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## THE RULE OF LAW DISCOURSE IN QATAR: THE OPINION COLUMNS OF HASSAN AL-SAYYED

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### Introduction

In 1998, Sheikh Hamad Bin Khalifah Al Thani, the former Emir of Qatar, declared in his speech to the Shura<sup>2</sup> (Advisory) Council his intention to establish a permanent constitution based on democracy and public participation. Sheikh Al-Thani insisted that these principles can only be realized through an elected parliament that expresses the will of people. In 2003, Qatar witnessed the first constitutional referendum in its history since independence. This referendum not only brought the first written constitution, but paved the way for subsequent discussions of the meanings of the rule of law.

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<sup>2</sup> Al-Shura is the Arabic translation of "Consultation". In Islamic Fiqh, the Quranic concept of Shura refers to consulting with people representatives on community issues. The main references to Shura in Quran are: "And take counsel with them concerning the [community's] affairs." (Aal `Imran 3:159) "Those who furthermore answer [the call of] their Lord and [duly] establish the Prayer and [conduct] their affairs by consultation among themselves and spend [charitably] out of what We have provided them." (Ash-Shura 42:38)

11 JANUARY 2017

The present paper explores prevalent themes in the current discourse of the rule of law in Qatar. Emphasizing these themes is indispensable to understanding the obstacles that the rule of law faces in Qatar. The main contribution of this paper is analyzing and delineating these obstacles. To narrow the scope of this analysis, the paper focuses on the weekly opinion columns of Dr. Hassan Al-Sayyed, published in Al-Sharq e-newspaper between 2011 and 2015. The academic specialization of Al-Sayyed and his involvement in the Qatari judiciary makes his writings a valuable source of the rule of law in Qatar. Al-Sayyed is currently a professor of constitutional law at Qatar University and a Judge of the Qatar International Court. He is also among Qatar's most active and knowledgeable commentators on local, regional and international issues of the rule of law. This paper categorizes these issues in five topics: human rights, the Shura council, separation of powers, the autonomy of the judiciary and public participation.

### **The Rule of Law and Human Rights**

Human rights and freedoms are one of the most recurrent themes in the columns of Al-Sayyed. According to him, the equivocality and the ambiguity of the constitutional text might be used to actually infringe on human rights and freedoms. The Qatari constitution stipulates that “freedom of expression”, “freedom of the press” and “the right of citizens to assemble” are guaranteed “in accordance with the conditions and circumstances set forth in the law.” Both articles reflect the country's stance on the question of rights and freedoms but clearly fail to specify the “conditions and circumstances” where and when these freedoms are or are no longer guaranteed. In this context, Al-Sayyed warns of the risk of human rights infringement and suppression of freedoms when the details of such articles are handed to secondary instruments of legislation. For example, the government may restrict the right to assemble or access to information for “security” purposes.

In Japan, the law of “state secrets” reflects concerns of Al-Sayyed about obfuscating information from public access in the name of “security”. This law gives the government the right to limit access to information deemed to be highly confidential and sensitive. Undoubtedly, some measures are necessary to protect the sovereignty of any country. However, the broad ambiguity of “state secrets” might be used to eclipse illicit practices that would stir public outcry.

Public protests, or “the right to assemble” as defined in the Qatari constitution, can also be suppressed by the rule of law. In Spain, the “public security law” prohibits gathering in the vicinity of the parliament of governmental institutions, and inflicts severe punishments on

11 JANUARY 2017

protesters posting pictures of police officers on social media.<sup>3</sup> The ratification of this law coincided with the adoption of austerity measures in Spain, which provoked huge protests across the country and hostile confrontations between protesters and police.<sup>4</sup>

Reflecting on the Spanish case, Al-Sayyed questions the role of the rule of law when the will of the people collides with executive power in times of crisis. He argues that in Western countries (including Spain), freedoms were mandated in a time when democracy was prosperous and prevailing. Because circumstances are presently less promising in these countries, these freedoms might no longer be secured. In Arab countries, including Qatar, Al-Sayyed finds that legal restrictions on freedoms are more severe. These restrictions, however, do not deviate from the legislative history of these countries because people do not occupy a real role in the legislative process.

### **The Shura Council: Does it Really Hold the Right of Legislation?**

The possibly conflicting/adversarial relationship between the executive and the legislative powers is another challenge for enhancing the rule of law in Qatar, opines Al Sayyed. The intervention of the government in legislation raises serious questions about the validity of the Shura Council. It is worth looking at the constitution of the advisory council to understand its limitations. The Qatari Advisory National Assembly, or the Shura Council, consists of forty-five members, in which thirty are elected by secret ballot. The secret ballot is done within the council, among its members. The remaining fifteen are directly appointed by the Emir. As Al-Sayyed has noted,<sup>5</sup> elections for the Shura Council have been postponed for decades, most recently until 2019, calling into doubt the body's actual accountability to the broader Qatari population.

