³ They use fraudulence to impose a certain pathway upon the people.⁴ Additionally, the unlimited and undisputed authority of the rulers in

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¹ *Infra* III.

² Why did Turkey hold a referendum, BBC NEWS (April 16, 2017), <http://www.bbc.com/news/world-europe-38883556>; OZLEM MADI-SISMAN, MUSLIMS, MONEY AND DEMOCRACY IN TURKEY RELUCTANT CAPITALISTS, 86 (2017); see also Spyridon Kotsovilis, Between Fedora and Fex, *Modern Turkey's Troubled Road to Democratic Consolidation and the Pluralizing Role of Erdogan's Pro-Islam Government*, IN TURKEY AND THE EUROPEAN UNION INTERNAL DYNAMICS AND EXTERNAL CHALLENGES, 56 (Joseph S. Jospheh ed. 2006).

³ Shams Al Din Al Hajjaji, *A Call for Judicial Reform in Egypt*, 11 VIENNA J. INT'L CONST. L. 256, 256-259 (2017).

⁴ *Id.*

many Islamic countries, like Saudi Arabia⁵ and Morocco,⁶ are non-Islamic. Thus, even though these countries practice Islam, their political regimes do not.

As a rule, Islam is neutral in relation to people's daily practices.⁷ It neither applauds nor condemns any set of rules, or regimes.⁸ However, it takes a firmer stand regarding the administration of the government.⁹ Islam is against exclusion from the decision-making process.¹⁰ The pervasiveness of the non-democratic regimes across the Islamic world raises the question of Islam's position from the point of view of Islam itself.¹¹ Many authoritarian or totalitarian Islamic regimes are keen to apply Islamic *Sharia* as their main source of legislation.¹² They turn a blind eye to the core notions of the Islamic principle of good government, either the *Shura* principle (public participation principle), or enumerated authorities to the government.¹³

This research gives four examples of countries with a Muslim majority. It shows that even though these countries share the same religion (some even share a language and culture as well), they

⁵ Article 6 of the Saudi Arabia constitution states "Citizens shall pledge allegiance to the King on the basis of the Book of God and the Sunnah of his Messenger, and on the basis of Submission and Obedience in times of Hardship and ease, fortune and adversity." THE CONSTITUTION OF THE KINGDOM OF SAUDI ARABIA of 2 March 1992, (Saudi Arabia), art. 6.

⁶ Article 42 of the Morocco Constitution states

The King Head of State, His Supreme Representative, Symbol of the unity of the Nation, Guarantor of the Permanence and of the continuity of the state and supreme arbiter between the institutions, sees to respect for the constitution, to the good functioning of the constitutional institutions, to the protection of democratic choice and of the rights and freedoms of the citizens (feminine) and citizens (masculine), of the collectivities, and to respect for the international commitments of the Kingdom. He is the Guarantor of the Independence of the Country and of the territorial integrity of the kingdom within its authentic frontiers. CONSTITUTION OF KINGDOM OF MOROCCO, 17 June 2011, art 42.

⁷ The prophet said "You have better knowledge (of a technical skill) in the affairs of the world." The Book of Virtues, SUNNAH, <https://sunnah.com/muslim/43/186>.

⁸ *Id.*

⁹ Abdul Rashid Moten, *Democracy and Development in the Muslim World*, IN THE MUSLIM WORLD IN THE 21ST CENTURY SPACE, POWER, AND HUMAN DEVELOPMENT, 189 (Samiul Hasan ed.2012).

¹⁰ *Id.*

¹¹ To read about the relation between Islam and Authoritarianism, see, LAUREL E. MILLER, JEFFREY MARINI, F. STEPHEN LARRABEE, ANGEL RABASA, STEPHANIE PEZARD, JULIE E. TAYLOR, AND TEWODAJ MENGISTU, DEMOCRATIZATION IN THE ARAB WORLD: PROSPECTS AND LESSONS FROM AROUND THE GLOBE, 46 (2012).

¹² Article 2 of the Egyptian Constitution states "Islamic sharia is the main source of Legislation" CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art.2; article 1 of the Islamic Republic of Iran states " the government of Iran is an Islamic Republic." CONSTITUTION OF ISLAMIC REPUBLIC OF IRAN, 24 October 1979 amended in 28 July 1982, art. 1; see also, Article 2 of the Constitution of Algeria states "Islam is the religion of the State."

CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC OF ALGERIA, 1989, amended 1996, art. 2.

¹³ *Supra* note 9.

apply different practices. These practices are not based on the Prophet's tradition. These regimes, however, share a common aspect, namely that they follow either totalitarian or authoritarian regimes. The countries are Turkey, Saudi Arabia, Egypt, and Morocco. Each one of these countries is home to its own application of authoritarian or totalitarian governments, but still shares the Islamic nature of the state.

A. Turkey: Secularism and Islamic Authoritarianism

Currently, Islam is being used to feed the new Turkish authoritarian regime.¹⁴ The political regime is working to migrate from a multi-power system to a unilateral power system. The regime is using Islam to achieve its goals, while Turkey is struggling between secularism and religious fundamentalism.¹⁵ The recently failed military coup has fortified the regime's position over that of the military, the police, and the judiciary. While both the military and the police are originally part of the executive authority, control over the judiciary is a new step towards the new Turkish authoritarian /Islamic regime.

The Turkish Constitution did not adopt the principle of separation between Islam and the state. Indeed, the Turkish Constitution maintains that Turkey is based on secularism.¹⁶ It bans any religious interference in state affairs.¹⁷ However, the principle of separation of church and state is applied only selectively.¹⁸ The Constitution does not ban the government from interfering in religion.¹⁹ It has given the state the right to orchestrate affairs of religion, based on secularism.²⁰ This inadequate form of application of the principle gives the right to Islam to interfere in the secular state.

¹⁴ PELIN AYAN MUSIL, *AUTHORITARIAN PARTY STRUCTURES AND DEMOCRATIC POLITICAL SETTING IN TURKEY*, 48-50 (Palgrave Macmillan, 2011).

¹⁵ Elliot Ackerman, *Ataturk Versus Erdogan: Turkey's Long Struggle*, THE NEW YORKER (July 16, 2016), <http://www.newyorker.com/news/news-desk/ataturk-versus-erdogan-turkeys-long-struggle>

¹⁶ PREAMBLE OF THE CONSTITUTION OF THE REPUBLIC OF TURKEY (October 18, 1882), amended in July 23, 1995 and April 16, 2017).

¹⁷ *Id.*

¹⁸ THIJL SUNIER AND NICO LANDMAN, *TRANSNATIONAL TURKISH ISLAM: SHIFTING GEOGRAPHIES OF RELIGIOUS ACTIVISM AND COMMUNITY BUILDING IN TURKEY AND EUROPE*, 21 (2015).

¹⁹ THE CONSTITUTION OF THE REPUBLIC OF TURKEY (October 18, 1882), amended in July 23, 1995 and April 16, 2017), art. 136.

²⁰ *Id.*

The permission of the secular principle to interfere in Islam was incompatible with the principle of the separation of church and state. The Turkish secular understanding of the government limits the individuals' freedom of religion.²¹ Even though the Constitution ensured that the principle of the secular state oversees the programs of the political parties,²² Islamic parties started to find leeway within a crooked system. During his term as Prime Minister, Erdogan declared himself to be secular,²³ but he did not believe in secularism as an alternative to religion.²⁴ The previous statement is a political statement that does not really reflect either the secular principle, or the principle of separation between the church and the state.

