

The Modern *Muhtasib* :
Religious Policing in the Kingdom of Saudi Arabia

Gregory G. Mack

The Faculty of Arts
Institute of Islamic Studies

McGill University
Montréal, Québec, Canada

April 11, 2013

A thesis submitted in partial fulfillment of the requirement for the degree of

Doctor of Philosophy

© Copyright 2013 All rights reserved.

ABSTRACT

Enabling the religious duty of enjoining virtue and forbidding vice was one of the most important functions of the Islamic state historically. The public enforcement of this duty, *ḥisbah*, was entrusted to the *muḥtasib*, an officer who acted as moral censor and market inspector. The *muḥtasib* existed throughout Islamic history until the reforms of the modern period, when his authority and function was usurped by nation-states; however, this office survives in Saudi Arabia, where its role has been assigned to the Committee for the Promotion of Virtue and Prevention of Vice (CPVPV). These "religious police" are commonly thought to epitomize the incompatibility of Islamic law with modern notions of freedom and human rights. Despite the CPVPV's notoriety and unique position in the face of secularization, it has been virtually ignored by Islamic studies, with no detailed assessment of it in theoretical or practical terms. This thesis explores *ḥisbah* in Saudi Arabia from 1926 to the present, articulating its evolving moral and legal constitution, as well as detailing CPVPV operations in relation to the developing nation-state.

The first chapter is a preliminary study of the pre-modern *muḥtasib*, which addresses the ethics, law and practice of *ḥisbah* prior to the CPVPV through a survey of key primary and secondary sources. It thus provides background for subsequent analysis, determining the *muḥtasib*'s historically constant and variable features, and helps contextualize modernization by the CPVPV.

The second chapter addresses the conceptualization of *ḥisbah* in Saudi Arabia through three main aspects: the ethical foundations of *ḥisbah* according to contemporary *akhḥlāq* literature; the official definition of *ḥisbah* in terms of *fiqh* by the CPVPV; and a survey of Saudi scholarship on enjoining virtue and forbidding vice by major *ʿulamāʾ*, intellectuals and Islamists. It thus provides an overview of official and unofficial discourse on *ḥisbah*, in both its general sense as the duty to

enjoin virtue and forbid vice, and its specific sense as the derivative function of the *muhtasib*.

The third chapter addresses the Saudi law of *hisbah* and its enforcement by the CPVPV through examining the agency's bylaws and governing constitution, followed by a statistical analysis of its activities based on official records. Analysis is then elaborated through three case studies on key issues: terrorism, veiling and gender segregation, and religious freedom. It thus clarifies *hisbah*'s legal definition and application by the CPVPV in contemporary Saudi history.

The fourth chapter addresses the relationship between *hisbah* and the nation-state through four main aspects: the historical justification of Saudi nationalism in terms of *hisbah*, based on official historiography; the legal foundations of the Saudi state in terms of *hisbah*, based on the doctrine of *siyāṣah sharʿīyah*, Basic Law of Governance and pertinent extra-legal factors; the legal foundations of the CPVPV in relation to the Saudi state, based on its evolving constitution and operations; and the legal and administrative basis of *hisbah* jurisdiction amongst other Saudi state agencies, based on research from the Higher Judicial Institute. It thus demonstrates the CPVPV's importance to Saudi nationalism and how *hisbah* functions through both the CPVPV and Saudi nation-state as a whole.

These four chapters are followed by tables and diagrams illustrating official records and statistics from the CPVPV, followed in turn by appendices containing original translations of the Governing Regulations and Executive Bylaws of the CPVPV, as well as a translation of articles pertaining to the CPVPV from the Law of Penal Procedures.

ABRÉGÉ

Historiquement, une des fonctions majeures de l'état islamique, a été de permettre le développement de la fonction religieuse consistant à imposer la vertu et interdire le vice. La mise en application de cette fonction dans la communauté, la *ḥisbah*, était confiée au *muḥtasib*, un agent qui agissait en qualité de senseur de la morale et contrôleur du commerce. Le *muḥtasib* a existé tout au long de l'histoire islamique jusqu'aux réformes de la période moderne, lorsque son autorité et sa fonction ont été usurpées par les états-nations ; cette fonction survit en Arabie Saoudite, où son rôle a été attribué au Ministère pour la Promotion de la Vertu et la Répression du Vice (MPVRV). Cette « police religieuse » est généralement perçue comme l'illustration parfaite de l'incompatibilité entre la loi islamique et les notions modernes de liberté et de droits de l'homme. Malgré la notoriété dont bénéficie le MPVRV et sa position unique face à la laïcisation de la société, il a été pratiquement totalement ignoré dans les études islamiques, on ne trouve donc aucune analyse qui s'y rapporte, que ce soit en termes théoriques ou pratiques. Cette thèse explore la *ḥisbah* en Arabie Saoudite de 1926 à nos jours, et présente sa composition d'un point de vue moral et légal, tout en exposant également les opérations du MPVRV par rapport au développement de l'état-nation.

Le premier chapitre regroupe une étude préliminaire du *muḥtasib* dans la période pré-moderne, qui aborde l'éthique, le droit et la pratique de la *ḥisbah*, avant l'établissement du MPVRV, à travers l'étude de sources clé, primaires et secondaires. Elle fournira ainsi un contexte pour les analyses ultérieures, mettant en exergue les caractéristiques constantes et variables dans le temps du *muḥtasib* et permettra de conceptualiser l'idée de modernisation de la *ḥisbah* à travers le transfert des fonctions du *muḥtasib* vers le MPVRV.

Le deuxième chapitre aborde le concept de la *ḥisbah* en Arabie Saoudite à travers trois aspects : les fondations éthiques de la *ḥisbah* selon la littérature

akhlāq contemporaine ; la définition officielle de la *ḥisbah* en termes de *fiqh* par le MPVRV ; et une étude de l'imposition de la vertu et l'interdiction du vice par les '*ulamā*', les intellectuels et autres islamistes les plus importants, à travers les programmes des diverses filières d'études saoudiennes. Il fournira ainsi une vue d'ensemble des traités officiels et non-officiels existants sur la *ḥisbah*, à la fois d'un point de vue général en ce qui concerne la fonction religieuse consistant à imposer la vertu et interdire le vice et du point de vue spécifique de la fonction dérivée du *muḥtasib*.

Le troisième chapitre présente la loi saoudienne de la *ḥisbah* et sa mise en application par le MPVRV à travers l'analyse des statuts du Ministère et de la constitution qui le régit, suivi par l'analyse statistique de ses activités, basée sur des documents officiels. Cette présentation est suivie d'une analyse détaillée de trois cas d'école sur des sujets clé : le terrorisme, le port du voile et la séparation des sexes et la liberté religieuse. Il clarifie ainsi la définition et l'application légales de la *ḥisbah* par le MPVRV dans l'histoire contemporaine de l'Arabie Saoudite.

Le quatrième chapitre aborde la relation entre la *ḥisbah* et l'état-nation à travers quatre aspects : la justification historique du nationalisme saoudien en termes de *ḥisbah*, basée sur une historiographie officielle ; les fondations légales de l'état saoudien en ce qui concerne la *ḥisbah*, basées sur la doctrine de la *siyāsah shar'īyah*, la Loi Fondamentale de Gouvernement et d'autres facteurs extra-légaux qui s'y rapportent ; les bases légales du MPVRV par rapport à l'état saoudien, à partir de ses statuts et opérations qui évoluent avec le temps ; enfin, les bases légales et administratives de la juridiction de la *ḥisbah* parmi les différentes agences étatiques saoudiennes, basées sur les recherches de l'Institut Supérieur Judiciaire. Ceci démontre ainsi l'importance du MPVRV pour le nationalisme saoudien et comment la *ḥisbah* fonctionne à la fois à travers le MPVRV et l'état-nation saoudien.

Ces quatre chapitres sont suivis par des tables et diagrammes illustrant les statistiques et documents officiels du MPVRV, eux-mêmes suivis par des

annexes contenant les traductions officielles des Règlements Constitutionnels et Statuts du MPVRV, ainsi qu'une traduction d'articles concernant le MPVRV provenant du Droit des Procédures Pénales.

ACKNOWLEDGEMENTS

I extend my sincere gratitude to my advisor Wael B. Hallaq, whose guidance I was privileged to benefit from. I cherish Professor Hallaq's style of mentorship and thank him for being continuously respectful and accessible. Through my studies, work and conversation with him over the course of my degree at McGill, his immense scholarship and critical mind have been a constant source of inspiration. Above and beyond academic concerns, Professor Hallaq was exceedingly kind and helpful, never wavering in his support or generosity.

I would also like to thank the faculty members of the Institute of Islamic Studies, especially Professor Robert Wisnovsky and Professor F. Jamil Regep—I truly appreciate the generous financial support and guidance I received during their respective tenures as director. I owe an equal debt of gratitude to Professor Rula Abisaab, from whose inspiring mentorship I was fortunate to benefit as a student and co-instructor. My sincere thanks also extend to Professors Malek Abisaab, Laila Parsons, Michelle Hartman and Setrag Manoukian, for their valuable advice during the course of my research, as well as to my external examiner, whose useful feedback led to the substantial improvement of my thesis.

It is with great pleasure that I thank Dr. Fahad al-Homoudi, who contributed immensely to facilitating my research in Saudi Arabia. His untiring support as a colleague and friend during my stay in the kingdom are truly appreciated. My heartfelt thanks also extend to Dr. Hamad Al al-Sheikh, Dr. Nasir Tuwaim, Sh. Aimen Benothman and Sh. Imtiyaz Damiel, whose generosity, conversation and valuable advice I had the privilege to benefit from.

The sometimes challenging task of conducting research in Saudi Arabia was considerably eased by the expert assistance I received from Mr. Hayyan al-Hafez at the King Faisal Center for Research and Islamic Studies and Mr. Bassam al-Yusuf at the CPVPV Center for Research and Studies. Thanks also to Dr. Frank Vogel, Dr. Saleh M. al-Jarbou, Dr. Walid S. al-Tuwaigri, Dr. Abulaziz al-Umari, and Dr. Abdulaziz al-

Fawzan, for generously sharing their time and thoughts with me on the subject of my research.

My studies and research could not have been effectively coordinated between Riyadh and Montreal without the hard work and kind support from staff at the Institute of Islamic Studies. In fact, I discovered a new level of appreciation for their administrative efficiency and good manners through my experience of sometimes overwhelming bureaucratic problems abroad. I recognize the efforts of Ms. Ann Yaxley, Ms. Sharron St. Thomas, Ms. Kirsty McKinnon, and Ms. Adina Sigartau, and thank them for it. Moreover, I commend the staff of the Institute's library, especially Mr. Adam Gacek, Ms. Salwa Ferahian, Mr. Stephen Millier, and Mr. Wayne St. Thomas, for their unfailing professionalism. Thanks also to Mr. Michael Nafi, Ms. Nathalie Darde-Dujmovic and Mr. Kal Chahhel for having generously shared their time and *érudition de la langue française*.

Reserving the expression of deepest thanks and most profound appreciation for last, I must express the immense debt of gratitude I owe to my family for the care and support I have received from them over the course of my higher education. I will be forever grateful to my mother and wife for patiently accompanying me on this journey. This project would never have been realized without their unconditional love and encouragement, which I was very blessed to receive. I thank my wife especially for enduring the hardships of my labour, and dedicate this dissertation to her—this project is hers as much as it is mine. I am also grateful to my children, Elias, Rayann and Hannah, who tolerated my preoccupation with kindness, and were an endless source of good cheer.

To my wife.

The Committee for the Promotion of Virtue and Prevention of Vice is an enduring pillar so long as Islam remains a pillar in this country, because enjoining virtue and forbidding vice is the basic pillar of the Islamic state—thank God we are in an Islamic state, and *ḥisbah* remains a pillar through its works...

—Minister of the Interior, Prince Nā'if ibn 'Abd al-'Azīz

Cooperation with men of the Committee for the Promotion of Virtue and Prevention of Vice should be considered a type of *jihād* in the way of truth, through which God may reform and purify, for God says: "And those who struggle in Our (Cause)—We will certainly guide them to Our Paths: for verily God is with those who do right."

—Shaykh 'Abd al-'Azīz ibn Bāz

Source: al-Ri'āṣah al-'Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar, *Kalimāt Sajallahā al-Ta'rīkh* (Far' Mintaqat al-Rīyāḍ, al-'Alāqāt wa-al-I'lām, 1430/2009).