Nonetheless, since its establishment in the 1960s, the Shura Council has undertaken several reforms. The most recent one accompanied the adoption of the permanent constitution in 2004. According to Al-Sayyed, this reform is a pivotal point in the legislative history of Qatar. Previously, the advisory council was an adjunct institution to the executive authorities. The role of the council was limited in giving recommendations that the government may or may not adopt. The current constitution recognizes the advisory council as a separate and autonomous

<sup>3</sup> Greenberg, Alissa. "Spain's new security law meets fierce criticism from rights groups". Time. July 2, 2015. <http://time.com/3944245/spain-security-law-ley-mordaza-dictatorship-censorship-gag/>

<sup>4</sup> Al-Sayyed, Hassan. "Sawt ash' b laysa bi jareema" [The voice of people is not a crime]. Al-Sharq. December 23, 2014. <http://www.al-sharq.com/news/details/294991>.

<sup>5</sup> "Opinion: Will Qatar finally see legislative elections?" Doha News. May 16, 2013. <http://dohanews.co/opinion-will-qatar-finally-see-legislative-elections/>.

11 JANUARY 2017

legislative authority. Among the legislative rights of the council are interrogation of ministers (except the prime minister), approbation of the general budget and motion of no-confidence.

The main legislative power of the advisory council remains the right to make and ratify a law, if unanimity is met, regardless of the Emir's opposition. However, this right does not entirely guarantee the autonomy of the advisory council from the government. Al-Sayyed explains that "unanimity", which the constitution defines as two-thirds of the council, is almost impossible to be met in practice. This problem becomes more salient when the executive branch of the government and the Shura council fail to agree on the draft law. In this case, it is not unexpected that the appointed portion of the council (one third) aligns with the executive power, as the latter holds the right to dismiss appointed members. Also, it is not guaranteed that the remaining two-thirds will definitely oppose the government. "If only one elected member allies with the government, it means that the law will never be passed."<sup>6</sup> The legislative process in Qatar brings back the question of democracy and the will of people. Does the Shura Council really hold the legislative power in Qatar? Does it really reflect the will of the Qatari people? The legislative process, as scrutinized by Al Sayyed, reveals that the executive power still has the last word in legislation.

### **The Rule of Law and the Separation of Powers More Broadly**

Another obstacle for the rule of law in Qatar is the separation of powers. In his comment on the Administrative Control and Transparency Authority in Qatar (ACTA), Al-Sayyed maintains that the interference of the government in the organizational structure of ACTA threatens its autonomy and impartiality. The main function of the ACTA is reporting the government's performance to the Emir, and documenting instances of dishonesty and corruption. Article 7 of the Emiri Decree No. 6 of 2015 stipulates that the Chairman of the ACTA is appointed directly by the Emir. The Article doesn't set any eligibility criteria for the aforementioned position which leaves the presidency of the ACTA open to members of the council of ministers, the core of the executive authority. This implies that the chairman of the ACTA can also hold a ministerial portfolio in the government. Al-Sayyed discusses a similar case where the vice president of the Qatari government was appointed as the head of the ACTA. He argues that given the functions of the ACTA, allocating such responsibility to the vice president puts its integrity in question.

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<sup>6</sup> Al-Sayyed, Hassan. "hal ymliko mjilso alshurā alqatāry almurtaqab sulṭāī alṭashrī'?" [Does the Upcoming Shura Council Hold the Authority of Legislation.?). *Majalat Al-Huquq*, June 2007, 257-88.

11 JANUARY 2017

The vice president holds the leading role in the policy process and may not be the best evaluator of the government's performance. Building on this example, Al-Sayyed believes that for the ACTA to fulfill its function of control and transparency, it should be entirely separated from any potential alliance with the government.

### **The Rule of Law and the Judiciary**

In this same context, Al-Sayyed contends that the appointment process of judges can also affect the independence of the judiciary in Qatar. In his column "The Constitutional Court and the Condition of Citizenship," Al-Sayyed states that Qatar and Kuwait are among the few countries in the world where constitutional judges can hold citizenship in a different country.<sup>7</sup> Of course, priority is given to Qatari nationals but the Qatari legislature allows the appointment of non-Qataris, especially from Arab countries with a long-held constitutional history. While their expertise is definitely an asset for the rule of law in Qatar, non-Qatari judges are not entirely protected from external pressure. Non-Qatari judges are also expatriates who left their home countries for the pursuit of a better life; this makes them an easy target for manipulation.<sup>8</sup> For that reason, Al-Sayyed argues against the appointment of non-Qataris in "institutions of sovereignty," namely the constitution court because it jeopardizes the principle of the independence of the judiciary in the country.

### **People and Power: Public Participation and the Rule of Law**

In Al-Sayyed's criticism of the rule of law in Qatar, he raises the question of people and power. Qatari nationals, a "few drops in a sea of expatriates" (Al-Sayyed 2010b)<sup>9</sup> may also be responsible of the staggering deficit of democracy in the country. The absence of a domestic population in the policy process – from the drafting to implementation of law - renders the rule of law in Qatar more vulnerable to manipulation and usurpation. The "disengagement" of the Qatari population from democratic life is not only the result of suppression. Al-Sayyed contends

<sup>7</sup> Al-Sayyed, Hassan. "al-mahkama al-dusturiya Wa Sharḥ al-muwaṭana." [The constitutional court and the condition of citizenship]. Al-Sharq. March 17, 2015. <http://www.al-sharq.com/news/details/318474>.

