



# MIDDLE EAST INSIGHTS

MIDDLE EAST INSTITUTE, NATIONAL UNIVERSITY OF SINGAPORE  
RULE OF LAW SERIES<sup>1</sup>

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## THE SOCIO-CULTURAL MEDIATION OF THE RULE OF LAW IN THE GULF ARAB STATES

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Both scholars and practitioners argue about the substantive content of the rule of law. The World Justice Project, which brings together both, emphasizes four universal principles: 1) the accountability of all before the law, including government officials; 2) laws that are clear, publicized and applied evenly; 3) a process of enforcement that is fair, efficient and accessible, and 4) justice delivered in a timely, ethical and fair way.<sup>2</sup> These are lofty goals. Analysts talk also about the pursuit of social justice, good governance and a healthy economy. There seems to be some consensus that, at heart, the rule of law is about the rules of the game –having some expectations of what will happen and how it will happen *ahead of time*. It provides for certainty and predictability in civil and political life. When people search for the rule of law, they often

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<sup>1</sup> All the contributions to this Insight are inspired by, and many of the individual authors supported by, Qatar National Research Fund's National Priorities Research Program Grant 6-459-5-050, the Rule of Law in Qatar and the Arab Gulf Project. We acknowledge the invaluable assistance of Noha Aboueldahab, Sarah Kofke-Egger, Susan Newton, Gwenn Okruhlik, Lubna Sharab, Sylvain Taouti and RA's at Qatar University and the University of Massachusetts-Amherst.

<sup>2</sup> See the World Justice Project at [worldjusticeproject.com](http://worldjusticeproject.com) for an explanation of how the rule of law is perceived and experienced around the world. The WJP is an international association of advocates.

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look towards formal documents, texts, decrees, institutions, judges and the state; that is, things that emanate from above.

My goal in this Insight is to demonstrate how the rule of law proceeds as a two-way street in the Gulf Arab states. It is not simply imposed on an acquiescent population by officials and bureaucrats. Social and cultural norms shape both its formation and its implementation through a variety of mechanisms. There is socio-cultural mediation between text and implementation that can be gray, negotiated and muddy or quite stark when based on value-laden differences.<sup>3</sup> Here, I briefly address shared attributes in the Gulf, specific issues of law (gender, foreign workers, judges, legal education), and some failures in implementation (equality in enforcement for women and foreigners). I conclude by drawing comparisons among the states, and speculating about how the rule of law in Gulf societies might shift to enhance gender equality and other rights. This analysis reflects conversations I had with Kuwaitis and Qataris and how they talk about the issues.<sup>4</sup>

Ramady suggests that socio-cultural connections (loosely, *wasta*) can have a positive influence, as in introducing a qualified person to an institution with a compatible need but also that negative *wasta* can lead to discrimination and unfairness.<sup>5</sup> He argues that “A major and dangerous consequence is political or social instability due to a loss of confidence in the State as well as in decision-makers...”<sup>6</sup> There is also ambiguity in *wasta*, as evidenced in this statement, “Here [in Qatar] there is a culture of gift-giving and generosity, based on a strong tribal Bedouin tradition. It is not necessarily given with intent to influence; it is given with intent to demonstrate status, friendliness and openness.”<sup>7</sup> Implicit in this statement is that a fine line exists between gift-giving and corruption.

### *Meta-Concerns and Complications in the Gulf*

<sup>3</sup> Socio-cultural mediation is not unique to the Gulf, the Arab world or the Middle East. Mediation occurs in all states and societies to greater and lesser degrees through such mechanisms as, for example, gender or class. Such social connection networks are variously called old boys networks in the United States, *guanxi* in China and *koneksi* in Indonesia.

<sup>4</sup> The ideas and quotes articulated in this essay emanate directly from 34 interviews in Kuwait and Qatar conducted between March 2014 and October 2016. The interviews were structured and open-ended. Respondents comprised university students, social activists, attorneys and faculty members. The privacy of the participants is granted given the critical nature of the subject.

<sup>5</sup> Mohamed A. Ramady, Overview to *The Political Economy of Wasta: Use and Abuse of Social Capital Networking*, Ramady, ed., (Switzerland: Springer International Publishing, 2016), xx.

<sup>6</sup> Ramady, p xx.

<sup>7</sup> Robert Musgrove quoted in Shane McGinley, “Qatar seeks to end ‘wasta’ culture – court boss,” *Arabian Business*, October 2, 2012 accessed March 5, 2017, [www.ArabianBusiness.com](http://www.ArabianBusiness.com).