TABLE OF CONTENTS

ABSTRACT	I
ABRÉGÉ	III
ACKNOWLEDGEMENTS	VI
TABLE OF CONTENTS	X
LIST OF TRANSLITERATION	XIII
ABBREVIATIONS.....	XIV
GENERAL INTRODUCTION	1
1. THE PRE-MODERN <i>MUḤTASIB</i>: AN OVERVIEW OF THE THEORY AND PRACTICE OF <i>HISBAH</i> PRIOR TO THE CPVPV	26
1.1. INTRODUCTION	26
1.2. ETHICS OF <i>HISBAH</i>	34
1.2.1. <i>Ethical Substance</i>	36
1.2.2. <i>Mode of Subjection</i>	39
1.2.3. <i>Techniques of the Self</i>	45
1.2.4. <i>Telos</i>	60
1.3. LAW OF <i>HISBAH</i>	66
1.3.1. <i>Enforcement</i>	67
1.3.2. <i>Procedure</i>	69
1.3.3. <i>General Principles of Substantive Law</i>	72
1.3.4. <i>Discretionary Punishment</i>	74
1.4. PRACTICE OF <i>HISBAH</i>	76
1.4.1. <i>Fiqh of Hisbah in Historical Context</i>	76
1.4.1.1. Al-Māwardī	77
1.4.1.2. Al-Ghazālī	80
1.4.1.3. Al-Shayzarī.....	83
1.4.1.4. Ibn Taymīyah	85
1.4.2. <i>Substantive Law of Hisbah in the Ottoman Empire</i>	89
1.4.2.1. <i>Enforcement</i>	91
1.4.2.2. <i>Procedure</i>	92
1.4.2.3. <i>Substantive Law</i>	93
1.4.2.4. <i>Discretionary Punishment</i>	95
1.5. CONCLUSION.....	97
2. CONCEPTUALIZING <i>HISBAH</i> IN SAUDI ARABIA	105
2.1. INTRODUCTION	105
2.2. ETHICAL FOUNDATIONS OF ENJOINING VIRTUE AND FORBIDDING VICE	111
2.3. ENJOINING VIRTUE AND FORBIDDING VICE ACCORDING TO THE CPVPV	119
2.4. ENJOINING VIRTUE AND FORBIDDING VICE ACCORDING TO SAUDI SCHOLARS	123

2.4.1. Earlier Saudi Scholars	125
2.4.2. Recent Saudi Scholars.....	131
2.4.3. Islamists.....	141
2.4.3.1. Activists	143
2.4.3.2. Radicals	147
2.5. CONCLUSION.....	150
3. THE SAUDI LAW OF ḤISBAH AND ITS ENFORCEMENT BY THE CPVPV	156
3.1. INTRODUCTION	156
3.1. MODERN POLICING AND THE LAWS OF <i>ḤISBAH</i>	161
3.1.1. Modern Policing	161
3.1.2. The Laws of <i>Ḥisbah</i>	166
3.2 ACTIVITIES OF THE CPVPV: STATISTICAL ANALYSIS	174
3.3. CASE STUDIES.....	182
3.3.1. The Case of Veiling and Gender Segregation	182
3.3.2. The Case of Terrorism.....	193
3.3.3. The Case of Religious Freedom	203
3.4. CONCLUSION.....	211
4. <i>ḤISBAH</i> AND THE SAUDI NATION-STATE	216
4.1. INTRODUCTION	216
4.2. <i>ḤISBAH</i> AND THE FOUNDATIONS OF SAUDI NATIONALISM	224
4.2.1. <i>Ḥisbah</i> throughout History.....	226
4.2.2. <i>Ḥisbah</i> in the Age of Muḥammad and the Rāshidūn Caliphate	228
4.2.3. <i>Ḥisbah</i> before the Age of ‘Abd al-‘Azīz.....	228
4.2.4. <i>Ḥisbah</i> in the Age of ‘Abd al-‘Azīz.....	230
4.2.5. <i>Ḥisbah</i> in the Age of Sa‘ūd, Fayṣal, Khālīd, and Fahd	232
4.3. <i>ḤISBAH</i> AND THE LEGAL FOUNDATIONS OF THE SAUDI STATE.....	235
4.4. <i>ḤISBAH</i> AND THE LEGAL FOUNDATIONS OF THE CPVPV	239
4.4.1. <i>Nizām</i> of 1345/1926.....	243
4.4.2. <i>Nizām</i> of 1349/1930.....	246
4.4.3. Committee of Public Security, 1355/1936.....	248
4.4.4. <i>Nizām</i> of 1356/1937.....	249
4.4.5. <i>Nizām</i> of 1372/1952.....	249
4.4.6. <i>Nizām</i> of 1396/1976.....	250
4.4.7. <i>Nizām</i> of 1400/1980.....	252
4.5. <i>ḤISBAH</i> AND OTHER SAUDI STATE AGENCIES	255
4.6. CONCLUSION.....	266
5. GENERAL CONCLUSION.....	271
FIGURE 1. ORGANIZATIONAL STRUCTURE OF THE GENERAL PRESIDENCY.....	286
TABLE 1. DISTRUBUTION OF COMMITTEES AND CENTERS ACCORDING TO REGION	290
TABLE 2. EMPLOYEES COMMISSIONED BY THE GENERAL PRESIDENCY ACCORDING TO TYPE, 1412-1428 AH [1991-2007 AD].....	290

TABLE 3. BUDGETS OF THE GENERAL PRESIDENCY, 1396-1428 AH [1976-2007 AD] IN SAUDI ARABIAN RIYALS	291
TABLE 4. COMMISSIONED EMPLOYEES OF THE GENERAL PRESIDENCY DURING THE FINANCIAL YEAR 1427/1428 AH [2006/07], BY TYPE OF OCCUPATION	292
TABLE 5. COMPOSITION OF THE GENERAL PRESIDENCY IN THE FINANCIAL YEAR 1427/1428 AH, BY MATERIAL ASSETS	292
TABLE 6: ACTIVITIES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF ESTABLISHING GUIDANCE CENTERS AND DELIVERING LECTURES, WORDS OF GUIDANCE, AND SYMPOSIA, DURING 1418-1428 [CA. 1997-2007]	293
TABLE 7: ACTIVITIES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF THE GUIDANCE OF SOCIETY (DISTRIBUTION OF PUBLICATIONS) DURING 1418-1428 [CA. 1997-2007]	294
TABLE 8: ACTIVITIES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF VISITS 1418-1428 [CA. 2006-07]	295
TABLE 9: CLARIFICATION OF TERMINOLOGY FROM THE PROCEEDING TABLES FOR THE CLASSIFICATION OF INCIDENTS SUBJECT TO DISCIPLINE BY COMMITTEES AND CENTERS	296
TABLE 10: CLASSIFICATION OF INCIDENTS DURING 1427-28 [CA. 2006-07], ACCORDING TO TYPE, NATIONALITY AND MEASURE.....	297
TABLE 11: CLASSIFICATION OF INCIDENTS AND THEIR VERIFICATION DURING 1427-28 [CA. 2006-07] IN THE REGIONS OF THE KINGDOM ACCORDING TO METHOD AND MEDIUM OF EXECUTION BY THE COMMITTEES, CENTERS, AND FIELD WORKERS	298
TABLE 12: COMPARISON OF INCIDENTS (CASES REFERRED TO SPECIALISTS, OFFENCES RESULTING IN ARREST) COMPLETED BY OFFICERS BETWEEN 1417-1428 [CA. 1986-2007], ACCORDING TO TYPE OF INCIDENT.....	299
TABLE 13: COMPARISON OF INCIDENTS (CASES REFERRED TO SPECIALISTS, OFFENCES RESULTING IN ARREST) COMPLETED BY OFFICERS BETWEEN 1418-1428 [CA. 1986-2007], ACCORDING TO BRANCHES OF THE PRESIDENCY	300
APPENDIX 1: <i>NIZAM</i> OF THE COMMITTEE FOR THE PROMOTION OF VIRTUE AND THE PREVENTION OF VICE	301
APPENDIX 2: THE EXECUTIVE BYLAWS FOR THE COMMITTEE OF THE PROMOTION OF VIRTUE AND PREVENTION OF VICES.....	305
APPENDIX 3: ARTICLES OF THE <i>NIZAM</i> OF PENAL PROCEDURES CONCERNING FIELD WORK OF THE COMMITTEE FOR THE PROMOTION OF VIRTUE AND PREVENTION OF VICE	319
BIBLIOGRAPHY	326

LIST OF TRANSLITERATION

Table of the system of transliteration of Arabic words and names used by
the Institute of Islamic Studies, McGill University.

ب = B	ز = Z	ف = f
ت = t	س = s	ق = q
ث = th	ش = sh	ك = k
ج = j	ص = ṣ	ل = l
ح = ḥ	ض = ḍ	م = m
خ = kh	ط = ṭ	ن = n
د = d	ظ = ṣ	ه = h
ذ = dh	ع = ‘	و = w
ر = r	غ = gh	ي = y

Short: a = اَ ; i = اِ ; u = اُ

Long: ā = آ ; ī = يِ ; ū = وِ

Diphthong: ay = اِي ; aw = اَوْ

ABBREVIATIONS

AE	American Ethnologist
AJCL	American Journal of Comparative Law
ALQ	Arab Law Quarterly
CA	Current Anthropology
EI	Encyclopaedia of Islam
EQ	Encyclopedia of the Qur'an
ER	Encyclopedia of Religion
HJL	Hastings Law Journal
ICLQ	International and Comparative Law Quarterly
IJMES	International Journal of Middle East Studies
ILS	Islamic Law and Society
JESHO	Journal of the Economic and Social History of the Orient
JINEL	Journal of International and Near Eastern Law
JLR	Journal of Law and Religion
JMS	Journal of Mediterranean Studies
MEJ	Middle East Journal
SI	Studia Islamica

General Introduction

The relation between law, morality and religion in the West has grown progressively more complex and fragmented over the past five hundred years. The social structure of law continues to develop in an increasingly isolated sphere, and law has grown more unified as an instrumental mode of social formation, purged of the supposedly extraneous elements of religious and moral culture. This separation has been taken for granted both by those who endorse it, such as those who have argued for the convergence of law and religion in ancient or "primitive" society,¹ and by those who deplore it.² One major problem concerning the relation between modern law, religion and morality, is whether these social spheres relate to each other any longer, and if so, how they relate.

Despite remaining comprehensive in their claims about the proximate and ultimate goods for human life, religion and morality seem to have lost any effective relationship with law. Modern secular law no longer invokes an explicitly religious cosmology, or directly relates to claims of religious revelation. The term "law" is now applied almost exclusively to positive law, meaning discrete rules promulgated by the state or its agents, and enforced by their sanctions. The state now has a monopoly on punishment, and compliance with religious rules or norms, which are often called "morals" to distinguish them from positive law, is voluntary rather than coercive. The

¹ E.g., Sir Henry Maine, *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas* (London: John Murray, 1861); Émile Durkheim, *Les formes élémentaires de la vie religieuse* (Paris: Presses Universitaires de France, 1912).

² E.g., Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983).

process by which religion lost its ability to enforce its provisions, and by which, at the same time, a secular legal order developed that no longer required the explicit sanction of religion, is one of the key transformations in the history of law. One of the difficult questions, from a modern perspective, is how far to extend the definition of "punishment" to religious, as opposed to state law.³

In stark contrast to the sovereign nature of the modern state, the role of the pre-modern Islamic state was significantly marginal, both as legislator and as a determinant of legal authority, while political-executive power was legitimated largely through its ability to apply the Shari'ah. Indeed, Sunnī juridical theory perceives the "Islamic state" merely as a vehicle for achieving security and order in ways conducive to Muslims fulfilling the religious duty of "enjoining virtue and forbidding vice" (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*).⁴ Enabling this religious duty was one of the most important functions of the state, the enforcement of which was assigned to the administration of *ḥisbah*. *Ḥisbah* was concerned with the supervision of public worship and moral behaviour as well as the regulation of markets, and jurisdiction over it was entrusted to the office of the *muḥtasib*.⁵

The *muḥtasib* continued to exist throughout the greater part of Muslim history until the reforms of the modern period, which witnessed the destruction of traditional

³ Robert A. Yelle, "Law and Religion: Law, Religion, and Punishment," *ER*² (New York: MacMillan, 2005), vol. 8, pp. 5371-5375.