The judiciary also struggles between Islam, secularism and authoritarianism. The judiciary in Turkey has constrained the development of political liberalism.²⁵ The essential goal of the judiciary has been replaced, from protecting individuals, to protecting governmental officials.²⁶ This is a result of the interference of politics in the judicial mission. The Turkish judiciary is heavily involved in social and political lives, thus creating a 'judicialisation' of politics.²⁷ This trend can be traced back to the early 1980s of the last century, which resulted in an alternate role of the judiciary. In this state of affairs, judges and prosecutors believe that their role is not to deliver justice, but rather to protect the state.²⁸ The Turkish judiciary functions mainly in two ways: intervening in political life in a way that pleases the regime, or helping to oppress those who do not please the regime.²⁹ In 2015, two judges were detained and arrested for issuing a judgment that

²¹ Hakan Olgun, *Religion-State Relations in Turkey, the Prospect of European Union Membership and the Lutheran Doctrine of the Two Kingdoms*, 33 RELIGION, STATE & SOC. 339, 339 (2005)

²² THE CONSTITUTION OF THE REPUBLIC OF TURKEY (October 18, 1882), amended in July 23, 1995 and April 16, 2017), at art. 68.

²³ Ahmet Kuru, *Secularism in Turkey: Myths and Realities*, 10 INSIGHT TURKEY 101, 103 (2008), http://ahmetkuru.sdsu.edu/docs/Kuru_IT.pdf

²⁴ *Id.*

²⁵ Zuhtu Arslan, *Reluctantly Sailing towards Political Liberalism: The Political Role of the Judiciary in Turkey*, 220 in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM (Terence Halliday, Lucien Karpik, and Malcolm Feeley, ed.).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Fatma Muca Gocok, *Denial of Violence: Ottoman Past, Turkish Present and Collective violence*, (2014), 404.

²⁹ Michael Gunter, *Turkey: the Politics of A New Democracy Constitution*, 19 MIDDLE EAST POL. 119, 122 (2012).

did not meet the authoritarian's approval.³⁰ Hence, the role of the judiciary, as the protector of political regime interests, maintains the authoritarian role in the country.³¹

The Supreme Constitutional Court is heavily involved in politics. It has a clear rule against political parties. The Court, which was established in 1961, has taken several steps against the political regime to limit its unconditional power over the judiciary. The President of the Court has issued several statements against the formation of political parties, in order to avoid any confrontation with the ruling party.³² Since the president of the Court issued several statements, the Court has been part of the political arena, and has managed to dissolve many political parties.³³ In 1991, the Court dissolved the United Communist Party of Turkey and, the year after, the Socialist Party. In 1994, it dissolved the Freedom and Democracy Party and, in 2001, the Virtue Party.³⁴ Additionally, in 2008 the Court banned several political figures of the Justice and Development Party AKP from politics.³⁵ As a result, the Court became part of the political dilemma in Turkey.

The Turkish army, foreign policy, as well as the tax system are in perfect compliance with the secular nature of the government. Islam is only used to achieve the political agenda of the ruling party. It does not have any real reflection on the Turkish administration. The Turkish army is a strong permanent army that intervenes in Iraq,³⁶ Syria,³⁷ and Cyprus.³⁸ Besides, Turkey imposes exorbitant taxes on its citizens that range from 15% to 35% of their income. As for its foreign

³⁰ The two judges have ruled to release of media members and officers, *see* Omar Keskin, Jurist: arrest of Judges leaves black mark on Turkish Judiciary, {May 03,2015} http://www.todayszaman.com/anasayfa_jurists-arrest-of-judges-leaves-black-mark-on-turkish-judiciary_379672.html

³¹ *Id* at 124

³² Zuhtu Arslan, *Conflicting Paradigms: Political Rights in the Turkish Constitutional Court*, 11 CRITICAL MIDDLE EASTERN STUD. 9, 15 (2002).

³³ *Id*.

³⁴ *Id* at 17.

³⁵ Fevzi Biligin, The Turkish Constitutional Court's Struggle for Democracy and the Rule of Law, RETHINK INSTITUTE WASHINGTON DC {October 2014}, <http://www.rethinkinstitute.org/turkish-constitutional-courts-struggle-democracy-rule-law/>

³⁶ Turkey Launches Ground Operation Against PKK in Northern Iraq, Turkish army Said, HURRIYET, (February 22, 2008), <http://www.hurriyet.com.tr/turkey-launches-ground-operation-against-pkk-in-northern-iraq-turkish-army-said-8287603>

³⁷ Bethan McKernan, Clashes Between Kurdish and Turkish forces in Syria Threaten to Derail Fight against ISIS, INDEPENDENT, (April 28, 2017), <http://www.independent.co.uk/news/world/middle-east/kurdish-fighters-turkish-army-syria-isis-battle-ypg-ypj-sdf-sinjar-raqqa-rojava-islamic-state-daesh-a7707471.html>

³⁸ Cyprus Talks: Erdogan Dismisses Full Turkish Troop Withdrawal, BBC NEWS, (January 13, 2017), <http://www.bbc.com/news/world-europe-38609828>

policy, Turkey has one of the most hostile foreign affairs policies that propagate the retrieval of the Ottoman Empire,³⁹ which is neo-Ottomanism.⁴⁰ Turkey has also launched attacks on other nations, as seen in several statements made by Erdogan against the United States,⁴¹ Europe,⁴² Germany,⁴³ and the Netherlands.⁴⁴ As a result, all these practices are non-compliant with Islam.

B. Saudi Arabia: Totalitarian Islamic Ideology

The Constitution of Saudi Arabia maintains that the Kingdom of Saudi Arabia is based on Islamic *Sharia*, and the principle of *Shura*.⁴⁵ However, the Saudi government lacks any form of Islamic nature, based on two factors. Firstly, even though Saudi Arabia's legal system is based in theory on the *Shura* principle, Saudi Arabia follows a monarchic system. Its name dates back to its early founder, King Abdul Aziz Al Saud (Ibn Saud).⁴⁶ The dynasty is made up of Ibn Saud's sons, and grandsons.⁴⁷ When the King is sworn in, he has a free choice of appointing the Deputy Crown Prince. Recently, King Salman Ibn Abdulaziz Al Saud impeached his cousin, Mohamed Bin Nayef. Instead he appointed his son, Prince Mohammed bin Salman, as Deputy Crown prince.⁴⁸

³⁹ Nick Danforth, Turkey's New Maps are Reclaiming the Ottoman Empire, FOREIGN POLICY, (October 23, 2016), <http://foreignpolicy.com/2016/10/23/turkeys-religious-nationalists-want-ottoman-borders-iraq-erdogan/>

⁴⁰ M. Hakan Yavuz, *Turkish Identity and Foreign Policy in Flux: The Rise of New-Ottomanism*, 7 CRITICAL MIDDLE EAST. STUD. 19, 19-21 (1998)

⁴¹ Erdogan's Bodyguards' in Violent Clash with protesters in Washington DC, THE GUARDIAN, (May 17, 2017), <https://www.theguardian.com/world/2017/may/17/erdogans-bodyguards-in-violent-clash-with-protesters-in-washington-dc>

⁴² Daren Butler and Tuvan Gumrukeu, Defiant Erdogan Attacks EU, Backs Restoring Death Penalty, REUTERS, (July 16, 2017), <https://www.reuters.com/article/us-turkey-security-anniversary/defiant-erdogan-attacks-eu-backs-restoring-death-penalty-idUSKBN1A10E7>

⁴³ Philip Oltermann, Erdogan Accuses Germany of Nazi Practices over Blocked Political Rallies, THE GUARDIAN, (March 5, 2017), <https://www.theguardian.com/world/2017/mar/05/erdogan-accuses-germany-of-nazi-practices-over-blocked-election-rallies>

⁴⁴ Jon Henley, recep Tayyip Erdogan, We Know Dutch From Srebrenica Massacre, THE GUARDIAN, (March 14, 2017), <https://www.theguardian.com/world/2017/mar/14/turkish-sanctions-bizarre-as-netherlands-has-more-to-be-angry-about-dutch-pm>

⁴⁵ THE CONSTITUTION OF THE KINGDOM OF SAUDI ARABIA of 2 March 1992, (Saudi Arabia), art. 8.