The Gulf Arab states have a remarkable array of attributes in common. These include, to varying degrees, reserves of oil and gas, governance by hereditary ruling families, reliance on a foreign labor force, patriarchy, limited participation in governance, constraints on civil society and norms of social networking.

There is no doubt that the ruling families hold ultimate authority, but this is mediated through gender, family and tribe, the *majalis* and *diwaniyya* (informal gatherings for discussion),<sup>8</sup> mosques, citizenship, sect, social class, media and schools. All of these can be used either to reinforce or to challenge governance and law. Social institutions can be deployed by governments to reinforce deference to authority or, quite differently, they can empower and nurture civil society. These power relations are not static. They ebb and flow over time. The general issues in all the Gulf Arab states are about transparency, accountability and predictability.

### *Specific Issues in the Rule of Law*

That said, there were several specific challenges about the rule of law that were articulated during interviews with legal stakeholders in Kuwait and Qatar. The issues concern mostly gender, the *bidoon* (a stateless person, without any legal documents of citizenship),<sup>9</sup> and foreign workers.

With regard to gender, governments trumpet the proportion of women to men in their law schools. This is a good thing as it indicates the more full integration of women into the profession. Several male attorneys in Doha commented that, “our best hires are local female attorneys. They were smart, they produced results, and they made a lot of money.” Yet, the same attorneys lament, “but they usually get married and then they quickly resign due to familial pressure and child-bearing.” This story is repeated often and suggests that what actually matters

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<sup>8</sup> Chay, Clemens (2015) 'Kuwait's diwaniyyas : dislocation and dissent in an urban Gulf society.', Discussion Paper. Durham University, Sheikh Nasser Al-Sabah Programme, Durham, UK. Available at <http://dro.dur.ac.uk/17512/1/17512.pdf>.

<sup>9</sup> For work on the *bidoon* in the Gulf, see Claire Beaugrand, *Stateless in the Gulf: Migration, Nationality and Security in Kuwait* (London: I.B. Tauris, forthcoming 2017) and “Statelessness and Administrative Violence: Biduns Survival Strategies in Kuwait, *The Muslim World* 101(2011): 228-250.

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within the legal establishment is more than how many women enter law school. It is how women can be retained in the legal profession.

Several Kuwaiti women attorneys suggested that reform of family law in the Gulf might have a greater impact on development than an electoral process. Family law regulates marriage, divorce, custody and inheritance. One said, “Parliaments and parties are nice but feeling protected during divorce, custody arguments and abuse is critical.” For example, several female attorneys expressed dismay that there is no shelter in Kuwait that provides a safe space during domestic crisis for abused women. Additionally, there are no female police officers who could serve as a bridge to women in need.<sup>10</sup>

Kuwaiti women are also incensed about citizenship laws. Several activist attorneys are devoting their pro bono efforts to the situation. If a Kuwaiti woman should marry a bidoon man, her children receive Kuwaiti nationality only if they are divorced. “Otherwise, the children remain bidoon in perpetuity.” Furthermore, a Kuwaiti female citizen married to a bidoon is given a home in the neighborhood of Salabiya, an area traditionally reserved for foreign workers. Living conditions are a far cry from the comfortable suburbs of citizens. A video of the sub-standard living conditions was circulating in Kuwait.

Though Gulf citizens are appreciative of their superlative lifestyle vis a vis the foreign workers in all economic sectors, especially construction and service, they remain cognizant still of the discrepancy in status. Some call for less distance between citizens and expatriates, an end to the *kafala* (sponsorship) system that makes foreign workers structurally subordinate, and an integration of foreigners into local society.<sup>11</sup> Though the text of new labor laws allows for significant rights for workers on the books, the reality in terms of how lower-income workers’ rights are enforced is much different.

### *A Gap Between Legal Text and Implementation*

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<sup>10</sup> Rania Maktabi, “Enfranchised Minors: Women as People in the Middle East after the 2011 Arab Uprisings,” *Laws* 6 (2017), doi:[10.3390/laws6010004](https://doi.org/10.3390/laws6010004).

<sup>11</sup> Gwenn Okruhlik, “Dependence, Disdain and Distance: State, Labor and Citizenship in the Arab Gulf States,” in *Industrialization in the Arab Gulf: A Socioeconomic Revolution*, Jean-Francois Seznec and Mimi Kirk, eds. (New York: Routledge with the Center for Contemporary Arab Studies Georgetown University: 2010): 125-142.