⁴ E.g., 'Alī ibn Muḥammad al-Māwardī, *al-Aḥkām al-Sulṭānīyah wa-al-Wilāyāt al-Dīnīyah* (Bayrūt: al-Maktab al-Islāmī, 1416/1996), Ch. 20.

⁵ Claude Cahen, "Ḥisba," *EF*² (Leiden: Brill, 1960), vol. 3, p. 485.

legal institutions and the usurping of their functions and authority by the nation-state.⁶ The office of the *muhtasib*, however, continues to have a very vital function in Saudi Arabia, where, scholars claim, Islamic law is still enforced in its “traditional” form.⁷ The classical responsibilities of this office, such as commercial and industrial regulation, summary enforcement of civil obligations, supervision of the probity of religious officials, exhorting the public to good, and moral policing, have been distributed to various state agencies, especially the *Hay’at al-Amr bi-al-Ma’rūf wa-al-Nahy ‘an al-Munkar* (“Committee for the Promotion of Virtue and Prevention of Vice,” or CPVPV), which holds the official designation of *muhtasib*, and is popularly known as the *Hay’ah* or the *Muṭawwa’*.

Given its unique position in the face of global secularization, the role of the *muhtasib* in Saudi Arabia provokes several questions: Do *ḥisbah* and the *muhtasib* acquire new significance in light of the modern separation between law and morality? How has *ḥisbah* been re-configured within Saudi Arabia in relation to its pre-modern forms? What elements of modernity is it reacting to, and what form of law and morality has been articulated by it? How has religious sanction been used to shape a particular ethic in Saudi Arabia, and how has it been enforced by the office of the *muhtasib*?

Reasons for studying this topic include its importance for understanding the relationship between human rights concepts and religious traditions, an increasingly

⁶ Wael B. Hallaq, “Can the Shari‘a Be Restored?” in Yvonne Y. Haddad and Barbara F. Stowasser, eds., *Islamic Law and the Challenges of Modernity* (Walnut Creek: Altamira Press, 2004), pp. 21-53; *Shari‘a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), Chs. 15-16.

⁷ Joseph Schacht, “Islamic Law in Contemporary States” *AJCL* 8 (1959): 133-47; Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), p. 154.

prominent field of research.⁸ Recently, the United States made the enforcement of religious freedom and the global extension of the rule of law central aspects of its foreign policy.⁹ Many European countries have imposed restrictions on immigrant religious communities, and there is a growing awareness of the role of religion in social conflict and terrorism.¹⁰ Responding to these developments, a large portion of scholarship addresses the compatibility and incompatibility of religious and human rights ideology; indeed, the case of Islam is viewed as particularly challenging in terms of whether Islamic law supports modern notions of freedom.¹¹ Saudi Arabia and its “Religious Police” have, for instance, generally been referred to as the apotheosis of oppression and the state’s invasion of the private sphere in popular Western accounts. Ignorance prevails, however, as to the laws of *hisbah* and their moral constitution, as well as historical details of their enforcement.

Analysis of *hisbah* in Saudi Arabia is also important because it offers a new dimension from which to examine the relationship between law and religion, which is largely premised upon the “secularization thesis” in many scholarly fields. According to this thesis, societies progressively move away from religious norms (or “morals”) as they modernize towards a complete regime of secular law that permits only such

⁸ Rosalind I. J. Hackett, “Law, Religion, and Human Rights,” *ER*² (New York: MacMillan, 2005), vol. 8, pp. 5362-66.

⁹ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report 2009*; available from www.state.gov, accessed 26/20/2009.

¹⁰ José Casanova, “Religion, European Secular Identities and European Integration,” K. Michalski, ed., *The New Europe* (New York: Central European University Press, 2006), Ch. 2; Mark Juergensmeyer, *Terrorism and the Mind of God* (Berkeley: University of California Press, 2003).

¹¹ E.g., Shireen T. Hunter, ed., *Islam and Human Rights: Advancing a U.S.-Muslim Dialogue* (Washington, DC: Center for Strategic and International Studies, 2005); Abdulaziz Sachedina, *Islam and the Challenge of Human Rights* (New York: Oxford University Press, 2009).

religious tenets as do not inhibit its administration and coercive power.¹² The resurgence of public religion is, in fact, a problem and challenge for secular law, the spread of which is considered the *sine qua non* for the spread of democracy.¹³ Recently, the secularization thesis has been the subject of sustained criticism within several fields, such as philosophy, anthropology, religious studies, gender theory and post-colonial theory.¹⁴ Increasingly, it appears that modern law and its enforcement maintains a historical relationship to older modes of religiosity. Examination of *hisbah* in Saudi Arabia contributes to this discussion, articulating a different pattern of modernization in terms of law and morality and their enforcement. Moreover, in light of the recent "Arab Spring" uprisings, the need to more fully understand *hisbah*'s nature in Saudi Arabia assumes greater urgency: as a key element of Muslim, especially Salafī, political activism and revolt as well as a major component of political conservatism, its significance to public life in contemporary Muslim societies is increasingly clear.

In terms of popular literature, the CPVPV has been roundly criticized in international journalism and human rights commentary for violations of privacy and

¹² The seminal social thinkers of the nineteenth century, from Max Weber to Karl Marx, like the leading figures of the European Enlightenment before them, all believed that religion would gradually fade in importance and cease to be significant with the advent of industrial society. For a discussion see Steve Bruce, "Pluralism and Religious Vitality," Steve Bruce, ed., *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis* (New York: Oxford University Press, 1992), pp. 170-194; Alan Aldridge, *Religion in the Contemporary World* (Cambridge: Polity Press, 2000), Ch. 4.

¹³ Cassanova; Charles Taylor, *A Secular Age* (Cambridge: Belknap Press of Harvard University Press, 2007).

¹⁴ Winnifred F. Sullivan, and Robert A. Yelle, "Law and Religion" *ER*² (New York: MacMillan, 2005), vol. 8, pp. 5325-32; N. E. Simmonds, "Law and Morality," *Routledge Encyclopedia of Philosophy* (New York: Routledge, 1998), pp. 438-442; Talal Asad, *Formations of the Secular* (Stanford: Stanford University Press, 2003), ch. 6.

limitation of moral autonomy;¹⁵ however, despite this prominent attention, it has been largely ignored by Islamic studies and historiography. Scholarly research topics regarding the *muhtasib* and *hisbah* have roots in the familiar Orientalist themes of foreign origins and the disjunction between theory and practice, which has evolved into controversy about its relation to the public sphere and the "secular" verses "religious" character of the office, as well as concern with its sanction of violence. Recent historiography on enjoining good and forbidding evil has set the agenda for research on the *muhtasib* and *hisbah*, and general histories of Saudi Arabia provide only limited or indirect commentary on the CPVPV.

Émile Tyan's groundbreaking work on judicial administration remains the main treatment of *hisbah* to-date, and the most influential thematic source for subsequent discussions.¹⁶ Based on a broad survey of pertinent *fiqh* and a summary of its historical application, Tyan claims that the Muslim world never actually experienced autonomous municipal institutions within the framework of government: all agencies possessing public authority were integrated within the central hierarchy of executive power. *Hisbah* was subject to this hierarchy, with its legal basis differing significantly from the actual historical powers granted to it.¹⁷ According to Tyan, the evolving needs of public law and regulation were, in reality, realized indirectly by legislative dispositions

¹⁵ E.g. Amnesty International, "Saudi Arabia: A Justice System without Justice" (10 May 2000); available from www.amnesty.org, accessed 22/1/2009; Human Rights Watch, *World Report 2008* (New York: Human Rights Watch, 2008), pp. 516-520.

¹⁶ Émile Tyan, "La Hisba et l'administration municipale," *Histoire de l'organisation judiciaire en pays d'Islam* (Leiden: Brill, 1960), Ch. 4.

¹⁷ *Ibid.*, pp. 617, 635.

promulgated by the political ruler using the device of *siyāsah shar‘īyah*.¹⁸ The functions of the *muhtasib*, while theoretically based on the injunctions of *fiqh*, thus emerged practically in the context of "secular administration." Tyan argues that ultimately the augmentation of *siyāsah* through such institutions as *ḥisbah* enabled the modern legal reforms of the nineteenth and twentieth century, which introduced the Western European judicial system to most Muslims societies.¹⁹ Subsequently, this claim was widely accepted amongst historians of Islamic law, and used as a basis to argue that there is a functional imperative towards secularization in Islamic history.²⁰ Tyan's theory concerning *ḥisbah* and *siyāsah*, however, is based upon the presumed secular origins of Islamic law and the "Closure of the Gate of *Ijtihād*." Most fully expressed by Joseph Schacht, these ideas have been the subject of strident criticism for their reliance upon genetic fallacy and hasty generalizations.²¹ Tyan's account of *siyāsah shar‘īyah* similarly fails to distinguish variations of the doctrine, such as between al-Māwardī and Ibn Taymīyah, and neglects any detailed account of the substantive law of *ḥisbah* and the historical context of its practice.²² While earlier authorities, such as al-Māwardī, conceded that rulers had the need and right to deviate from *fiqh* in order to achieve *siyāsah*, Ibn Taymīyah claimed that such deviations are imaginary.²³ Ibn Taymīyah and

¹⁸ Tyan, "Methodologie et sources du droit en Islam (istiṣān, istiṣlāh, siyāsa shar‘īyya)." *SI* 10 (1959): 79-109.

¹⁹ Ibid.

²⁰ E.g., Noel J. Coulson, *A History of Islamic Law*, p. 28; Sami Zubaida, *Law and Power in the Islamic World* (New York: I. B. Tauris, 2004), p. 60.

²¹ Wael Hallaq, "Was the Gate of Ijtihad Closed? *IJMES* 3 (1984): 3-41; "The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse," *UCLA JINEL* 2/1 (2002-03): 1-31.

²² Hallaq's argument concerning the "Circle of Justice" also effectively addresses the limits of *siyāsah* legislation and executive authority in pre-modern governance in opposition to Tyan's position; see *Sharī‘a: Theory, Practice, Transformation*, Ch. 5.

²³ Al-Māwardī, *al-Aḥkām al-Sulṭānīyah wa-al-Wilāyāt al-Dīnīyah*, pp. 148-70, 361-3.

his student Ibn Qayyim al-Jawzīyah advanced a more expansive vision of *fiqh*, by which the excesses of rulers may be curtailed and legitimacy extended to actual states.²⁴ In modern times this approach has been adopted by the Wahhābī movement as the constitution for all Saudi states since 1745, operating in conjunction with *ḥisbah*.

Following Tyan's lead, Patricia Crone has argued that the *muḥtasib*'s origins lie in the Byzantine *agoranomos*, pointing to an Islamic accretion upon an essentially secular institution.²⁵ In the same way, Willem Floor claims that the *muḥtasib* in Iranian history was not actually a "religious" office having as its main task enjoining virtue and forbidding vice;²⁶ however, in his earlier comparison of the Iranian *muḥtasib* with the *dārūgha-yi bāzār* (superintendent of the Qājār market) he claimed that the *muḥtasib*'s function was indeed primarily religious.²⁷ This change of opinion resembles what Yahya Sadowski's has termed "new Orientalism," or a shift in discourse corresponding with the Islamic revolution in Iran, representing a desire to strip its religious institutions of historical legitimacy.²⁸

In opposition, Benjamin R. Foster claims that it is historically meaningless and probably inaccurate to say that *ḥisbah* was derived from *agoranomia*, due to the thin

²⁴ Ibn Taymīyah, *al-Siyāsah al-Sharʿīyah*, Muḥammad Mubārak, ed. (Bayrūt: Dār al-Kutub al-ʿArabīyah, 1966); Ibn Qayyim al-Jawzīyah, *al-Ṭuruq al-Hukmīyah fī al-Siyāsah al-Sharʿīyah* (al-Qāhirah: Maṭbaʿat al-Sunnah al-Muḥammadīyah, 1337).

²⁵ Patricia Crone, "Appendix 3: the Muḥtasib," *Roman, Provincial and Islamic Law* (New York: Cambridge University Press, 1987), pp. 107-8; Joseph Schacht, "Review: 'Histoire de l'organisation judiciaire en pays d'Islam,'" *Orientalia* 17 (1948): 515-19.