⁴⁶ *Id.* art. 5/1.

⁴⁷ *Id.* art. 5/2.

⁴⁸ Nicole Chavez, Tamara Qiblawi, and James Griffiths, Saudi Arabia's King Replaces Nephew with son as Heir to throne, CNN, (June 21, 2017), <http://edition.cnn.com/2017/06/21/middleeast/saudi-arabia-crown-prince/index.html>

The replacement process was sudden and took place overnight, without consulting the *Shura* Council.⁴⁹

Secondly, the Saudi Arabian government system is that of an absolute monarchy.⁵⁰ The King of Saudi Arabia enjoys more powers than the Prophet Powers. In addition to military, tax collection, and foreign affairs powers, all authorities are vested in the hands of the King. The King is also the prime minister,⁵¹ who has absolute power to appoint and impeach judges.⁵² He is the supreme commander of the armed forces,⁵³ with absolute powers to declare a state of emergency, mobilization, and war.⁵⁴ He also possesses total power to impeach members of the *Shura* Council, and to reformulate it.⁵⁵ All these authorities, according to the Constitution, are claimed to be derived from the Quran and the Prophet's *Sunnah*.⁵⁶ Hence, no one can dispute the King's authorities.

While the Prophet enjoyed very limited power over the military forces, tax, and foreign representation, the King of Saudi Arabia practices them unapologetically, and without any inhibition. The military of Saudi Arabia is not only the fourth highest military-spending force in the world after the United States, China, and Russia,⁵⁷ it also poses as intervention forces. This intervention power takes on two forms, direct and indirect intervention.

Direct intervention has occurred in the cases of Bahrain and Yemen. After protests in Tunisia successfully ousted President Zine El Abidine Ben Ali in December 2010,⁵⁸ the Bahraini and Yemeni people followed suit in an effort to overthrow their regimes. Saudi Arabia played a vital

⁴⁹ Stephen Kalin, Saudi Arabia's King Salman Ousts Nephew and Names Son as Next in Line to Throne, INDEPENDENT, (June 21, 2017), <http://www.independent.co.uk/news/world/middle-east/saudi-arabia-crown-prince-mohammed-bin-salman-ruler-kingdom-monarch-king-salman-a7799986.html>

⁵⁰ THE CONSTITUTION OF THE KINGDOM OF SAUDI ARABIA of 2 March 1992, (Saudi Arabia), art. 1.

⁵¹ *Id.* art. 56.

⁵² *Id.* art. 52.

⁵³ *Id.* art. 59.

⁵⁴ *Id.* art. 60.

⁵⁵ *Id.* art. 68.

⁵⁶ *Id.* art. 1 and 6.

⁵⁷ Niall McCarthy, The Top 15 Countries for Military Expenditure in 2016, FORBES BUSINESS, (April 24, 2017), <https://www.forbes.com/sites/niallmccarthy/2017/04/24/the-top-15-countries-for-military-expenditure-in-2016-infographic/#b51373543f32>

⁵⁸ Tunisia since the Arab Spring: timeline, THE TELEGRAPH, (2015)

<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/tunisia/11480587/Tunisia-since-the-Arab-Spring-timeline.html>

role in crushing the conflict against the governments of Bahrain and Yemen.⁵⁹ The protests were met with brutality by their own regime, with the aid of Saudi Arabian military forces. In Bahrain, Saudi Arabia sent its National Guard forces, estimated to be 5,000 military personnel.⁶⁰ In Yemen, the situation was more complicated, since Yemen had a long history of civil wars.⁶¹ Saudi Arabia adopted the same approach it had in Bahrain; however, the situation did not go down well with the Yemenis. To legitimize its intervention in Yemen, Saudi Arabia formulated a Saudi-led multinational coalition,⁶² and Saudi Arabia became part of the civil war in Yemen.⁶³

As for indirect intervention, Saudi Arabia played a vital role in Syria's and Libya's internal conflicts, by financing groups of belligerents.⁶⁴ Saudi Arabia was met with unprecedented failure when it applied the same strategies used in Bahrain and Yemen. There was also uncalled-for interference from several western and eastern countries, such as Russia, Iran, Turkey, and the United States.⁶⁵ Their involvement has caused the situation to become more complicated, making it even more difficult for Saudi Arabia to make an impact through its intervention.⁶⁶

The foreign affairs policy of Saudi Arabia is geared towards protecting its regional interests, resulting in an ambivalent foreign policy. On the one hand, it intervened in Yemen to protect the legitimacy of Hadi's government in the wake of Saleh's government.⁶⁷ It used military forces to protect its interests and policies in Yemen. On the other hand, it financed the military coup of 2013

⁵⁹ Aidan Lewis, Why has Morocco's King survived the Arab Spring? BBC NEWS, (24 November 2011) <http://www.bbc.com/news/world-middle-east-15856989>

⁶⁰ Amy Austin Holmes, The Military intervention that the World Forgot: Saudi and Emirati Forces Continue to Police Bahrain, ALJAZEERA AMERICA, (March 29, 2014) <http://america.aljazeera.com/opinions/2014/3/bahrain-uprisinginterventionsaudiarabiaemirates.html>

⁶¹ Asher Aviad Orkaby, *The International History of Yemen Civil War, 196-1968*, (April 2014), https://dash.harvard.edu/bitstream/handle/1/12269828/orkaby_gsas.harvard_00841_11420.pdf?sequence=1

⁶² Jon Gambrell, Here are the members of the Saudi-led Coalition in Yemen and What they're Contributing, BUSINESS INSIDER, (March 30, 2015) <http://www.businessinsider.com/members-of-saudi-led-coalition-in-yemen-their-contributions-2015-3?IR=T>

⁶³ Yemen Crisis: Who is Fighting Whom? BBC NEWS, MIDDLE EAST, (28 March 2017), <http://www.bbc.com/news/world-middle-east-29319423>

⁶⁴ C.J. Chivers and Eric Schmitt, Saudis Step-up Help for Rebels in Syria With Croatian Arms, THE NEW YORK TIMES, (February 25, 2013), http://www.nytimes.com/2013/02/26/world/middleeast/in-shift-saudis-are-said-to-arm-rebels-in-syria.html?partner=rss&emc=rss&smid=tw-nytimes&_r=0, See also, Who is Supplying Weapons to the Warring Sides in Syria, BBC NEWS, (14 June 2013), <http://www.bbc.com/news/world-middle-east-22906965>

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Mehmood Hussain, Saudi Intervention in Yemen and its Impact on Saudi's Economy, FOREIGN POLICY NEWS, (December 11, 2016), <http://foreignpolicynews.org/2016/12/11/saudi-intervention-yemen-impact-saudis-economy/>

in Egypt, against the legitimate ex-President Morsi.⁶⁸ It believed that the military regime in Egypt, rather than the Muslim Brotherhood regime, would better suit its interests in Egypt.⁶⁹ It offered Egypt plenty of aid, in the form of cash and oil-industry commodities.⁷⁰ The Saudi policy makers believed that this was the way to buy the Egyptian regime's loyalty. Nonetheless, Saudi Arabia immediately stopped all kinds of aid to Egypt once it realized that the Egyptian regime would not follow and abide by its regional policies.⁷¹

The taxation system of Saudi Arabia is based mainly on *Zakat*. However, Saudi Arabia started to impose various new taxes on its citizens and resident foreigners after the recent collapse of oil prices from \$150 to \$50 a barrel.⁷² One of the most recent taxes imposed was the expats' family tax.⁷³ Each foreign worker is now obliged to pay taxes for each member of his/her family. This tax is not based on any Islamic foundation, unlike the Prophet's taxation system, which was limited to *Zakat*. This corroborates the fact that the absolute monarchic system of Saudi Arabia does not follow Islamic rule.