<sup>8</sup> Al-Sayyed, Hassan. "al-mahkama al-dusturiya Wa Sharḥ al-muwaṭana." [The constitutional court and the condition of citizenship]. Al-Sharq. March 17, 2015. <http://www.al-sharq.com/news/details/318474>.

<sup>9</sup> Al-Sayyed, Hassan. "Mu'adala ṣa'bī Jida'an!". [A very difficult equation!]. Al-Sharq. December 21, 2010. <http://www.al-sharq.com/news/details/168802>.

11 JANUARY 2017

that economic and social prosperity can also be a reason. Qataris are willingly absent from the Qatari political scene because they are not “coerced into it.”

Al-Sayyed explains that people may not sense the importance of democracy if they are not part of legislation. They may also not realize the drastic outcomes of authoritarianism on their lives if they are economically and socially prosperous. Indeed, Al Sayyed's explanation of the "coercion factors" of public participation is consistent with the status-quo of several countries in the Arab World. In Egypt, where expatriates are a "few drops in a sea" of Egyptian nationals,<sup>10</sup> the main slogan of the Arab Spring was "'*eish, horeyah, dala egtema'eya*" (Bread, Freedom, Social Justice).<sup>11</sup> If these words summarize the demands of protesters, their order probably reflects the priorities of the Egyptian population. "Bread", a cultural symbol of survival, came before the democratic values of Freedom and Social Justice. Of course, the causes of the Egyptian Arab Uprisings are more complex to be reduced to one catalyst, that is economy. However, the slogan of the Egyptian revolution confirms a potential negative correlation between economic prosperity and the public demand for participation in the policy process.

## Conclusion

The weekly opinion columns of Hassan Al Sayyed reveal the features of the rule of law discourse in Qatar. Qatar's first written constitution emphasized the universal values of democracy and public participation, and considered the latter as the pillar of the rule of law. With these values came the need to define the meanings of the rule of law in Qatar. Al-Sayyed is one of the Qatari intellectuals and law practitioners to highlight this issue. Al-Sayyed considers the Qatari constitution and the parliamentary system as a “step toward the best” (Al-Sayyed 2011) but he also warns about the ambiguity of the constitutional text and the interference of powers in Qatar. He questions the stance of the Qatari legislature on issues of human rights and public participation.

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<sup>10</sup> In 2015, the Egyptian Central Agency for Public Mobilization and Statistics (CAMPAS), estimated a total of 13896 expatriates in the country, that is 0,015% of the total population.

Wahba, Medhat. Al Ihsaa: ertefa' 'adad al 'aamilin al ajaneb fi Mesr ela 13 alf 'amel ajnabi 'jam 2015. [Statistics: the number of foreign workers in Egypt raises to 13 thousand in 2015]. Al-yom Al-sabe'. July 16, 2016. Retrieved from: <http://www.youm7.com/story/2016/7/16/2801891/الف-13-الى-مصر>

<sup>11</sup> Zurayk, R. (2012). Bread, freedom, and social justice. *Journal of Agriculture, Food Systems, and Community Development*, 2(2), 7-10. Retrieved from <http://search.proquest.com/docview/1016735955?accountid=10267>

11 JANUARY 2017

Interestingly, the criticisms offered by Al-Sayyed intersect with the findings of David Mednicoff's research on the rule of law in Qatar. The primary results of surveys of law students in Qatar (n= 226) shows that the majority of respondents considered a "government limited by the law" and "contemporary principles of international law" as the least important features of the rule of law. They estimated "principles of shariah" and "administration of justice" to be the most important. While these results seemingly diverge from the criticisms of Al-Sayyed, they also reveal another issue about the understanding of the rule of law. In fact, Al-Sayyed defends principles that emanate from international law, and believes in the separation of powers, or a "government limited by law." Simultaneously, he insists on the importance of Islamic identity in Qatar in law enforcement. In his article "Criminals but Free," for example, he calls for strict penalties for illegal consumption and trade of alcohol.<sup>12</sup> This example demonstrates that the seeming contradiction between Al-Sayyed's opinion and student response eclipses a strong consensus on the importance of Shariah. This observation leads to the following question: "What does Shariah mean for Qataris?" Answering this question would perhaps expand on Al-Sayyed's knowledgeable and important critical, yet hopeful and constructive, commentary on issues related to meanings of the rule of law in Qatar.

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<sup>12</sup> Al-Sayyed, Hassan. *kħuṭwṭon naħwa aḷafḷl* [A Step toward the Best]. Al-Sharq. November 15, 2011. <http://www.al-sharq.com/news/details/168609>.