²⁶ Willem Floor, "The Office of the Muḥtasib in Iran," *Iranian Studies* 18 (1985): 53-74.

²⁷ Willem Floor, "The Marketplace in Qajar Persia: The Office of Dārūgha-yi Bāzār and Muḥtasib," *Die Welt des Islams* 13 (1971): 212-229.

²⁸ Yahya Sadowski, "The New Orientalism and the Democracy Debate," J. Benin and J. Stork, eds., *Political Islam: Essays from the Middle East Report* (Berkeley: University of California Press, 1997), pp. 14-21.

record of historical evidence.²⁹ R. P. Buckley likewise disputes the case for foreign origins, claiming that the *muḥtasib* and its predecessor the *ṣāḥib* or *ʿāmil al-sūq*, could have developed separately from the *agoranomos*.³⁰ Thomas F. Glick's study of cultural borrowing seeks to nuance this topic beyond a fallacious either/or understanding through a detailed comparison of the diffusion from *agoranomos* to *ṣāḥib al-sūq*, and from *muḥtasib* to *mustasaf*, its Christian equivalent in medieval Spain. Glick's more sophisticated approach demonstrates the probability of the *muḥtasib*'s evolution from pre-Islamic origins, although his ultimate assessment falls back upon Orientalist assumptions employed by Tyan concerning the decadence of Islamic legal institutions.³¹

Historians generally agree that the pre-modern *muḥtasib* was characterized by the integration of his task as controller of the market, within the wider duty of maintaining the seemingly ordering of moral and religious life.³² Differences of opinion, however, exist concerning the primary focus of his activities within this range of responsibilities: some historians stress that the *muḥtasib*'s powers were wider where the spiritual welfare of Muslims were concerned, while others argue that his regard for correct weights, measures and scales was always the primary one.³³ Scholarly accounts also generally assume modern liberal notions of moral autonomy and religious freedom to condemn violations of privacy based on *ḥisbah*.³⁴ Several authors, however, have attempted to

²⁹ Benjamin R. Foster, "Agoranomos and Muhtasib," *JESHO* 13 (1970): 128-144.

³⁰ R. P. Buckley, "The Muḥtasib," *Arabica* 39, 1 (1992): 59-117

³¹ Thomas F. Glick, "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion," *Viator* 2 (1971): 59-81; "New Perspectives on the Ḥisba and Its Hispanic Derivatives," *al-Qanṭara* 13/2 (1992): 475-489.

³² C. Cahen and M. Talbi, "Ḥisba," *EF*, vol. 3, p. 485.

³³ E.g., R. Levy, "Muḥtasib," *EI*¹, vol. 6, p. 703; contrast with R. P. Buckley, *The Book of the Islamic Market Inspector* (New York: Oxford University Press, 1999), p. 17.

³⁴ E.g., Mehrangiz Kar, "The Invasion of the Private Sphere in Iran," *Social Research* 70 (2003): 829-36.

move beyond these limitations, studying the *muḥtasib* as it relates to notions of the "public" and "private" in terms of Islamic law and society; for example, Kristen Stilt and Roy Mottahedeh's examination of theoretical and practical *muḥtasib* manuals illustrates particular divisions of the public and private that shift according to "relational status" between the alternate extremes of the home and the marketplace.³⁵

Otherwise, Michael Cook's compendious study of enjoining good and forbidding evil throughout Islamic history, which is focused on the individual as actor, has largely set the agenda for recent historiography on *ḥisbah* and the *muḥtasib*.³⁶ Ahmed Abdelsalam thus refines Cook's approach in his analysis of the necessary conditions for the official use of violence when forbidding vice, paying particular attention to the works of al-Māwardī, al-Ghazālī and Ibn Taymīyah.³⁷ Complementing Cook's coverage and reiterating Tyan's claims about *ḥisbah*, Abbas Hamdani argues that the real function of the medieval *muḥtasib* was controlling and intimidating working people into submission to the ruling authority, especially preventing solidarity amongst craftsmen and professionals. His examination centers on the works of al-Ghazālī and al-Māwardī, as contextualized by their contemporary political environments.³⁸ Another variation of this theme is explored by Gideon Weigert, who focuses on the *muḥtasib*'s jurisdiction

³⁵ Roy Mottahedeh and Kristen Stilt, "Public and Private Viewed through the work of the Muḥtasib," *Social Research* 70 (2003): 235-48. See also, Mohsen Kavidar, "An Introduction to the Public and Private Debate in a Sharia System," *ibid.*, pp. 659-80.

³⁶ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2000).

³⁷ Ahmed Abdelsalam, "The Practice of Violence in Hisba Theories," *Iranian Studies* 38 (2005): 547-54.

³⁸ Abbas Hamdani, "The Muhtasib as Guardian of Public Morality in the Medieval City," *Digest of Middle Eastern Studies* (2008): 92-104.

over the "People of the Book."³⁹ Weigert identifies the 'Umar's Pact provisions as the basic rules governing the policing of *dhimmīs*, but asserts that these restrictions were not always imposed rigidly in daily life; in fact, a complex and interdependent set of factors mitigated application, including geography and the individual personality of the *muhtasib*. A sophisticated approach to the medieval *muhtasib* is likewise employed by Kristen Stilt, who draws upon legal realism to carefully examine the law's application. Her extensive study of the *muhtasib* in Mamlūk Cairo and Fustat is one of the very few dealing with pre-Ottoman Islamic law in practice, and demonstrates the influence of social, economic and political factors, as well as potentially applicable laws and individual personalities.⁴⁰ Muhammad Surty similarly examines *ḥisbah* in broad relation to medieval society, outlining its relationship with public welfare and health science institutions.⁴¹

Cook's work also recognizes Wahhābism's unusual penchant for enjoining good and forbidding evil, and its prominent place during the second Saudi state (1818-1891) because *jihād* was not an option.⁴² Cook's focus, however, is not the *muhtasib* and its administration, *ḥisbah*, nor does he attempt to provide a detailed historical record of this field in Saudi Arabia, especially since the CPVPV's foundation in 1926. In the absence of complete information, some scholars have speculated that a process of emasculation

³⁹ Gideon Weigert, "A Note on the Muhtasib and Ahl al-Dhimma," *Der Islam* 75 (1998): 331-37.

⁴⁰ Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (New York: Oxford University Press, 2011); "Price Setting and Hording in Mamluk Cairo," P. J. Bearman, *et al.*, eds., *The Law Applied: Contextualizing the Islamic Shari'a* (New York: I. B. Tauris, 2008), Ch. 4. See also, Pedro Chalmeta *El "señor del zoco" en España* (Madrid: Instituto Hispano-Arabe de Cultura, 1973) for a detailed study of the *muhtasib* in medieval Spain, 889-1492, which includes a study of markets in pre-Islamic and early Islamic history more generally.

⁴¹ Muhammad Ibrahim H. I. Surty, "The Institution of Ḥisbah and Its Impact on the Health Sciences from the Seventh to the Thirteenth Century C.E.," *Islamic Quarterly* 43 (1999): 5-20.

⁴² Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 175-92.

has occurred as a result of bureaucratization: *hisbah* is thought to have atrophied through restriction of the scope of its activities and the curtailment of CPVPV powers over time.⁴³ It has been suggested, alternatively, that the CPVPV has provided the rising tide of Muslim fundamentalism with an institutional base and intrusive powers by entrenching forces of moral Puritanism that might have dissipated long ago in a more secular climate.⁴⁴ Frank Vogel reiterates the latter position in a paper examining restrictions on the powers of the CPVPV, in which he asserts its persistent invasiveness and continuous ability to violate privacy in excess of traditional legal prescriptions.⁴⁵

The CPVPV receives cursory attention in historiography surrounding its origins amongst the *muṭawwa'*, a class of preachers that first emerged from the Wahhābī revival in the mid-1880s, who trained the Ikhwān warriors and acted as pilot missionaries amongst the Bedouin as well as voluntary "religious police" throughout Najd.⁴⁶ The *muṭawwa'* have thus been described as active agents of state formation from 1902 onwards, and the nucleus of the CPVPV along with members of the Ikhwān.⁴⁷ Before 1926 the *muṭawwa'* and Ikhwān posed a threat to both scholars and rulers, and the creation of the CPVPV has been interpreted as a move to temper their zeal and harness it in service of nation-building. As an organ of state, the CPVPV is now

⁴³ Aharon Layish, "'Ulamā' and Politics in Saudi Arabia," M. Heper and R. Israeli, eds., *Islam and Politics in the Middle East* (New York: Croom and Helm, 1984), 53f; Ayman al-Yassini, *Religion and State in the Kingdom of Saudi Arabia* (London: Westview Press, 1985), p. 70.

⁴⁴ Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, p. 182, 147f.

⁴⁵ Frank E. Vogel, "The Public and Private in Saudi Arabia: Restrictions on the Powers of the Committees for Ordering the Good and Forbidding Evil," *Social Research* 70 (2003): 749-59.

⁴⁶ Christine Moss Helms, *The Cohesion of Saudi Arabia: Evolution of Political Identity* (London: Croom Helm, 1981), pp. 129-34, 140; Joseph Kostiner, *The Making of Saudi Arabia 1916-1936: From Chieftaincy to Monarchical State* (New York: Oxford University Press, 1993), pp. 43-44, 54, 70, 75, 77, 78, 186.

⁴⁷ Madawi al-Rasheed, *A History of Saudi Arabia* (New York: Cambridge University Press, 2010), Ch. 2.

generally considered a reactionary vehicle to entrench and expand the *‘ulamā’s* power, as well as an instrument to legitimize the ruling regime, albeit one that increasingly operates according to defined protocols.⁴⁸

The importance of *ḥisbah* in contemporary religious and political movements has been discussed by a number of scholars, with attention paid to the ambiguous influence of Wahhābism on modern Salafism in this respect, especially regarding the promotion of creedal reform. *Ḥisbah* is acknowledged to have its own particular genealogy both within and without Saudi Arabia, and can be transformed into a political tool that allows for active interference in the public sphere, ranging from a quietist-minimalist stance, to an activist-maximalist, even violent, stance.⁴⁹ Noah Salomon’s study of Salafī missionaries in the Sudan, for example, recounts their call to the promotion of virtue and prevention of vice for the reform of doctrine.⁵⁰ The practice of *ḥisbah* by Salafī activists, or *ḥarakīs*, in Egypt, has been studied by Susanne Olsson in relation to charges of heresy (*takfīr*) levied at political opponents in a power struggle of legal and religious authority.⁵¹ *Ḥisbah* campaigns by Salafī-*jihādīs* and *ḥarakīs* have been examined in Indonesia during the aftermath of Suharto’s fall, as well as in northern

⁴⁸ David Holden and Richard Johns, *The House of Saud* (London: Sidgwick and Jackson, 1981), p. 260; David Commins, *The Wahhabi Mission and Saudi Arabia* (New York: I. B. Tauris, 2006), pp. 109-113, 129; James Buchan, "Secular and Religious Opposition in Saudi Arabia," Tim Niblock, ed., *State, Society and Economy in Saudi Arabia* (New York: Palgrave Macmillan, 1982), pp. 108, 111-12; Robert Lacey, *Inside the Kingdom* (New York: Viking, 2009), pp. 52, 85, 329.

⁴⁹ Roel Meijer, "Introduction," *Global Salafism: Islam’s New Religious Movement* (New York: Columbia, 2009), pp. 1-32; "Commanding Right and Forbidding Wrong as a Principle of Social Action: The Case of the Egyptian al-Jama’a al-Islamiyya," *Global Salafism*, Ch. 8; Bernard Haykel, "On the Nature of Salafī Thought and Action," *Global Salafism*, Ch. 1.

⁵⁰ Noah Salomon, "The Salafī Critique of Islamism: Doctrine, Difference, and the Problem of Political Action in Contemporary Sudan," *Global Salafism*, Ch. 6.

⁵¹ Susanne Olsson, "Apostasy in Egypt: Contemporary Cases of *Ḥisbah*," *Muslim World* 98 (2008): 95-115.