C. Egypt: Islam and Government by Military, and Military Judiciary

Egypt is an Islamic country.⁷⁴ However, the ruling of the country's general affairs is not Islamic. Islam does not supersede the military regime in the country. President Anwar Al-Sadat started the constitutional nature of Islam in Egypt. In 1980, he decided to make the terms of the presidency unlimited. The Islamists supported President Al-Sadat in his decision and expressed their

⁶⁸ David Hearst, Why Saudi Arabia is Taking a Risk by Backing the Egyptian Coup, THE GUARDIAN, (August 20, 2013), <https://www.theguardian.com/commentisfree/2013/aug/20/saudi-arabia-coup-egypt>

⁶⁹ Rod Nordland, Saudi Arabia Promises to Aid Egypt's Regime, THE NEW YORK TIMES, (August 19, 2013), <http://www.nytimes.com/2013/08/20/world/middleeast/saudi-arabia-vows-to-back-egypts-rulers.html?mcubz=1>

⁷⁰ Saudi Arabia Approves \$5 Billion aid package to Egypt, ALARABIYA ENGLISH, (July 9, 2013), <http://english.alarabiya.net/en/business/economy/2013/07/09/Saudi-Arabia-approves-5-billion-aid-package-to-Egypt.html>

⁷¹ Lin Noueihed and Asma AlSharif, Fuel Aid Halt Suggests Deeper Saudi Egyptian Rift, REUTERS (October 12, 2016), <http://www.reuters.com/article/us-egypt-saudi-analysis/fuel-aid-halt-suggests-deeper-saudi-egyptian-rift-idUSKBN12E1N8>, See also, Saudi Arabia halts \$23 bn oil Aid deal to Egypt indefinitely, Middle East, (November 7, 2016), <http://www.middleeasteye.net/news/egypt-strike-new-oil-deals-iran-report-124526470>

⁷² Liam Denning, Wanted in Saudi Arabia: An Extremely Careful Driver, BLOOMBERG BUSINESSWEEK, (June 27, 2017) <https://www.bloomberg.com/news/articles/2017-06-27/saudi-arabia-and-oil-prices-careful-steering-needed>.

⁷³ Saudi Arabia Introduces New Tax for Expatriates, AL-ARABIYA ENGLISH, (July 3, 2017) <http://english.alarabiya.net/en/business/economy/2017/07/03/Saudi-Arabia-introduces-new-tax-for-expatriates.html>.

⁷⁴ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 2.

unofficial agreement. In return, he included an article in the Constitution to consider Islamic *Sharia* as the main source of legislation. Hence, even though Egypt is an Islamic country, Islam cannot supersede the military interest in the administration of the country.

In Egyptian contemporary history, the Egyptian army dominates the political, social, and legal life in Egypt.⁷⁵ During the 1800s, Mohamed Ali Pasha, was the founder of modern Egypt.⁷⁶ He was Albanian and an officer in the Ottoman Army.⁷⁷ After the French colonization of Egypt ended, the Egyptian jurists formed one of the early *Shura* councils and elected Mohamed Aly to be the *Amir*. In a massacre known as the Massacre of Mamelukes at the Cairo Citadel, Ali killed all the senior officers in the Egyptian army who opposed him. He then led a war against the Ottomans to secure Egypt as his own property.⁷⁸ This war spelled the end of him – and his dynasty – as a recognized ruler of Egypt.⁷⁹ His dynasty ruled Egypt until 1952.

In 1952, the Egyptian military started a military coup against King Farouk, the great-grandson of Mohamed Ali. They declared Egypt a republic. Mohamed Naguib (1952-1953),⁸⁰ Gamal Abdel-Nasser (1953-1970),⁸¹ Anwar Al-Sadat (1970-1981),⁸² and Mohamed Hosni Mubarak (1981-2011)⁸³ were all military officers. There were very few exceptions to the army rule, such as Supreme Court Chief Justice Judge Adly Mansour (2013-2014),⁸⁴ and Professor Sofi Abu Talib (1980-1981).⁸⁵ However, the most important exception occurred after the success of the 2011

⁷⁵ Michele Dunne, and Amr Hamzawy, Egypt's Secular Political Parties; A Struggle for Identity and Independence, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, (March 31 2017), <http://carnegieendowment.org/2017/03/31/egypt-s-secular-political-parties-struggle-for-identity-and-independence-pub-68482>.

⁷⁶ ALI COSKUN TUNCER, SOVEREIGN DEBT AND INTERNATIONAL FINANCIAL CONTROL THE MIDDLE EAST AND THE BALKANS, 1870-1914, 30-31 (2015).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Laura M. James, *Gamal Abdel Nasser*, IN MENTAL MAPS IN THE EARLY COLD WAR ERA, 1945-68, 218 (Steven Casey and Jonathan Wright eds. 2011).

⁸¹ *Id.*

⁸² Mustafa Menshawy, STATE, MEMORY AND EGYPT'S VICTORY IN THE 1973 WAR RULING BY DISCOURSE, 149-155 (2017).

⁸³ ALAA AL-DIN ARAFAT, THE MUBARAK LEADERSHIP AND FUTURE OF DEMOCRACY IN EGYPT, 24 (2009).

⁸⁴ ALAA AL-DIN ARAFAT, EGYPT IN CRISIS THE FALL OF ISLAMISM AND PROSPECTS OF DEMOCRATIZATION, 124 (2017).

⁸⁵ Former acting President of Egypt dies in Malaysia, REUTERS, (February 21, 2008), <http://www.reuters.com/article/idINIndia-32078520080221>.

Revolution.⁸⁶ In 2012, Egypt had its first civilian president, who was a professor of engineering.⁸⁷ His ascension to power lasted only for a year,⁸⁸ when the army assumed the ruling authority once again in 2013, after a military coup against President Morsi.⁸⁹

The 2013 military coup resulted in the full domination of the military over every aspect of the government.⁹⁰ In terms of the executive authority, the current president of the republic is Field-Marshal Abdelfattah Al-Sisi.⁹¹ Al-Sisi was the mastermind behind the military coup.⁹² He was the Minister of Defense during the presidency of ex-President Mohamed Morsi.⁹³ Al-Sisi has appointed former army generals as governors.⁹⁴ As for the legislative authority, the Muslim Brotherhood won 48% of the 2013 parliamentary elections, while the other parties won 52%. In the 2015 Parliament, the army formed a political coalition called “For the love of Egypt.”⁹⁵ This coalition was made up of 380 members.⁹⁶ Parliament had 71 military generals, out of a total of 445

⁸⁶ JOSEPH J. KAMINSKI, *THE CONTEMPORARY ISLAMIC GOVERNED STATE A RECONCEPTUALIZATION*, 231-233 (2017).