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This gap between legal texts and fair enforcement is linked to two serious challenges concerning judges and implementation. First, judges in both Kuwait and Qatar are usually foreign and thus, sometimes timid in decision-making because they can be easily removed. Several interview respondents suggested that judges are often unqualified and that most rely on the opinions of foreign expert reports to render an opinion. Kuwaitis and Qataris suggest that it absolves judges of “blame” in an unpopular decision. They also carry a very heavy caseload and are often over-worked.

Second, in all the Gulf states, there is indeed good law on the books. The text is often fair, balanced and protects human rights. However, citizens and residents believe that, “there is a mismatch between resources, vision and implementation” that highlights the role of socio-cultural mediation.

For example, one interviewee said that, “Law is good and has respect. But it is hindered by a web of powerful relations that are hidden and unseen.” Another was blunt, “Implementation is based on personal and political motivations.” An attorney in Doha said, “There is a ‘duality’ of law – you cannot possibly understand law until you grasp its duality. What it says and what is reality.”

In general, the problem is less law as text *per se*. The problem is governance by law and the enforcement of law. A foreign lawyer in Doha explained that, “Qatar will make legal changes in its vocabulary in response to international power and pressure – but real legal change will take a generation.” This is what Andrew Walter calls “mock compliance,” in which a country might have a rhetorical and outward appearance of compliance with international standards while having hidden behavioral divergences from such standards.<sup>12</sup> This observation was buttressed by another lawyer who said, “Qatar is only doing what is minimally pragmatic in order to engage the world’s economy.”

A similar cynicism was also voiced in Kuwait. A young activist said that the “biggest challenge to the rule of law in the country is to make it apply to Ministers of Parliament (MPs) and to taxi drivers alike.” When I asked about the fair implementation of law in the country, another individual replied simply, “There is *fasad* (corruption).” Yet another remarked, “The rule of law relates differently to different social groups in the country.”

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<sup>12</sup> Andrew Walter, *Governing Finance: East Asia’s Adoption of International Standards* (Ithaca, NY: Cornell University Press, 2008) cited in Martin Hvidt, “Economic and Institutional Reforms in the Arab Gulf Countries,” *Middle East Journal* 65 (2011): 95.

*Legal Education*

A Kuwaiti professor and practitioner of law lamented the status of law and legal education throughout the Arab world. He said that it was much better 80 years ago and that today, “The curriculum at law schools is stagnant – generations of law students simply read from the same texts. There is very little research production in law and precious little translation from other languages.” The resulting inertia means that law has not kept pace with social and national developments. In addition, the financial reality of teaching law is such that you must have two jobs so law professors have law firms on the side. This means that teaching becomes an “extra.” All of this, he concluded, is reflected in declining standards in students, judges, lawyers, literature, and practitioners. In short, the legal community now suffers from malaise.

The law school at Qatar University is much younger, more international and has more English-language teaching modules than those in Kuwait. Still, an international attorney there notes that “Much legal education is still rote memorization as there is neither practice nor interrogation of students.”

*Comparisons Between Kuwait and Qatar*

Despite many shared attributes, interviewees repeatedly noted differences in how the rule of law plays out in Kuwait and Qatar. A legal consultant well-versed in both countries argued that Kuwait is in general more progressive and provides a greater margin of maneuver. He said, “It is a real country with real problems and real instabilities. It is difficult to satisfy everybody – there is more dissatisfaction with social and economic issues.” He continued, there is also a more complex history and there are more Shi‘a in the population; the idea of a heritage of freedom is better established.

In October 2016 in Kuwait, I sensed disillusionment with and disengagement from high politics, from institutions, laws and procedures. Many people have resorted to their own safe spaces below where they can more effectively promote positive changes on a smaller but still important level. Young people in particular are self-confident and aware. They are engaged in progressive non-profits. While the engagement of more Kuwaitis in diverse social entrepreneurship likely will benefit the country, even these young entrepreneurs acknowledge that it does not threaten the fundamental distribution of power. One entrepreneur, aware of his

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limits to promote meaningful change, commented, “Our government likes to restrict civil society activity because of its relationship to democracy.” The ruling family utilized its old tried-and-true mechanism: allow limited social activity to create a temporary safety valve to release potential political dissent.<sup>13</sup>

In Kuwait, though, there is an interesting tension. The resentment that is fueled by the practice of negative *wasta* – using social networks to reinforce inequality - feeds into a vibrant associational life in civil society. People are disenchanted and disillusioned. This may eventually foster more dissent and demands for the rule of law.