Nigeria as part of the expansion of Islamic law there. The former concerns mainly the unofficial prohibition of alcohol, prostitution and gambling, while the latter is focused on the official curtailment of women's mobility and visibility.⁵² Roel Meijer characterizes *hisbah* within Saudi Arabia as a socially conservative principle serving to enforce religious ritual, as well as to ensure political subservience and counter secular opposition; however, facts concerning its conceptualization, structure and enforcement remain unknown.⁵³

In the absence of any detailed historical research on the CPVPV in Saudi Arabia as well as its basis in the broader duty of enjoining virtue and forbidding vice, I aim to fill this lacuna in scholarship. Through this study I hope to document the operations of the CPVPV since its establishment in 1926, in addition to defining its moral and legal constitution. While building on earlier historical work, I will try to avoid methodological problems that have hindered previous analyses; for example, I hope to move beyond assumptions of the validity and historical inevitability of secularism and studies that dismiss religious and legal claims in contest with modern liberalism as fundamentalism, as well as providing an accurate accounting of concepts like public and private, law and morality. In so doing, I hope to add a new dimension to discourse on the CPVPV as well as the *muhtasib* and *hisbah*, the history of Saudi Arabia, Salafism, and the public role of Islam.

⁵² Noorhaidi Hasan, "Ambivalent Doctrines and Conflicts in the Salafi Movement in Indonesia," *Global Salafism*, Ch. 7; Fatima L. Adamu, "Gender, Hisba and the Enforcement of Morality in Northern Nigeria," *Africa* 78 (2008): 136-152.

⁵³ Roel Meijer, "Introduction," *Global Salafism*, pp. 1-32.

I will argue that the CPVPV shares defining characteristics with the pre-modern *muhtasib* in terms of the moral basis of its function in enjoining virtue and forbidding vice, its legal constitution, procedures and practice, as well as its relation to state and society. At the same time, the CPVPV expresses aspects of variation in the same categories: the processes of modernization have shaped *hisbah* in Saudi Arabia so that the CPVPV is no longer simply a *muhtasib* in the traditional sense, but rather has developed as part of a particular moral and legal culture into a type of "religious police force." While modernization has proceeded within a regime of Islamic law and morality, CPVPV jurisdiction has been restricted to religious tenets that do not inhibit the state's administration and coercive power over civil transactions (*mu'āmalāt*). It is necessary, in fact, to understand *hisbah* as a function of both the CPVPV as well as the Saudi nation-state.

More specifically, first of all, *hisbah* is conceptualized in Saudi Arabia as a linchpin between morality and law. In other words, enjoining virtue and forbidding vice, as both an individual duty and function of the CPVPV, is considered a main mode by which individual subjects are called upon or incited to obey the Shari'ah and cultivate an honourable disposition. Literature on *hisbah*, including both *akhlāq* and *fiqh*, thus serves as a guide to ethical work required for the reform of the self and society as the counterpart of *jihād* during peacetime. As such, *hisbah* in Saudi Arabia is generally founded upon notions rooted in the pre-modern Islamic tradition; however, its conception in terms of both virtue ethics and law also displays several elements of variation. Heightened centrality is attached to the sentiments of modesty and shame, which are especially attenuated to devotional, sexual and authoritarian aspects of

morality. This is closely associated with a more prominent expression of *ḥisbah* than in previous history resulting from the adaptation of the Ḥanbalī tradition to an institutionalized role in the Saudi nation-state under the prescriptive agency of an official ‘*ulamā*’ and the CPVPV. The particular ethic enforced by the CPVPV embodies the Wahhābī concept of *tawḥīd* ("monotheism") with its associated focus on strict adherence to ‘*ibādāt*’ ("rules of worship") and reformed ‘*aqīdah*’ ("creed"). Within the intensive discourse generated on *ḥisbah* in Saudi Arabia, scholarly opinions range from conservative confirmation of the CPVPV's role and desire for its intensification, to protest against it and desire to expand the concept of *ḥisbah* to address broader social, economic and political reform. Scholarly opinions also range from those struggling against the conceptual categories of modern liberalism, to those attempting dialogue with them when addressing contemporary moral and legal problems.

Evidence for the conceptualization of *ḥisbah* in the pre-modern Islamic tradition is drawn from *akhḥlāq* literature, including works like al-Ghazālī's *Iḥyā’ ‘Ulūm al-Dīn*, which stands as the principal example of literature on *ḥisbah*'s moral aspects, as well as key examples from Ḥanbalī scholars, like the influential work of Ibn Taymīyah. Major works of historiography will also be examined along with principal examples of *fiqh* treatises on *ḥisbah* and administrative manuals for *muḥtasibs*, such as the works of al-Māwardī and al-Shayzarī. Evidence for the conceptualization of *ḥisbah* in the Saudi context lies in contemporary *akhḥlāq* literature, including treatises issued by the CPVPV and endorsed by the High Council of Islamic Scholars (*Hay’at Kibār ‘Ulamā*), as well as *fiqh* literature from the CPVPV on enjoining virtue and forbidding vice, and discourse on this topic by Saudi ‘*ulamā*’, intellectuals, political activists, and radicals.

Secondly, in the law and enforcement of *ḥisbah*, four main aspects of continuity and change exist between the CPVPV and pre-modern *muḥtasib*: the form of law, range of duties, punishments, and relation to state and society. The form of law governing CPVPV jurisdiction remains integrated with morality, whereby its *nizām* (i.e. statute law or *siyāsah* legislation) pre-supposes the categories and authority of *fiqh* and custom (*‘urf*) as well as the archetype of *akhlāq* on the same topic, partly reminiscent of Ottoman *qānūn*; however, there is a marked shift towards enforcing a more codified morality in the form of bylaws and regulations specialized in *‘ibādāt*, *‘aqīdah* and sexual morality. In terms of the range of duties, the decisive aspect of CPVPV jurisdiction continues to be the prosecution of *shar‘ī* violations caught in *flagrante delicto*, by which officers perform the *muḥtasib*'s traditional role of moral censor; however, the role of market inspector has disappeared from CPVPV jurisdiction, with enforcement activities now centered upon religious rules, especially pertaining to prayer and sexual morality, with other aspects of criminal law and public safety only marginally addressed. In terms of punishments, the CPVPV maintains executive authority to apply *ta‘zīr* penalties within the limits of Ḥanbalī *fiqh*; however, corporal punishments are surrounded by more protocol and increasing emphasis is placed on rehabilitation programs, not to mention its restricted ability to impose more severe discretionary penalties on the strength of *siyāsah*. In terms of relation to state and society, like the pre-modern *muḥtasib*, the CPVPV acts as a vehicle to enforce law and order in support of the ruling regime and prescriptive authority of the *‘ulamā’*; however, unlike previous Ḥanbalī history, it does not operate in a minority community, but is institutionalized as an organ of the nation-state with greater intrusive powers at its disposal, resembling a type of

"religious police force"—a phenomena with profound implications. It also polices particular social problems in a society marked by conservative local custom, but which faces rapid changes related to modernization; for example, terrorism, veiling and gender segregation, and the spread of conflicting values and ideas are major issues engaged by the CPVPV.

Evidence for the law and enforcement of *ḥisbah* in pre-modern Islamic history is drawn from key works of modern historiography, and principal *fiqh* treatises on *ḥisbah* and administrative manuals for *muḥtasibs*, in addition to substantive laws of *ḥisbah* contained in *iḥtisāb qānūnnāmleri*, the Ottoman Criminal Code, and accounts of its execution by Ottoman *muḥtasibs* in the sixteenth and seventeenth centuries from historical chronicles and court records. Evidence for the Saudi law of *ḥisbah* and its enforcement by the CPVPV lies in the *Nizām* of the CPVPV (see Appendix 1), which has been in effect since 1980, the Executive Bylaws of the CPVPV (see Appendix 2), which has been in effect since 1987, and articles from the *Nizām* of Penal Procedures concerning CPVPV fieldwork (see Appendix 3), which have been in effect since 2001. Together these documents comprise the CPVPV's legal foundation, respectively defining its governing constitution, rules for its application of *ḥisbah*, and additional regulations concerning arrest, seizure and punishment. Proof is also drawn from CPVPV operating statistics, which provide an official record of its enforcement activities and material resources from 1997-2007 (see Tables 1-13). Additional references are made to literature and *fatāwá* by Saudi '*ulamā*', Saudi press reports and other official publications from the CPVPV for further detail on specific issues of importance pertaining to CPVPV performance.

Finally, it is necessary to understand *ḥisbah* as a function of the CPVPV specifically, as well as an integral aspect of the the Saudi nation-state generally. While in many respects the CPVPV continues to function as a *muḥtasib* in the traditional sense, *ḥisbah* must also be conceived as operating more broadly within the apparatus of modern government. The CPVPV's role has been increasingly restricted to that of moral censor that enjoins virtue and forbids vice over a jurisdiction largely limited to *ʿibādāt*. There has been a simultaneous growth in the Saudi state's jurisdiction over the regulation of *muʿāmalāt*, or the duties traditionally assigned to the *muḥtasib* as market inspector. Modern state formation has thus resulted in the broadening and bifurcation of *ḥisbah* between the CPVPV and other state agencies. On one hand, the upshot of this process is increased levels of administrative efficiencies through specialization, centralization and the use of modern technology. This has been generally contained within an overarching Islamic system, and the CPVPV serves as a symbol for national legitimacy and unity therein. On the other hand, it has also resulted in a more limited approach to *ḥisbah* by the CPVPV, as well as ad hoc and often uncoordinated policy from other state agencies regarding *ḥisbah*.

In addition to the above mentioned evidence for the application of substantive law by the Ottoman *muḥtasib*, evidence concerning the relationship between *ḥisbah* and the state in pre-modern Islamic history lies in the circumstances that surrounded major works of *fiqh* and *muḥtasib* manuals, like the works of al-Ghazālī, al-Māwardī, Ibn Taymīyah, and al-Shayzarī, as determined by historiography. This helps illustrate the interaction of legal and extra-legal factors in the conception of *ḥisbah*, showing how this jurisdiction changed in response to different problems affecting public morality, as well

as the relationship between it and particular regimes. Evidence on *ḥisbah* and the Saudi nation-state lies in official historiography, which details how the national ethic is expressed historically through *ḥisbah*, and demonstrates how *ḥisbah* serves as the foundation for Saudi nationalism and justification for the state, as symbolized by the CPVPV. All CPVPV governing constitutions as well as historical records pertaining to CPVPV institutional development help explain the agency's evolution from its founding in 1926 to the present, demonstrating changes to governing form in relation to state expansion. Saudi research on *siyāṣah sharʿīyah*, including work from the Higher Judicial Institute at al-Imām Muḥammad ibn Saʿūd Islamic University, illustrates the conception and application of *ḥisbah* by state agencies other than the CPVPV.

Methodologically, I employ an eclectic approach to critical theory, unified by its ability to clarify the relationship between moral and legal aspects of *ḥisbah*, as well as their connection to state and society in history. More specifically, I rely upon post-structuralist theory, including the work of Michel Foucault and his interlocutors, in approaching the ethical subject as both self-constituting and constituted, centering inquiry upon the point at which ethics dovetail with discursive formations and power relations. On one hand, this approach to analysis helps identify the particular shape and character of ethical practices and conceptions of agency that are crucial to understanding the relationship between law and morality in Saudi Arabia; for example, Foucault's "aesthetics of existence" avoids problems with assuming a voluntaristic, autonomous subject, and does not reduce the importance of notions foreign to modern

morality, such as eschatology, socially grounded moral gain, honour, and shame.⁵⁴ Recent work by Saba Mahmood and Wael Hallaq are useful examples of this approach applied respectively to the study of Muslim pietistic movements in contemporary Egyptian history and the delineation of the moral subject in relation to the Shari‘ah.⁵⁵ I also draw upon convergent work in Anglo-American moral philosophy to cast light on virtue ethics in comparative perspective, such as Bernard Williams and Gabriel Taylor's studies of honour and shame, which avoid the logical fallacies plaguing earlier work in Mediterranean studies;⁵⁶ indeed, in the wake of G. E. M. Anscombe, these studies have revived Friedrich Nietzsche's appreciation for ancient Greek religious culture's reliance upon shame as the basis of moral practice, (who actually considered the Wahhābīs in his search for a palatable "Other" to Judeo-Christian modernity, despite his substantial

⁵⁴ The major texts of Foucault's last period, where he develops a new mode of ethical thought he describes as "aesthetics of existence," are the second and third volumes of *The History of Sexuality: The Use of Pleasure*, transl. R. Hurley (New York: Vintage Books, 1986); and *The Care for the Self*, transl. R. Hurley (London: Penguin Books, 1986).