⁸⁷ Mohamed Morsi Fast Facts, CNN LIBRARY, (August 25, 2017)

<http://edition.cnn.com/2012/12/28/world/meast/mohamed-morsy---fast-facts/index.html>.

⁸⁸ Profile: Egypt's Mohamed Morsi, CNN NEWS, (April 21, 2015), <http://www.bbc.com/news/world-middle-east-18371427>.

⁸⁹ Ricahard Spencer, A Military Coup in all but Name: How Egypt's Crisis Unfolded, THE TELEGRAPH, (July 3, 2013), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/10158641/A-military-coup-in-all-but-name-how-Egyptys-crisis-unfolded.html>.

⁹⁰ Joana Saba, The Military and the State: The Role of the Armed Forces in Post- 30 June Egypt, DAILY NEWS EGYPT, (September 27, 2014), <https://dailynewsegypt.com/2014/09/27/military-state-role-armed-forces-post-30-june-egypt/>.

⁹¹ *Id.*

⁹² David D. Kipkpatrick, Army Ousts Egypt's President; Morsi Is Taken Into Military Custody, THE NEW YORK TIMES (July 3, 2013), <http://www.nytimes.com/2013/07/04/world/middleeast/egypt.html?mcubz=1>.

⁹³ Kareem Fahim, In Upheaval for Egypt, Morsi Forces out Military Chiefs, THE NEW YORK TIMES, (August 12, 2012) <http://www.nytimes.com/2012/08/13/world/middleeast/egyptian-leader-ousts-military-chiefs.html?mcubz=1>.

⁹⁴ Egypt Names Six provincial Governors, mostly ex-general, REUTERS, (September 7, 2016), <http://www.reuters.com/article/us-egypt-governors/egypt-names-six-provincial-governors-mostly-ex-generals-idUSKCN11D285>, *See also*, Sarah el-Sheikh, Government reshuffle features al-Sisi appointment with Military Background, DAILY NEWS EGYPT, (December 26, 2015), <https://dailynewsegypt.com/2015/12/26/government-reshuffle-features-al-sisi-appointments-with-military-backgrounds/>.

⁹⁵ Ahmed Fouad, “Did Egyptian intelligence meddle in recent elections?” EGYPT PULSE, AL-MONITOR (January 1, 2016) <http://www.al-monitor.com/pulse/originals/2016/01/egypt-parliament-accusation-interference-intelligence.html>.

⁹⁶ Omar Halawa, Meet Egypt's New parliamentary Majority Bloc: In Support of Egypt, ATLANTIC COUNCIL, (January 11, 2016), <http://www.atlanticcouncil.org/blogs/menasource/meet-egypt-s-new-parliamentary-majority-bloc-in-support-of-egypt>.

members.⁹⁷ As for the judiciary, an ongoing “judicial massacre” of judges has been taking place between the years 2014 and 2017. After the success of the 2013 military coup, many disciplinary trials took place to impeach a number of judges, who declared their opposition to the return of military rule of the government.⁹⁸ Between the years 2014 and 2016, more than 200 judges were impeached.⁹⁹ Military forces, again, have become an undisputed authority during Al-Sisi’s rule.

The military judiciary plays a vital role in the military authoritarian regime in Egypt.¹⁰⁰ The military judiciary’s representatives have been members of all the constitutional assemblies since January 2011. They advocate for a special status for the military judiciary in all constitutions. This is based on two reasons. Firstly, the army advocates for an exclusive jurisdiction of the military judiciary over any issues related to the army.¹⁰¹ One of the aims of this exclusive jurisdiction is to protect army investments.¹⁰² The army owns farms, gas stations, factories, and outlet stores.¹⁰³ It offers services to the public at a fair market price, without being subjected to the tax law.¹⁰⁴ The 2014 Constitution reflects these objectives in Article 204.¹⁰⁵

⁹⁷ *Belasma’ .. ta’araf ‘al 71 lawa jaysh we-mokhabarat fi albarlaman al-‘skari, nafazat Parlamen*, (December 5, 2015}, http://old.egyptwindow.net/news_Details.aspx?News_ID=90772

⁹⁸ Ahmed Saliman, *37 kharqan fi mazbahat al-Qada’h fi misr*, AL-ARABY (21 March 2015) <http://www.alaraby.co.uk/opinion/2015/3/21/>.

⁹⁹ Shams Al Din Al Hajjaji, *Clash of Titians: A Comparative Approach to Reform of Judicial Accountability in Egypt*, 41 SEATTLE U. L. REV. 1, 30 (2017).

¹⁰⁰ ANTONI ABAT I NANET AND MARK TUSHNET, *THE ARAB SPRING: AN ESSAY ON REVOLUTION AND CONSTITUTIONALISM*, 242 (2015).

¹⁰¹ Stephan Roll, *Managing Change: How Egypt’s Military Leadership Shaped the Transformation*, 21 MEDITERRANEAN POLITICS 23, 23-26 (2016).

¹⁰² *Id.*

¹⁰³ Shana Marshall, *The Egyptian Armed Forces and the Remaking of an Economic Empire*, CARNEGIE MIDDLE EAST CENTER, (April 15, 2015), <http://carnegie-mec.org/2015/04/15/egyptian-armed-forces-and-remaking-of-economic-empire-pub-59726>.

¹⁰⁴ Abigail Hauslohner, *Egypt’s Military Inc. Expands its Control of the Economy*, THE GUARDIAN, (March 18, 2014), <https://www.theguardian.com/world/2014/mar/18/egypt-military-economy-power-elections>.

¹⁰⁵ Article 204/1 of the Constitution of the Arab Republic of Egypt states that The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the armed forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 204/1.

Secondly, the 2014 Constitution prohibits trials of civilians before military courts.¹⁰⁶ However, the Constitution allows for a very broad exception to this rule.¹⁰⁷ The list includes: assault against military facilities, military barracks, or any establishments that falls under military authority.¹⁰⁸ Army General Medhat Radwan, head of the Military Judiciary Authority, was asked during a television interview whether the army's facilities, such as the armed forces' clubs, military-run factory outlets, and gas stations are open to the public.¹⁰⁹ He asserted that there is no difference between a military facility for civilians, and a military facility for the army. Both are military places. He replied, "There is no difference between the soldier in these facilities, and the soldier sitting on a tank; it is not his fault that he serves in this place."¹¹⁰ The interviewer responded with "...but this is a civilian activity,"¹¹¹ to which he replied: "sorry madam, it is not."¹¹²

Moreover, many civilians were tried during and after the 2011 Revolution in front of military courts. The total number of civilians who stood trial before military courts, between the period of January 2011 to October 2014, is more than 11,000 citizens.¹¹³ In November 2014 alone, 820 civilians were put to trial and prosecuted before the military judiciary.¹¹⁴ In December 2014, top leaders of the Muslim Brotherhood, the political group in power before the military coup in 2014, were tried and prosecuted before military courts.¹¹⁵ Between the period of November 2014 and

¹⁰⁶ Article 204/2 states "No civilian shall face trial before the Military Court." *Id.* art. 204/2

¹⁰⁷ Article 204/3 states

Except for crimes that represent a direct assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.

Id. art. 204/3.

¹⁰⁸ *Id.*

¹⁰⁹ Mohahkamat alskarayah elie Yatkhanaq ma-a'mal albanzenat al-watanyah we-eli-mish A'gboh yeseab al-balad, YOUTUBE (December 2, 2013), <https://www.youtube.com/watch?v=gp2HRVVC0QA>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Egypt: Unprecedented Expansion of Military Courts, Decree Broaden Jurisdiction over Civilians, HUMAN RIGHTS WATCH, (November 17, 2014), <https://www.hrw.org/news/2014/11/17/egypt-unprecedented-expansion-military-courts>.