In Qatar, the government channels everything towards the economy and subsidies for citizens. One result is simply a lack of interest in various socio-political concerns and hence, a less vibrant associational life in civil society. A Qatari woman was forthright, “When we Qataris talk about law it is about us being 5 percent of the population. Law is about free electricity and free water and gas. When we Qataris talk about ‘law’, we talk about protecting our privilege over foreigners. Law is about our privilege.” [Note that other estimates suggest that Qataris are 12 percent of the population.]<sup>14</sup>

Zahra Babar explains that citizenship has become the means by which the state reserves valuable public goods for a select class of resident conferring a wide range of financial benefits only to its citizenry. This translates into a legal structure and framework, which places rigid controls over the rights to citizenship. Where openings are made, e.g. through naturalization, they are done so cautiously.<sup>15</sup> The rule of law does not apply consistently to 88 percent of the population.

A Qatari attorney said, “Law is a statistical game in Qatar. Qatari numbers are few and they don’t need any money.” The state distributes massive rentier wealth to its citizenry. Lina Khatib reached similar conclusions. She suggests that Qatar is tiny in local population, extremely wealthy and that citizens are basically happy with the status quo. Citizens “report a high degree

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<sup>13</sup> See Jill Crystal for discussion of the safety valve mechanism, in “Coalitions in Oil Monarchies: Kuwait and Qatar,” *Comparative Politics*, 21/4 (July 1989): 427-443 and Rulers and Merchants in Kuwait and Qatar (Cambridge: Cambridge University Press, 1995). Also, Michael Herb, *All in the Family: Absolutism, Revolution and Democracy in Middle Eastern Monarchies* (Albany: SUNY University Press, 1999).

<sup>14</sup> For population estimates, see Gulf Labor Markets and Migration at <http://gulfmigration.eu/tota-population-and-percentage-of-nationals-and-non-nationals-in-gcc-countries-latest-national-statistics-2010-2015/>. For the complexities of demographic data, see Onn Winckler “How Many Qatari Nationals Are There?” *Middle East Quarterly* 22 (2025).

<sup>15</sup> Zahra Babar, *The Cost of Belonging: Citizenship Construction in the State of Qatar*, *Middle East Journal*, 68 (2014): 420.

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of satisfaction and quality of life, driven by the state's support of most of their economic needs."<sup>16</sup> Informal networks and social connections permeate state institutions.

Khatib draws support from Gengler and Tessler who argued likewise that Qatari "civil society is no well-spring of democratic citizens but of citizens cum clients, and clients with understandably little appetite for altering the socio-political status quo."<sup>17</sup> They conclude that Qataris engage in associational life in order to seek private advantage and to interact with like-minded individuals. These ends do not challenge the political and social status quo; rather, they reinforce it. As one remarked to me, "I can give up democracy if it is for the sake of economic wealth." In Qatar then, *wasta* and social connections may serve to reinforce the state and to decrease the rule of law.

As Rania Maktabi explains, the above attitudes exemplify how political clientelism works in rentier states. It refers to the reciprocal relationship characterized by inequality and power differences between rulers and ruled who exchange resources – economic welfare for political acquiescence. Qatar lacks autonomous social and political institutions that operate without state intrusion. Kuwait, on the other hand, has an autonomous pool of civil society organizations.<sup>18</sup>

### *Comparison Among Gulf States*

Even with their similarities, there are specificities in each country about how the debates on the rule of law play out. The United Arab Emirates is complicated by a federal system of governance in which there are unequal resources, power and authority among individual units. The rule of law plays out differently in Ras Al Khaimah than in Dubai.

In all GCC states, the distance and animosity between citizens and foreign workers is a concern. But several observers were keen to point out the difference in "sense of belonging" between Qatar and Dubai. In Dubai, a family of foreign origin may well feel they belong to the Emirate and feel loyal to it.<sup>19</sup> Whereas in Qatar or Kuwait, even after 30 years of contributions, families know they are of foreign origin and will be distinct and outside society forever with no

<sup>16</sup> Lina Khatib, "Corruption in Qatar? The link Between the Governance Regime and Anti-Corruption Indicators," *European Research Centre for Anti-Corruption and State-Building*, Working Paper No. 40, December 2013: p24.

<sup>17</sup> From Justin Gengler and Mark Tessler, *Civic Life and Democratic Citizenship in Qatar: Findings from the First Qatar World Values Survey* (2011): 16 cited in Khatib: 24.

<sup>18</sup> Rania Maktabi, "Female Citizenship and Family Law in Kuwait and Qatar: Globalization and Pressures for Reform in Two Rentier States," *NIDABA*, 1 (2016): 20-34.

<sup>19</sup> For a nuanced analysis of Indians in Dubai, see, Neha Vora *Impossible Citizens: Dubai's Indian Diaspora* (Durham: Duke University Press, 2013). On Qatar, see Babar, "The Cost of Belonging: Citizenship Construction in the State of Qatar."