⁵⁵ Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton: Princeton University Press, 2005); Hallaq, "The Shari‘a and the Fashioning of the Moral Subject: An Essay on the Technologies of the Self," unpublished ms., forthcoming as *The Impossible State: Islam, Politics and Modernity's Moral Predicament* (New York: Columbia University Press, 2012), Ch. 5, pt. 2; "Groundwork of the Moral Law: A New Look at the Qur‘ān and the Genesis of the Shari‘a," *ILS* 16 (2009): 239-79.

⁵⁶ On aspects of convergence between Foucault's aesthetics of existence and the virtue ethics that has become prominent in Anglo-American moral philosophy over the past three decades, see Neil Levy, "Foucault as Virtue Ethicist," *Foucault Studies* 1 (2004): 20-31. See also, Bernard Williams, "Morality the Peculiar Institution," *Ethics and the Limits of Philosophy* (Cambridge: Harvard University Press, 1985), Ch. 10; *Shame and Necessity* (Berkeley: University of California Press, 1993); Gabriel Taylor, *Pride, Shame, and Guilt: Emotions of Self-Assessment* (Oxford: Clarendon, 1985). For criticism of earlier work in Mediterranean studies, see M. Hertzfeld, "Honor and Shame: Problems in the Comparative Analysis of Moral Systems," *Man* 15 (1980): 339-51; J. W. Fernandez, "Consciousness and Class in Southern Spain," *AE* 10 (1983): 165-213; U. Wikan, "Shame and Honour: A Contestable Pair," *Man* 19 (1984): 635-52; J. de Pina-Cabral, "The Mediterranean as a Category of Regional Comparison: a Critical View," *CA* 30 (1989): 399-406; V. A. Goddard, J. Llobera, C. Shore, "Introduction: The Anthropology of Europe," V. A. Goddard, et al., eds., *The Anthropology of Europe: Identity and Boundaries in Conflict* (Oxford: Berg, 1994), pp. 1-40.

ignorance of Islam).⁵⁷ On the other hand, this approach to analysis also directs attention to the coherence and continuity of a set of discourses, and maps the transformation that they undergo, including those brought under the pressure of more powerful traditions; for example, Foucault's study of government rationality and modern policing as they developed in Western history sheds light upon aspects of continuity and change represented by *hisbah's* genealogy in Saudi Arabia, especially through the CPVPV.⁵⁸ Talal Asad's anthropology provides a useful example of this approach applied to Muslim societies, especially his understanding of modernization as an ongoing process to accommodate, understand and achieve partial mastery over a reality increasingly organized by discourses whose historical loci and bases of power lie in the West.⁵⁹

The evidence for this dissertation was gathered in Riyadh, Saudi Arabia, between 2007 and 2011, including primary textual sources and statistics, as well as documented interviews with members of the Saudi religious establishment, including students, professors, judges, government officials, and CPVPV officers. I have, however, chosen to omit explicit reference to oral sources because of ethical considerations: everyone had a frank opinion, but off the record, given the prominent practice of self-censorship in

⁵⁷ G. E. M. Anscombe, "Modern Moral Philosophy," *Philosophy* 33/124 (1958): 1-19; Friedrich Nietzsche, *On the Genealogy of Morals*, Walter Kaufmann, transl. (New York: Vintage Books, 1989), Essay 2, sect. 23; "Die Wissenschaft," *Gesamtausgabe* (Berlin, 1973), vol. 5, sect. 2, p. 84; Ian Almond, "Nietzsche's Peace with Islam," *German Life and Letters* 56 (2003): 0016-8777.

⁵⁸ Foucault's writings through the 1970s comprise a multifaceted attack on modern notions of self-constitution, the major texts of which are the first volume of *The History of Sexuality*, transl. R. Hurley (New York: Vintage Books, 1986); and *Discipline and Punish*, transl. Alan Sheridan (New York: Vintage Books, 1995). See also, "Governmentality," in Graham Burchell, et al., eds., *The Foucault Effect* (Chicago: University of Chicago Press, 1991) 87-104.

⁵⁹ Talal Asad, *Formations of the Secular* (Stanford: Stanford University Press, 2003).

Saudi Arabia. Their guidance is instead related implicitly through my interpretation of abundant documentary evidence on the same topics.

My claims will be established over the course of four chapters, the first of which concerns the pre-modern *muḥtasib*, providing an overview of the theory and practice of *ḥisbah* prior to the CPVPV. This opening chapter is categorized into three main sections on the ethics of *ḥisbah*, the law of *ḥisbah*, and the practice of *ḥisbah*, with attention simultaneously being paid to the chronological order of scholarship and events addressed. As a preliminary chapter, it provides the background for subsequent analysis by uncovering essential aspects of the pre-modern *muḥtasib* in theoretical and practical terms from a survey of key primary and secondary sources. I thereby aim to determine the *muḥtasib*'s constant and variable features through an examination of its jurisdiction in moral and legal terms, as well as its enforcement of substantive law. Through this broad, integrated approach, I hope to add a new dimension to discussion, as well as providing a basis for comparison and contrast with the CPVPV in order to trace its historical development in a genealogical manner.

The second chapter concerns the conceptualization of *ḥisbah* in Saudi Arabia. This chapter is categorized into three main sections, the first of which regards the ethical foundations of *ḥisbah* in Saudi Arabia, paying particular attention to key works of contemporary *akhlāq* literature. The second section examines the official definition of *ḥisbah* in terms of *fiqh* by the CPVPV. The third section is a survey of Saudi scholarship on enjoining virtue and forbidding vice by major '*ulamā'*, intellectuals and Islamists, which is sub-divided according to earlier scholars, more recent ones, and activists and radicals. As such, this chapter provides an overview of scholarly discourse

on *ḥisbah* in Saudi Arabia, in both its general sense as the moral duty to enjoin virtue and forbid vice, as well as its specific sense as the derivative function of the *muḥtasib*. I thus aim to discover key points of *ḥisbah*'s conceptualization from both official and unofficial sources, providing a more detailed record of theorization in terms of both *akhlāq* and *fiqh*, as well as commentary thereupon. In so doing I also hope to identify elements of continuity and change between *ḥisbah* in Saudi Arabia and pre-modern history.

The third chapter elaborates upon the Saudi law of *ḥisbah* and its enforcement by the CPVPV through examining the agency's bylaws and governing constitution, followed by a statistical analysis of CPVPV enforcement activity based on official records. Further depth of analysis is achieved through three case studies on key issues pertaining to CPVPV performance: terrorism, veiling and gender segregation, and religious freedom. I thereby aim to discover more precisely how *ḥisbah* has been legally defined and applied by the CPVPV in contemporary Saudi history. In so doing, I hope to understand more clearly how it functions in comparison and contrast with the *muḥtasib* of pre-modern history, and also hope to identify some significant social issues which affect the practice of *ḥisbah* by the CPVPV.

The fourth chapter concerns the relationship between *ḥisbah* and the nation-state, and proceeds by way of four sections, the first of which examines the historical justification of Saudi nationalism in terms of *ḥisbah*, with particular attention to the narrative of official historiography as represented by the CPVPV. Secondly, the legal foundations of the Saudi state in terms of *ḥisbah* are discussed, as discerned from the official doctrine of *siyāsah sharʿīyah* and the Basic Law of Governance, as well as

pertinent extra-legal factors that provide historical context. Thirdly, the legal foundations of the CPVPV in relation to the Saudi state are examined through account of its evolving constitution from 1926 to the present, considering decree laws (*nizāms*) in addition to relevant extra-legal factors regarding their historical application. Finally, the legal and administrative basis of *ḥisbah* jurisdiction amongst other Saudi state agencies is explored, as well as their practical record and degree of coordination with the CPVPV, as determined from research conducted at al-Imām Muḥammad ibn Sa‘ūd Islamic University. I thus hope to discover more precisely how the image of the *muṭawwa‘*, wearing a long beard and headdress (*shimāgh*) without a fastening cord (*‘iqāl*), and wielding a rattan cane (*qaṣbah*) has become an iconic national symbol in Saudi Arabia. In other words, I hope to trace the continued evolution of the *muṭawwa‘* into the CPVPV, and show how it has contributed to Saudi nationalism, as well as how its jurisdiction has developed in relation to modern state formation.

1. The Pre-Modern *Muhtasib*: An Overview of the Theory and Practice of *Hisbah* Prior to the CPVPV

1.1. Introduction

Saudi Arabia's sole custody of *hisbah* amongst modern Sunni Muslim societies is widely acknowledged by Saudi scholars, as well as its authoritative basis in tradition and valid evolution within the bounds of the nation-state.¹ Modern historians likewise point to Saudi Arabia's legal system as a singular example of traditional Islamic law and governance still in practice.² The significance of these claims begs the question: What were the basic characteristics of *hisbah* and its agent the *muhtasib* in pre-modern history?

To determine what *hisbah* is in Saudi Arabia, it makes sense to first determine what it *was* in pre-modern history. In other Muslim societies, the functions of the *muhtasib* were usurped by other state agencies as a result of modern reforms, and the regulation of law and morality became dominated by a very different set of principles and structures.³ Although Saudi Arabia was not colonized by a European

¹ E.g. Ṭāmī ibn Hudayf al-Baqamī, *al-Taṭbīqāt al-ʿAmaliyah lil-Ḥisbah fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah min ʿām 1351-1408* (al-Riyāḍ: Jāmiʿat al-Imām Muḥammad ibn Saʿūd al-Islāmīyah, 1415/1990), p. 10; ʿAbd Allāh ibn Burjis al-Dūsarī, "al-Istishrāf al-Mustaqbilī li-Majālat al-Iḥtisāb fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah" (paper presented at Nadwat al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Riyāḍ, 11-12/4/1431); for a detailed summary of this paper and its author's biography, see al-Riʿāsah al-ʿAmmah li-Hayʿat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar, *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Riyāḍ, 11-12/4/1431* (al-Riyāḍ: al-Lajnah al-ʿIlmiyah, Markaz al-Buḥūth wa-al-Dirāsāt, 1431), pp. 133-41; ʿAbd Allāh ibn Ibrāhīm al-Ṭarīqī, "al-Ḥisbah fī Anẓimat al-Saʿūdīyah wa fī Turāth al-Fuqahāʾ," *ibid.*, pp. 75-77; Ṣāliḥ ibn ʿAbd Allāh al-Furayḥ, "ʿInāyat Wulāt al-Amr Ḥukkām al-Dawlah al-Saʿūdīyah bi-al-Ḥisbah ʿIlmiyan wa ʿAmaliyan," *ibid.*, pp. 62-7; ʿAbd al-Raḥmān ibn ʿUmar al-Madkhālī, "al-Ḥisbah fī Ḍawʿ al-Niẓām al-Asāsī lil-Ḥukm fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah," *ibid.*, pp. 67-71; Ḥāmid al-Jadʿānī, "al-Ḥisbah fī Ḍawʿ al-Siyāsah al-Sharʿīyah," *ibid.*, pp. 171-7; Khālīd ibn ʿAbd al-ʿAzīz al-Dakhīl, "Dawr Hayʿat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar fī Ḍabṭ al-Jināʿī," *ibid.*, pp. 78-81; Rizayn ibn Muḥammad al-Rizayn, "Muẓāhir al-Ḥisbah al-Waqāʿīyah fī al-Anẓimah al-Iqtisādīyah al-Saʿūdīyah," *ibid.*, 82-4.

² Schacht, "Islamic Law in Contemporary States"; Coulson, *A History of Islamic Law*, p. 154.

³ Hallaq, *Shariʿa: Theory, Practice, Transformations*, Chs. 15-16; J. N. D. Anderson, *Law Reform in the Muslim World* (London: Athelone Press, 1976).

power, the processes of modernization have created a vastly different environment than existed less than a century ago; for example, emergence of the nation-state has dramatically affected traditional institutions. Identifying the basic characteristics of *ḥisbah* and the *muḥtasib* in pre-modern history would help facilitate comparison and contrast with the CPVPV in order to better gauge elements of continuity and change.