¹¹⁴ Egypt: Surge of Military Trials Decree Used to Send Protesters to Flawed Courts, HUMAN RIGHTS WATCH (December 18, 2014), <https://www.hrw.org/news/2014/12/18/egypt-surge-military-trials>.

¹¹⁵ *Id.*

April 2016, 7,400 civilians were tried in military courts.¹¹⁶ This is thus evidence of the increasing military judiciary in Egypt's political and legal life.¹¹⁷

D. Morocco: Constitutional Monarch, or Retrieval of *Amir Al-Mu'minin*

Morocco is an Islamic country, and it follows a monarchic system.¹¹⁸ The 2011 Constitution of Morocco describes its ruler in two contradictory terms. The Moroccan ruler is a king, as well as a Commander of the Faith, *Amir Al-Mu'minin*.¹¹⁹ By definition, a person cannot be a king and *Amir Al-Mu'minin* at the same time.¹²⁰ *Amir Al-Mu'minin* is a governmental official, who has the qualification of judge (or former judge), with very limited enumerated executive authorities. *Amir Al-Mu'minin* is a term that has the historical meaning of successor to the Prophet. Instead of repeating the word "successor", they replaced it with the word *Amir Al-Mu'minin*. It is not synonymous to the word "king" or "emperor".

There are four major differences between the function of being a king, and that of being *Amir al-Mu'minin*. Firstly, a king is a descendant of a royal family, who inherits the title from a blood relationship.¹²¹ *Amir Al-Mu'minin* is a person from the lay people, chosen by them to perform a certain public role. Secondly, the king can have absolute or constitutional rights.¹²² *Amir Al-Mu'minin*, on the other hand, has very limited authorities, as the authorities are originally drawn from the Quran or the *Sunnah*. Thirdly, there are no pre-requisites, or qualifications required to be a king.¹²³ Usually, kings or presidents do not need certain qualifications¹²⁴ to be appointed as

¹¹⁶ Egypt: 7,400 Civilians Tried in Military Courts: Torture, Disappearances Used to Elicit Confessions, HUMAN RIGHTS WATCH (April 13, 2016), <https://www.hrw.org/news/2016/04/13/egypt-7400-civilians-tried-military-courts>.

¹¹⁷ *Id.*

¹¹⁸ CONSTITUTION OF KINGDOM OF MOROCCO, 17 June 2011, art. 1.

¹¹⁹ *Id.* art. 41.

¹²⁰ M.A. SHABAN, ISLAMIC HISTORY A NEW INTERPRETATION I A.D. 600-750 (A.H.132), 37-39 (1999).

¹²¹ HOWARD NENNER, THE RIGHT TO BE KING: THE SUCCESSION TO THE CROWN OF ENGLAND, 1603-1714, 8 (MacMillan Press, 1999).

¹²² GAVIN KENNEDY, ADAM SMITH'S LOST LEGACY, 78-81 (2005).

¹²³ The Family Qualification, THE TELEGRAPH, (October 16, 2006), <http://www.telegraph.co.uk/news/uknews/1531553/The-family-qualifications.html>

¹²⁴ *Id.*

such.¹²⁵ *Amir Al-Mu'minin* is usually someone who is qualified as a judge,¹²⁶ whose main role is to ensure equality and justice among people and to protect the state against wars. Fourthly, the king gets sovereign grants, which are considered a right to the king and his family.¹²⁷ *Amir Al-Mu'minin* is an employee, who receives a modest or no salary for his public work. Hence, these two terms are not synonymous.

Even though the King of Morocco introduced several reforms and a new Constitution, he still reserves many privileges that have the potential to jeopardize the whole political process. On the one hand, the King has the absolute right to dissolve the parliament.¹²⁸ He is the supreme leader of the army,¹²⁹ the police,¹³⁰ the supreme judge,¹³¹ and the protector of judicial independence.¹³² He is also the grantor of the democratic choice in Morocco.¹³³ In addition, the King appoints the prime minister from the majority party,¹³⁴ while he has all the power to remove any member of the cabinet at his own will.¹³⁵ This gives the King a guardianship authority over the Moroccan people. On the other hand, the King of Morocco has introduced substantial constitutional amendments.¹³⁶ He introduced a new 2011 Constitution, which was aimed to squash protests in Arab countries. Revolutions swept the region in 2011, demanding more protection for citizens' rights and transparency in governance matters. The King initiated a constitutional reform movement to avoid the consequences of these protests. It was aimed at enhancing the role of law and legal transparency in Morocco's political and legal life. One of the most important reforms was the establishment of a new Constitutional Court. This Court introduced a new checks-and-balances mechanism between

¹²⁵ Biography of HM. King Mohammed VI, KINGDOM OF MOROCCO - MINISTRY OF CULTURE AND COMMUNICATION, (2013) <http://www.maroc.ma/en/content/biography-hm-king-mohammed-vi>.

¹²⁶ Quran Surat Saad 38:26 states "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow you own desires."

¹²⁷ Kim Willsher, Moroccans Pay 144m a year for Monarch, THE TELEGRAPH, (January 23, 2005), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/morocco/1481846/Moroccans-pay-144m-a-year-for-monarch.html>

¹²⁸ CONSTITUTION OF KINGDOM OF MOROCCO, 17 June 2011, art. 51 and 104.

¹²⁹ *Id.* art. 53.

¹³⁰ *Id.* art. 54.

¹³¹ *Id.* art. 56.

¹³² *Id.* art. 57.

¹³³ *Id.* art. 42.

¹³⁴ *Id.* art. 46/1.

¹³⁵ *Id.* art. 46/2.

¹³⁶ *Id.*

the King (government), Parliament, and the Judiciary. On the one hand, the Court can strike down any unconstitutional law. This authority is unconventional in monarchic systems.¹³⁷ On the other hand, the appointment of judges of the new Constitutional Court is jointly vested in the hands of both the King and Parliament.¹³⁸ The King has the right to appoint only half the members of the Court, while Parliament elects the other half.¹³⁹ In this regard, the Moroccan Constitutional Court avoids the problem of checks-and-balances that started with the newly instituted Jordanian Constitutional Court, which was established during the same period. The Jordanian Constitutional Court appointment process is solely in the King's hands.¹⁴⁰

Morocco is no different from Turkey, Saudi Arabia, and Egypt. Recently, the Islamist party in Morocco (Islamic Justice and Development Party) won the majority of votes in the parliamentary elections.¹⁴¹ However, there are no promises of reform, such as the tax system. Currently, tax rates have reached 15% to 35% of individual income and corporate tax.¹⁴² It would also be quite impossible to reverse these tax hikes.¹⁴³ This is for two reasons. Firstly, because the Islamists have promised the public that the party will offer more jobs.¹⁴⁴ Secondly, the Islamists are not popular among other political parties or with the King.¹⁴⁵ It proved a very difficult process for the Islamist party to form a government.¹⁴⁶ Islamists will not be able to achieve any progress with the high

¹³⁷ In the United Kingdom, courts can issue a non-binding declaration of unconstitutionality. This means that the law is unconstitutional, yet still valid. *See in that regard*, David Jenkins, *Common Law Declarations of Unconstitutionality*, 7 INT’J CONST. L. 183, 200 (2009).

¹³⁸ CONSTITUTION OF KINGDOM OF MOROCCO, 17 June 2011, art. 130.