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rights. Even a man who was granted Qatari citizenship through naturalization bemoaned to me “I was a first-class expatriate. Now, I am a second-class citizen.”

In Saudi Arabia, an unusual feature is the direct influence of sharia law, in comparison to its more indirect legitimation status in other GCC states. Furthermore, Steffen Hertog demonstrates that the boundary between bureaucratic inertia and deliberate obstructionism in the Saudi distributive state is often blurred. There are unexplained and arbitrary demands for additional documentation, arbitrary fees and delays. Recruitment and promotion are not based on merit but *wasta* and structural incentives for performance are lacking.<sup>20</sup> Finally, the sheer enormous size of the ruling family complicates any discussion about accountability. There are over 7,000 princes; how do you regulate third and fourth cousins? It is unwieldy.

Bahraini debates about the rule of law are complicated by sect, as the majority of the population is Shi‘a though the ruling Al-Khalifa family is Sunni.

And, at this historical juncture in Oman, the debate about the rule of law is seamlessly intertwined with uncertainty about succession. Omanis want to know ahead of time who will follow Sultan Qaboos. For many Omanis, the rule of law is about the institutionalization of succession.

Finally, Kuwait has long had a lively Parliament, significant open debate, a history of opposition and a relatively open press. There is more space for civil society. Yet the Parliament is occasionally dissolved by Emiri decree. Qatar is smaller and wealthier. There is less public debate about the rule of law though certainly it occurs in private.

The entire situation is further complicated by the Gulf Cooperation Council Collective Security Law whereby domestic laws of sovereign countries can be enforced regionally, i.e., across borders. It is not always clear to which law or whose law the rule of law refers. Some citizens interpret this move to be a “circling of the wagons” between the ruling families. Yet the current crisis in the Gulf leaves the future of the GCC open to question.

### *Conclusions: What to do?*

In the end, the key question for citizens and policy-makers interested in enhanced legal efficacy is where to start. There is fundamental disagreement on the starting point to reform and

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<sup>20</sup> Steffen Hertog, *Princes, Brokers, and Bureaucrats: Oil and the State in Saudi Arabia*, (New York: Cornell University Press, 2010) Chapter Five, especially pages 160 and 183.

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implement law. On the one hand, some argue that societal norms are the biggest hindrance to the rule of law. They point to patriarchal norms that imbue family, business and governance, noting, “We have laws to protect women on the books but our mentality, culture and traditions limit women.” And, “More terrifying than law is our custom and tradition.” One female attorney argued, “We must educate women first – then, men will change.”

On the other hand, some argue that they must change the law first – it is far easier to revise text than to inculcate generational change. “There is no time to wait for society to change on its own. Change the law. Society will follow.”

Citizens bemoan that there is an absence of a will to change and to grow and to take the inevitable risks that accompany change. There is precious little civics education about responsibility and engagement.<sup>21</sup> Many people lamented, “People do not understand the role of citizenry in shaping law through civil society.” Others pleaded for the integration of civic responsibility into public and private education because “Citizens need to feel pride and responsibility of ownership.”

There is instead, for now, a focus on hyper-consumerism in the Gulf. The contours of “belonging to the nation” are given substance through material welfare. An unfortunate consequence, I argue, is that citizenship becomes defined less through rights and responsibilities and more through consumerism made possible through the distributive state. This is especially true in the uber-rich states of Dubai and Qatar, less so in Saudi Arabia, Oman, Bahrain and even Kuwait.

A woman attorney argued, “We should not say “Oh, please, give us our rights.” Rather, we must *take* our rights! We must stand up and say, “You are *obligated* to respect my rights. We must force them to elevate the conversation from the gutter.” Rights are often enshrined in legal text but are not respected in the daily life of ordinary citizens.

In conclusion, legal text is often just but enforcement is unequal. The disenfranchised - for example, women, foreign workers, the bidoon - call for social justice. The privileged who benefit from social networks are more satisfied with the duality of the status quo. In the Gulf, there has been an emphasis on text of law rather than the spirit of law. An attorney summed it up

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<sup>21</sup> Rania Al-Nakib, “Education and Democratic Development in Kuwait: Citizens in Waiting,” Chatham House, March 2015: 1-15 and “[Citizenship, nationalism, human rights and democracy: a tangling of terms in the Kuwaiti curriculum](#)” [Educational Research](#) 53 (2011).

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by saying, “Look, being legal is one thing; being just is another.” Both the enhancement of legal texts and the realization of their underlying spirit matter; they are not mutually exclusive objectives.

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