In its broadest sense, *ḥisbah* is a vast topic that encompasses both the introductory aspects of religion, as well as all the other fundamental points.⁴ It is possible, however, to define *ḥisbah* with greater precision in terms of its linguistic, terminological and literary meaning as a preliminary step toward discerning a general profile of this institution. Two main linguistic meanings are ascribed to the noun *ḥisbah*: calculation and calculation of reward.⁵ A dual and interconnected meaning is also ascribed to the term in theological and legal scholarship, the first more general and comprehensive, the second more specific and technical. First of all, *ḥisbah* is used to describe the duty of Muslims to enjoin virtue and forbid vice (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*); in other words, the duty of one Muslim to intervene when another is acting wrongly.⁶ Secondly, it refers to the function of the person who is effectively entrusted with the public application of this duty. This person was called the *muḥtasib*, which is usually translated as "market inspector" or "censor."⁷

⁴ Abū Bakr ibn al-ʿArabī, *Aḥkām al-Qurʿān* (al-Qāhirah: Maṭbaʿat al-Saʿādah, 1331), vol. 1, p. 294.

⁵ Aḥmad ibn Fāris al-Qazwīnī, *Muʿjam Maqāyīs al-Lughah* (Bayrūt: Dār al-Fikr, 2009), vol. 2, p. 6; Aḥmad ibn Ismāʿīl Najm al-Dīn ibn al-Athīr, *Jawhar al-Kanz* (al-Iskandarīyah: Munshaʿat al-Maʿārif, 2000), vol. 1, p. 382; Ibn Manẓūr al-Ifriqī, *Lisān al-ʿArab al-Muḥīṭ* (Bayrūt: Dār al-Lisān al-ʿArab, n.d.), vol. 1, pp. 314-15.

⁶ Michael Cook, *Forbidding Wrong in Islam: An Introduction* (New York: Cambridge University Press, 2003), p. xi.

⁷ R. Levy, "Muḥtasib," *EF*, vol. 6, p. 702.

The dual meaning of *ḥisbah* is expressed in corresponding categories of literature on the topic, which overlap to a certain extent. The first group centers on more theoretical treatments of enjoining virtue and forbidding vice, and obligations arising from it for the *muḥtasib* and the office of *ḥisbah*. This category is comprised of both *fiqh* and *akhlāq* literature, which respectively pertain to legal and moral aspects of *ḥisbah*.⁸ The second group focuses more specifically on technical details of the *muḥtasib*'s supervision, and function as practical guides; these manuals are intended particularly for the *muḥtasib*, and while they express agreement with *fiqh*, are of an administrative and not a strictly juridical character.⁹ Differences of opinion expressed in both categories of literature center on several key issues: what kind of duty must *ḥisbah* be related to; who may and who must fulfill these duties respectively; with what means may this duty be fulfilled; and the extent to which violence is permissible.¹⁰

Fiqh writings on *ḥisbah* are closely associated with *siyāsah sharʿīyah* ("governance in accordance with the Sharīʿah"), which is a Sunnī constitutional and legal doctrine emerging in late medieval times calling for harmonization of the law and procedures of *fiqh* with the practical demands of governance (*siyāsah*). In fact, these writings can be classified as *fiqh* writings on *siyāsah*, as they dealt with issues of adjudication and criminal law pertaining to the *muḥtasib*'s jurisdiction, which overlapped both judicial and executive spheres of authority. As such, the *muḥtasib*'s jurisdiction was also partly governed by *siyāsah* legislation known as *qānūn*, which

⁸ E.g. al-Māwardī, *al-Aḥkām al-Sulṭānīyah*; al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn*; Ibn Taymīyah, *al-Ḥisbah fī al-Islām*.

⁹ E.g. Jalāl al-Dīn ʿAbd al-Raḥmān ibn Nāṣr al-Shayzarī, *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah* (Bayrūt: Dār al-Thaqāfah, 1401).

¹⁰ Ahmed Abdelsalam, "The Practice of Violence in the Ḥisbah-Theories," p. 547.

often merely asserted the provisions of *fiqh* in an effort to add emphasis on such provisions, as well as to depict the sultānic will as Sharī‘ah-minded. The *qānūn*, however, also added to *fiqh*, especially regarding issues having to do with law and order, as expressed through discretionary punishments. Moreover, information on individual *muḥtasibs* and their activities is also known from such sources as certificates of investiture, biographical dictionaries and historical chronicles.¹¹

Modern historians agree that the *muḥtasib*'s prototype (the *ṣāhib* or ‘*āmil al-sūq*) emerged during the Prophet's time in Medina, and transformed into the *muḥtasib* during the ‘Abbāsid caliphate about the time of al-Ma‘mūn (r. 197-217/813-833); the new title appeared with the addition of religious duties to the pre-existing role of market inspector.¹² Scholars also agree on the *muḥtasib*'s continuity throughout most Muslim societies until the legal and political reforms of the modern period, when the institution was usurped by the nation-state; for example, it was officially abolished in the Ottoman Empire in the mid-nineteenth century, but existed until the beginning of the twentieth century in Morocco and Bukhārā.¹³ Inquiry has focused upon matters of controversy surrounding *ḥisbah*, such as the *muḥtasib*'s legal independence, in addition to analysing duties according to the categories of "religious" and "secular".¹⁴ More particularly, debate has concerned the foreign and secular origins of the *muḥtasib*,¹⁵ the use of the *muḥtasib* by rulers to

¹¹ C. Cahen and M. Talbi, "Ḥisbah," *EF*, vol. 3, pp. 484-7.

¹² Glick, "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion."

¹³ R. Mantran, "Ḥisbah: Ottoman Empire," *EF* (Leiden: Brill, 1971), vol. 3, pp. 485.

¹⁴ Tyan, "La Ḥisba et l'administration municipale." Tyan's work remains the main treatment of *ḥisbah* to-date, and the most influential thematic source for subsequent discussions.

¹⁵ Crone, "Appendix 3: the Muḥtasib"; Schacht, "Review: 'Histoire de l'organisation judiciaire en pays d'Islam'"; Foster, "Agoranomos and Muhtasib"; Glick, "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion"; "New Perspectives on the Ḥisba and Its Hispanic Derivatives."

suppress legal and political opposition;¹⁶ and the primarily religious versus secular focus of its activities throughout history.¹⁷ While the integration of the pre-modern *muhtasib's* duties has been generally acknowledged, the predominant focus of activities upon either market inspection or religious policing is a matter of disagreement; hasty generalizations and genetic fallacy are pervasive problems in this respect, as well as an un-integrated approach to the moral and legal aspects of *hisbah*.¹⁸ More recently, the study of *hisbah* has been marked by useful advances: the analytical categories of "public" and "private" have been re-evaluated in light of the *muhtasib's* jurisdiction, and the importance of extra-legal factors, such as economics, politics and individual personalities, have been demonstrated to affect the degree of *hisbah's* application.¹⁹

In this chapter, I hope to discover essential aspects of the pre-modern *muhtasib* in theoretical and practical terms from a survey of key primary and secondary sources. I hope to determine the *muhtasib's* constant and variable features through an examination of its jurisdiction in moral and legal terms, as well as its enforcement of substantive law. Through this broad, integrated approach, I hope to add a new dimension to discussion, as well as providing a basis for comparison and contrast with the CPVPV in order to trace historical development in a genealogical manner.

¹⁶ Kar, "The Invasion of the Private Sphere in Iran"; Abdelsalam, "The Practice of Violence in Hisba Theories"; Hamdani, "The Muhtasib as Guardian of Public Morality in the Medieval City"; Weigert, "A Note on the Muhtasib and Ahl al-Dhimma."

¹⁷ Floor, "The Office of the Muhtasib in Iran"; "The Marketplace in Qajar Persia: The Office of Dārūgha-yi Bāzār and Muhtasib"; Levy, "Muhtasib," p. 703; R. P. Buckley, *The Book of the Islamic Market Inspector* (New York: Oxford University Press, 1999), p. 17.

¹⁸ For further details see my comments on Tyan in the General Introduction.

¹⁹ Mottahedeh and Stilt, "Public and Private Viewed through the work of the Muhtasib." See also, Mohsen Kavadar, "An Introduction to the Public and Private Debate in a Sharia System," *Social Research* 70 (2003): 659-80; Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*; "Price Setting and Hording in Mamluk Cairo."

Three main aspects define the characteristics of *ḥisbah* in pre-modern history. First of all, the moral basis of *ḥisbah* is revealed through analysis of the elements of ethical relations that surround the duty of enjoining virtue and forbidding vice. The tradition of Islamic virtue ethics conceived the individual Muslim subject as both constituted and self-constituting through this practice of mutual self-discipline. It was expressed through a common understanding of ethical substance (ontology), mode of subjection (deontology), ethical work (ascetics), and *telos* (teleology); however, variation of emphasis existed upon such factors as the particular virtues appealed to and vices condemned, the degree of recognition for individual versus collective agency, and how exactly the fundamentals of religion (*uṣūl al-dīn*) were configured in notions of theistic teleology. Evidence for this lies in *akhlāq* literature, including works like al-Ghazālī's *Iḥyā' 'Ulūm al-Dīn*, which stands as the principal example of literature on *ḥisbah*'s moral aspects, as well as key examples from Ḥanbalī scholars, like the influential work of Ibn Taymīyah.²⁰

Secondly, the ethics-based understanding of *ḥisbah* existed alongside law-based notions of *fiqh*, through which obligations arising for this virtue were articulated for the *muḥtasib*. Administrative and procedural aspects of the *muḥtasib* as a state agent were also elaborated upon this basis, including discretionary penalties. The *muḥtasib*'s jurisdiction, however, also included *siyāsah* legislation (*qānūn*): as both a judicial and executive officer he adjudicated and enforced substantive law that included rules prescribed by both jurists and rulers, whose respective aims were primarily reformative and punitive. The *muḥtasib*'s duties can be distinguished principally by his method of approach: he concerned himself with

²⁰ Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 3.

infractions based on obvious and incontestable facts, such as when the perpetrator was caught in *flagrante delicto*, over which he possessed extensive powers to intervene of his own accord. Within this scope, his duties were generally associated with two main categories: market inspection, which included the prohibition of fraud in commercial transactions, supervision of public safety standards, and regulation of trades and professions; as well as moral censorship, which included enforcing public morality and religious obligations like sex segregation, performance of the five daily prayers and so forth. Moreover, intrusive aspects of the *muhtasib's* powers were mitigated by several factors, including the prohibition against spying, limitations of pre-modern government, informality of legal proceedings, and coherence between law and society through a shared morality. Evidence for this is found in key works of modern historiography, and principal examples of theoretical and practical *ḥisbah* treatises.

Finally, in terms of the practice of *ḥisbah*, on one hand, it is possible to discern variable elements in the law of *ḥisbah* more clearly in relation to different social, political and economic factors that contextualized *fiqh* on the subject. Evidence for this lies in the circumstances that surrounded the works of al-Ghazālī, al-Māwardī, Ibn Taymīyah, and al-Shayzarī as determined by historiography. This helps illustrate the interaction of legal and extra-legal factors in the conception of *ḥisbah*, showing how this jurisdiction changed in response to different problems affecting public morality, as well as the relationship between it and particular regimes. On the other hand, it is possible to discern aspects convergence and divergence between the *fiqh* of *ḥisbah* and its historical application through examination of substantive laws, i.e. both *fiqh* and *siyāsah* legislation (*qānūn*), and their application in a specific period.

Evidence for this lies in the laws of *ḥisbah* contained in *iḥtisāb qānūnnameleri*, the Ottoman Criminal Code, as well as accounts of its execution by Ottoman *muḥtasibs* in the sixteenth and seventeenth centuries from historical chronicles and court records.²¹ This helps provide a clearer account of the concrete moral acts of the *muḥtasib* as a historical law enforcement agent from well-documented legal and social history, as well as the relationship between the *fiqh* of *ḥisbah* and the actual legislation of rulers.

My examination of primary sources in *fiqh* and *akhlāq* literature is centered upon influential works by Ḥanbalī and Shāfiʿī scholars, owing to their prominence in the field generally as well as upon Saudi scholarship particularly. In my approach to *ḥisbah* as law I have arranged material in a manner similar to modern books on criminal law, as well as contextualizing this using legal and social historiography. The three main aspects of my claims will be established over the course of three corresponding sections, categorized according to the ethics of *ḥisbah*, the law of *ḥisbah* and the practice of *ḥisbah*, with attention simultaneously being paid to the chronological order of scholarship and events addressed.