¹³⁹ *Id.*

¹⁴⁰ Jordanian Constitutional Court Law, art. 5/A.

¹⁴¹ Aziz El-Yaakoubi and Patrick Markey, Moderate Moroccan Islamists win Elections, Coalition Talks Seen Tough, REUTERS, (October 8, 2016), <http://www.reuters.com/article/us-morocco-election-tally-idUSKCN1280EP>.

¹⁴² Morocco: Tax System, SANTANDER, (2017) <https://en.portal.santandertrade.com/establish-overseas/morocco/tax-system>.

¹⁴³ Lachen Achy, Morocco and the Justice and Development Party's Economic Program, CARNEGIE MIDDLE EAST CENTER, (December 13, 2011), <http://carnegie-mec.org/2011/12/13/morocco-and-justice-and-development-party-s-economic-program-pub-46836>

¹⁴⁴ *Id.*

¹⁴⁵ Imad Stitou, Morocco Finally Gets New Government, but at What Cost, AL-MONITOR, (April 12, 2017), <http://www.al-monitor.com/pulse/originals/2017/04/morocco-government-islamist-party-majority.html>.

¹⁴⁶ Samia Errazzouki, Morocco King Names new Cabinet, Islamists Lose Key post, REUTERS, (April 5, 2017), <http://www.reuters.com/article/us-morocco-politics/morocco-king-names-new-cabinet-islamists-lose-key-post-idUSKBN1772E5>

opposition from other parties.¹⁴⁷ Therefore, the limited powers of the Islamic government is not a factual issue in the case of Morocco.

I. Applying Islamic Government by Judiciary

A. Mandatory Qualification of the Head of the Executive Authority

Current democratic, authoritarian, and totalitarian regimes do not require the head of state candidate to have any higher educational or practical experience. Democratic countries leave it to candidates to establish their own merits and credibility directly with the public.¹⁴⁸ This has, on various occasions, resulted in highly qualified and educated presidents.¹⁴⁹ The most recent former President of the United States, Barack Obama, is an example of a superb, highly educated candidate.¹⁵⁰ In most cases, presidential election campaigns in the United States depend mainly on the presidential candidates. The cost of the last election in 2016 came to more than \$2 billion.¹⁵¹ In authoritarian military regimes, the only qualification needed to become a president is the rank within the army, as seen in Egypt.¹⁵² In totalitarian regimes, the only qualification is the power over the state, as seen in Saudi Arabia.¹⁵³ All the regimes thus agree on a lack of specific educational requirements.

In Islam, a candidate vying for the position of head of state enjoys high levels of educational and practical experience. Qualifications should equal those of a judge at Supreme Court level. The

¹⁴⁷ Ahmed T. Kuru, Muslim Politics Without An “Islamic State: Can Turkey’s Justice and Development Party be A Model For Arab Islamists?”, 6, BROOKINGS DOHA CENTER, (February, 2013), https://www.brookings.edu/wp-content/uploads/2016/06/BDC_AKP-Model_Kuru.pdf.

¹⁴⁸ ALEXANDER S. BELENKY, UNDERSTANDING THE FUNDAMENTALS OF THE US PRESIDENTIAL ELECTION SYSTEM, 139 (2012).

¹⁴⁹ *Id.*

¹⁵⁰ BAODONG LIU, THE ELECTION OF BARACK OBAMA HOW HE WON, 9 (2010).

¹⁵¹ Anu Narayanswamy, Darla Cameron and Matea Gold, Money Raises as of Dec. 31, THE WASHINGTONPOST, (February 1, 2017), <https://www.washingtonpost.com/graphics/politics/2016-election/campaign-finance/>

¹⁵² *Supra note* 90.

¹⁵³ Profile: King Salman of Saudi Arabia, BBC NEWS, (January 23, 2015), <http://www.bbc.com/news/world-middle-east-30945925>.

Quran stipulates clear knowledge and practical requirements in a Muslim leader.¹⁵⁴ The Prophet's main task was to rule in disputes among Muslims. The first four successors of the Prophet either were judges or had the qualifications of judges. Abu Bakr was one of the Prophet's closest friends, acting as his deputy on several occasions. Omar Ibn Al-Khatab was a judge during the Abu Bakr succession period. Ali Ibn Abi Taleb was the judge of Yemen during the Prophet's time, and the Supreme Judge during the Omar Ibn al-Khatab and Othman Ibn Affan periods. Hence, any Muslim who is appointed as a governor or ruler should be a judge.

B. Government with Enumerated Authorities

Unlimited powers are not part of the Islamic understanding of good government, based on the Quran and the Prophet's tradition. The authority of the head of state, as well as the government's authorities, shall be enumerated, same as the United States government authorities. The United States Constitution ensures that the government has enumerated authorities.¹⁵⁵ The government works with Congress on the basis of the checks-and-balances rules.¹⁵⁶ The President cannot lead the country single-handedly without the legislative authorities.¹⁵⁷ The Courts also play a role in ensuring that both authorities do not violate the Constitution.¹⁵⁸ In Islamic governments, authorities are limited to three forms: military power, collection of *sadaqat*, and foreign representation.

As for the military power, a permanent army is not one of the features of Islam. However, this does not mean that Muslims refrain from establishing national armies, similar to Iceland,

¹⁵⁴ Quran Surat Al-Baqarah States:

"Have you not considered the assembly of the Children of Israel after [the time of] Moses when they said to a prophet of theirs, "Send to us a king, and we will fight in the way of God"? He said, "Would you perhaps refrain from fighting if fighting was prescribed for you?" They said, "And why should we not fight in the cause of God when we have been driven out from our homes and from our children?" ... And their prophet said to them, "Indeed, God has sent to you Saul as a king." They said, "How can he have kingship over us while we are more worthy of kingship than him and he has not been given any measure of wealth?" He said, "Indeed, God has chosen him over you and has increased him abundantly in knowledge and stature. And God gives His sovereignty to whom He wills. And God is all-Encompassing [in favor] and Knowing." Quran, Surat Al-Baqarah, verses 2:246 and 247.

¹⁵⁵ US Const. art. I.

¹⁵⁶ BOGDAN IANCY, LEGISLATIVE DELEGATION, THE EROSION OF NORMATIVE LIMITS IN MODERN CONSTITUTIONALISM, 104-108 (2012).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

Liechtenstein, and Costa Rica.¹⁵⁹ Armies in Islamic countries have specific aims, which are self-defense and the protection of freedom of religion. Establishing and maintaining a fully-fledged army is a service that is very costly and time-consuming, especially in times of peace. According to the U.S. Department of Defense, the budget of military personnel for the year 2017 is \$138 billion.¹⁶⁰ It is the second highest spending item in the budget, after the operation and maintenance of the army.¹⁶¹ As a result, the human factor in Islamic armies is used on needs basis.

The modern application of the Islamic military tradition is a mixture of that seen in several countries. Any Islamic army consists of two main components. The first is the human component, which should always be fit and ready. That said, armies in Islamic countries function part-time in times of peace and are fully-fledged in times of war. Armies function on a needs basis. The balancing point between not having a permanent army and ready soldiers is a part-time military service. Service in the Swiss army is part-time.¹⁶² It is mandatory for men and voluntary for women.¹⁶³ The aim of part-time military service is to keep citizens alert in the event of threat or potential danger that might face the country.

The second component of any army is that of technology and science. This category includes all the equipment that is necessary for war: guns, airplanes, and satellites. The main spending of the army budget in Islamic countries should be focused on scientific research, rather than a permanent, fully equipped army. Islamic countries allocate a minimal fraction of their GDP to research and science. Turkey allocates 1% of its GDP,¹⁶⁴ Egypt and Morocco each dedicate 0.6% of their GDP,¹⁶⁵ and Saudi Arabia spends just 0.04% of its GDP on scientific research.¹⁶⁶ Israel has one of

¹⁵⁹ Kathy Gilsinan, Countries Without Militaries, THE ATLANTIC (November 11, 2014), <https://www.theatlantic.com/international/archive/2014/11/countries-without-militaries/382606/>

¹⁶⁰ Department of Defense (DOD) Releases Fiscal Year 2017 President's Budget Proposal, Press Operation, US DEPARTMENT OF DEFENSE, (February 9, 2016), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/652687/department-of-defense-dod-releases-fiscal-year-2017-presidents-budget-proposal/>

¹⁶¹ *Id.*

¹⁶² Switzerland, The World Factbook, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/sz.html>; *See also*, Swiss vote to Keep mandatory Army Service, THE NEW YORK TIMES, (September 22, 2013), <http://www.nytimes.com/2013/09/23/world/europe/swiss-vote-to-keep-mandatory-army-service.html?mcubz=1>

¹⁶³ *Id.*

¹⁶⁴ Research and Development Expenditure (% of GDP), Data, WORLD BANK, (1996-2004), <https://data.worldbank.org/indicator/GB.XPD.RSDV.GD.ZS?locations=EG-MA-TR-SA>

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

the strongest armies in the Middle East. It dedicates 4% of its GDP to science and technology.¹⁶⁷ This is an example of how Islamic countries should pay more attention to their spending on scientific research and technology.

As for collected revenue, the rule in Islam is “if you impose what God did not identify, God imposes on you what is not required.” Tax rates and methods of calculation should be changed to comply with the Islamic requirements.¹⁶⁸ Tax rates should decrease to 2.5% of individual income, and a maximum of 10% for trade, agriculture, and manufacturing.¹⁶⁹ Many Islamic countries impose on their citizens 10 to 15 times this rate. A modern application of the Islamic tax rate exists in Qatar. It applies a 0% personal income tax rate and a 10% corporate tax rate.¹⁷⁰ As for the calculation, it is based on the annual savings of the individual. This means a deduction applies to what exceeds an individual’s basic need. On the one hand, the global tax system deducts tax from the source (net salary). This means 20% to 40% of the person’s income is deducted. On the other hand, the person who saves 50% of his income would be entitled to pay 2.5% on the 50%, which equates to 1.25% of his income. There is therefore a big gap between the contemporary and Islamic applications of tax rates.

Certain categories in society should be subject to more lenient tax rate policies. They should be based on either the principle of freedom of religion, or that of social justice. The first category applies to non-Muslims, who should pay less than what Muslims pay to the government.¹⁷¹ It is argued that offering non-Muslims a reduced tax rate is a form of discrimination based on religion.¹⁷² However, based on the Prophet’s tradition, non-Muslims enjoy a better tax rates than Muslims. Equating Muslims and non-Muslims in their financial duties may generate doubt of

¹⁶⁷ Rebecca Harrington, These 9 Countries Spend a greater share of Money on Science than the United State, BUSINESS INSIDER, (March 1, 2016), <http://www.businessinsider.com/american-science-funding-statistics-vs-world-2016-2?IR=T/#9-germany-29-of-its-gdp-1>

¹⁶⁸ Azman Mohd Noor and Muhamad Nasir Haron, *Imposing Zakat on Legal Entities and its Applications in Islamic Financial Institutions*, 27 ARAB L. Q. 71, 75-78 (2013).

¹⁶⁹ *Id.*

¹⁷⁰ Qatar Personal Income Tax Rate (2004-2017), TRADE ECONOMIC (2017), <https://tradingeconomics.com/qatar/personal-income-tax-rate>

¹⁷¹ Kamran Hashemi, *The Right of Minorities to Identity and the Challenge of non-Discrimination: A Study on the Effect of Traditional Muslims Dhimmah on Current State Practices*, 13 INT’L J. ON MINORITY & GROUP RTS. 1, 15 (2006).

¹⁷² Daveed Gartenstein-Ross, *No Other Gods Before Me: Spheres of Influence in the Relationship Between Christianity and Islam*, 2 DENV. J. INT’L L. & POL’Y 223, 249 (2005).

forcing non-Muslims to convert to Islam. The second category includes elderly citizens, women (upon their request), minors, the poor, and people with special needs. They should be exempt from paying any taxes. Taxes were introduced in the first place to help precisely these categories, and they should be entitled to the largest portion of spending. Moreover, Muslims and non-Muslims in the second category are treated equally.¹⁷³ Non-Muslim elderly citizens, women (upon their request), minors, the poor, and people with special needs should be exempt from paying any taxes.

Last but not least, foreign policy in Islamic governments should be neutral. They should have minimal representation in foreign countries, meaning that they do not interfere in other nations' affairs and politics. The core of Islam is far removed from imposing itself on the internal affairs of other nations. A perfect example of neutral foreign policy is that of Switzerland.¹⁷⁴ It adopts a neutral global position and never took part in either of the World Wars.¹⁷⁵ Minimal representation of Islamic countries abroad is an attempt to save expenditure that is usually borne by the general public. The only exception from the previous proposed reform is the protection of the freedom of religion. Generally, Islam is not neutral regarding the principle of freedom of religion, be it against Muslims or non-Muslims. For Muslims, the Quran is clear about encouraging Muslims to support their fellow brothers and sisters, who are being discriminated against based on their religion. The Muslims of Rohingya in Myanmar are currently being systematically persecuted based on their religion. All Muslims are obligated to support and help them in any form they can.

II. Conclusion

The comparison offered in this research aims not to condemn certain practices of some Islamic countries. It does, however, aim to clarify that they do not belong to true Islam, despite claiming to be Islamic traditions. The Egyptian regime is military-based. It uses its power to govern the people, and to protect its own interest in society. It demarcates itself as a better class than the rest of the population. The 2013 military coup used the government to hold all the authorities, with very limited resistance from the judiciary and civil society. The Turkish system lives an ambivalent

¹⁷³ *Supra* note 171 at 117.

¹⁷⁴ Oliver Pauchard, The day Switzerland Became Neutral, SWISSINFO, (March 20, 2015), https://www.swissinfo.ch/eng/congress-of-vienna_the-day-switzerland-became-neutral/41335520

¹⁷⁵ *Id.*

reality. They are Islamic, but live by secular laws. The government is formed by conservative Muslims who have to deal with secular institutions. The Saudi Arabia regime is selective in applying Islamic principles. It claims to be the guardian of Islam, as the King is named '*the custodian of the two holy Muslim mosques*'. Islam, nonetheless, is not applicable once it threatens their thrones. The Moroccan King wishes to be *Amir al-Mu'minin*, with all the social and historical respect this commands in Muslim culture. However, he cannot leave all his authorities as a king. He still holds unlimited authorities and privileges. This, as a principle and by definition, contradicts the concept of the *Amir al-Mu'minin*.

This research, finally, offers some recommendations to contemporary Islamic governments to enable them to comply with the principle of government by judiciary in Islam. These recommendations are based on the Quranic and the Prophet's traditions in governing the early Muslims. Firstly, the governor or ruler in the Islamic government should have the qualifications of a judge. Secondly, the Islamic government should enjoy very limited authorities over Muslims. Its authorities are intended to protect the weak from the strong, and the poor from the rich. It is also not supposed to take advantage of the rich and the strong people among its citizens.