²¹ Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973); Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997); Abūlaziz Bayındır, *Islam muhakeme huku: Osmanlı dervi uygulaması* (Istanbul: Islami İlimler Araştırma Vakfı, 1986); Ebussuud Efendi and Mehmet Ertuğrul Düzdāg, *Şeyhülislam Ebussuud Efendi Fetvaları* (Istanbul: Enderun Kitabevi, 1983); Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003); Eyal Ginio, "The Administration of Criminal Justice in Ottoman Selanik (Salonica) During the Eighteenth Century," *Turcica* 30 (1998): 185-210; Ahmet Mumcu, *Osman devletinde siyaseten katl* (Ankara: Ankara Üniversitesi, Hukuk Fakültesi, 1963); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003); Richard Repp, "Qānūn and Shari'a in the Ottoman Context," in *Islamic Law: Social and Historical Contexts*, A. Al-Azmeh, ed. (London: Routledge, 1988), pp. 124-46; Rudolph Peters, *Crime and Punishment in Islamic Law* (New York: Cambridge University Press, 2005).

1.2. Ethics of *Hisbah*

"Ethics" in the Islamic context is usually employed in reference to two things: the five epistemological categories of human acts in *fiqh* (obligatory, meritorious, indifferent, reprehensible, and forbidden), or the cultivation of morally upright character (*akhhlāq*).²² The former concern dominates the discussion of human acts, and is deontic rather than teleological in nature, as jurists do not try to provide a full rational justification for ethics outside divine revelation (although legal discussions are not indifferent to the inner state of mind that lies between human acts). The latter concern is considered, together with politics and economics, as part of practical philosophy, being focused on defining the characteristics and moral constitutions of the soul, and the method of moderating and controlling them (although discussions in *akhhlāq* are not indifferent to human acts and their determination by *fiqh*).

To a large extent, this distinction between *fiqh* and *akhhlāq* corresponds with Foucault's distinction between moral codes and ethics, which, along with the concrete acts of moral agents, form the three primary areas of morality. Foucault understands moral codes as consisting of the more or less explicitly formulated values and rules recommended to individuals by "prescriptive agencies." Ethics consists of the conduct required of an individual so as to render its own actions consistent with a moral code and standards of moral approval. Morally approved conduct is a wide category, as it does not designate just those acts that comply with a moral code. Ethical conduct consists of the actions performed and capacities

²² E.g., Frederick M. Denny, "Ethical Dimensions of Islamic Ritual Law," Edwin B. Firmage, et al., eds., *Religion and Law: Biblical-Judaic and Islamic Perspectives* (Winona Lake, IN: Eisenbrauns, 1990), pp. 199-210.

exercised intentionally by a subject for the purpose of engaging in morally approved conduct. A moral obligation is an imperative of a moral code that either requires or forbids a specific kind of conduct, whereas an ethical obligation is a prescription for conduct that is a necessary condition for producing morally approved conduct.²³ Foucault does not consider moral codes and ethics to be incommensurable; for example, he argues that in Christianity, both types of morality functioned side-by-side, even if during different periods the relative emphasis upon each has varied.²⁴ For the ancient Greeks, he claims, the "care of the self" was the foundational principle of all moral rationality.²⁵

Ethical relations are constituted by four formal elements, the contents of which are subject to historical variation: the ontological element or "ethical substance," the deontological element or "mode of subjection," the ascetic element or "ethical work," and the teleological element or "*telos*."²⁶ Applying these categories of analysis to the Islamic tradition can allow us to apprehend the specific kind of ethical subject that was conceived through the cultivation of *akhlāq* and practice of *fiqh*. This approach avoids problems associated with assuming a voluntaristic, autonomous subject, and does not reduce the importance of concepts foreign to modern morality, such as eschatology, socially-grounded moral gain, honour, and shame. Instead, ethics is conceived as a set of practical activities that

²³ Foucault, *The History of Sexuality; Ethics: Subjectivity and Truth* (New York: New Press, 1997); L. H. Martin, H. Gutman and P. Hutton, eds., *Technologies of the Self: A Seminar with Michel Foucault* (Amherst: University of Massachusetts Press, 1988); Arnold Davidson, "Foucault, the History of Ethics, and Ancient Thought," G. Gutting, ed., *Cambridge Companion to Foucault* (New York: Cambridge University Press, 1994); James Faubion, "Towards an Anthropology of Ethics: Foucault and the Pedagogies of Autopoiesis," *Representations* 74 (2001): 83-104.

²⁴ Foucault, *The History of Sexuality*, vol. 2, p. 30.

²⁵ Ibid., pp. 73, 108, 211; *ibid.*, vol. 3, pp. 45-54.

²⁶ Foucault, *The History of Sexuality*, vols. 1, 2.

are germane to a certain way of life, being embedded in a specific set of historical practices.

1.2.1. Ethical Substance

The ethical substance is the material or aspect of the self that is morally problematic, taken as the object of one's ethical reflection, and transformed in one's ethical work. In pre-modern Islamic history those aspects of the self that pertained to the domain of ethical judgement were considered to be the "heart" (*qalb*) and "soul" (*nafs*). Reflection on these and the desire for their transformation was of central concern in *akhlāq* literature, in which Muslim scholars referred to psychological illnesses such as hatred, envy, attachment to material life, anger, and hostility as "diseases of the heart" or "soul ailments" that should be managed first before attending to illnesses of the physical body.²⁷ Within these general parameters, the exact form, function, processes, dysfunction, and treatment of the heart and soul were subject to variation amongst scholars.

Al-Ghazālī's seminal account of the subject is expressed as part of a theory of human nature that conceives human beings as pliable in their moral constitution: humans are neither good nor bad, but made of different potentialities, and the heart and soul are identified as the places where human nature and potentialities gather. There are four potentialities in all of us: the aggressive (*sab'īyah*), beastly (*bahīmīyah*), satanic (*shayṭānīyah*), and divine (*rabbānīyah*). Anger, animosity, violence and courage are expressed from the first; greed, gluttony, caution and lustfulness from the second; deception, lying and trickery from the third; and

²⁷ H. F. Nagamia, *Islamic Medicine: History and Current Practice*; retrieved May 16, 2007 from www.iiim.org/islamed3.html.

knowledge (*‘ilm*), intellect, cognition (*gnosis*), and understanding from the fourth. This fourth potentiality also includes a strong innate tendency to command and moderate the other three.²⁸ The first three potentialities, however, do include attributes that possess the capability of being good or bad; for example, courage is harmful if not restrained, and so is caution if it becomes excessive. Each human being enjoys a certain amount of these four potentialities, and only the prophets were free of the first three. *‘Ilm*, however, is both the essence and *raison d’être* of human beings.²⁹ It is the only way through which the individual can attain perfection, for the potentiality of *rabbānīyah* was bestowed with the power to exercise complete control over the others.³⁰

The first three potentialities are located in the sphere of the soul, whereas the fourth is located in the sphere of the heart. Knowledge, and therefore intellect (*‘aql*), however, does not only inhabit the heart but also constitutes it. The heart, in fact, is defined as a "divine grace" (*laṭīfah rabbānīyah rūḥānīyah*), the true nature and essence of humanity (*ḥaqīqat al-insān*), as well as the source of all human knowledge. Conversely, the stronger the actualization of the soul's potentialities, the more evil it becomes. As such, under the influence of the commanding heart/intellect, the soul might suppress the actualization of the non-divine potentialities. In acting that way, the soul might progress into a stage where it achieves consciousness of the divine potentialities, positioning itself in a state of self-blame (*lawm*). This soul (*al-nafs al-lawwāmah*) represents a middle stage, one of transformation leading to a higher stage, i.e. the peaceful soul (*al-nafs al-muṭma’innah*) that has succeeded in freeing

²⁸ Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, vol. 3, pp. 12-13. For a more detailed discussion of this subject in relation to Islamic law and morality, see Hallaq, "Sharī‘a and the Fashioning of the Moral Subject."

²⁹ Al-Ghazālī, *Ihyā’ ‘Ulūm al-Dīn*, vol. 3, p. 10.

³⁰ Ibid, vol. 3, p. 13.

itself of all negative qualities.³¹ Based upon this analysis of the soul, al-Ghazālī derives what he calls the "mothers" (*ummahāt*) or principal virtues, which may be cultivated from its potentialities: wisdom (*hikmah*), courage (*shujā'ah*), temperance (*'iffah*), and justice (*'adl*).³²

Ibn Taymīyah's *Amrāḍ al-Qulūb* is a prominent account of the subject within the Ḥanbalī tradition, which shares much in common with al-Ghazālī's explanation, but displays less obvious influence from the Greek philosophical tradition of virtue ethics.³³ Therein, he discusses the heart's form, function and processes in relation to the soul, as well as describing the various symptoms of diseased hearts and their treatment. Although the anatomy and physiology of the heart was known then, Ibn Taymīyah neglected to mention this, instead identifying its primary function as psychological and spiritual, for "God created the human heart in order for them to know things."³⁴ The heart is the quintessence of the human being and was created to play a governing role over the entire body through its intellect, dominating and restraining the whims and desires of the temporal body, which reside in the soul. Although the heart naturally understands matters in the same way that the eye sees and the ear hears, through faith the heart may be trained to understand things better; thus, with knowledge and understanding the heart may attain wisdom, which allows it to distinguish between good and evil.

Realizing the heart's full potential requires three main preconditions, expressed through its normal form and functions. First of all, if the heart is sensitive and soft,

³¹ Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 3, p. 13.

³² Mohamed Ahmad Sherif, *Ghazālī's Theory of Virtue* (Albany: SUNY Press, 1975), Ch. 2.

³³ Ibn Taymīyah, *Amrāḍ al-Qulūb wa Shifā'uhā* (al-Qāhirah: al-Maṭba'ah al-Salafiyyah, 1399). See also Bilal Philips, *A Commentary on Ibn Taymiyyah's Essay on the Heart* (Kuala Lumpur: Dakwah Corner Bookstore, 2008).

³⁴ Ibn Taymīyah, *Amrāḍ al-Qulūb wa Shifā'uhā*.

it easily accepts knowledge, which becomes firmly rooted in it, and the heart is affected by it. Secondly, the heart must be pure and healthy so that knowledge can grow and bear fruit in it. Finally, by conforming to its innate disposition (*fiṭrah*) a heart inclines toward truth, knowledge and remembrance of God, while turning away from everything else. On the other hand, there are several reasons why the heart may become deformed and its normal functions inhibited. If it is not used to acquire knowledge and it is unaware of the truth, it forgets about God. If the soul is uncontrolled and becomes preoccupied with the temptations of this world through satisfying its physical appetites, this will block the heart from learning the truth or reflecting upon it, even if it may be inclined toward truth. Arrogance prevents the truth from being sought, and along with other whims and desires it can also oppose the heart's normal inclination after it has acquired knowledge, causing the heart to deny the truth. If the heart has been affected by corrupt desires it will become hard and harsh, which will make it difficult to accept knowledge; however, if a hard or harsh heart does accept knowledge, it can corrupt that knowledge.³⁵

1.2.2. Mode of Subjection

The mode of subjection is the way that the individual establishes its relation to the moral code, or how people are called upon to recognize their moral obligations. According to Foucault, it is the "deontological" or normative component of ethics; for example, what requires a person to help someone in need. The Islamic tradition holds that the act is morally valorized for a Muslim to the extent that it is produced out of respect for God's will as revealed in the Sharī'ah. Generally, this is conceived as a result of faith (*īmān*) that resides in the heart (*qalb*) and functions as the

³⁵ Ibid.

conscience, being the mutual corollary of the external practice of *islām*. More particularly, the decisive aspect of faith in this regard is a sense of modesty or shame (*ḥayā*), through which a believer's heart acts as a guide to honourable conduct. Its importance is commonly acknowledged as an intellectual consciousness of the constant desire for, and pursuit of, the "care of the self"; however, varying degrees of attention are paid to *ḥayā* as an individual virtue as well as a social virtue and component of reform in a broader sense.

In the English language, "shame" possesses a twofold meaning: in addition to its nominal use, which describes an emotional restraint on behaviour, or modesty, as a verb it means to feel or conceive shame.³⁶ Gabriel Taylor's philosophical study of shame identifies a close conceptual link between it and respect: if someone has self-respect then under certain specifiable conditions he will be feeling shame. A person has no self-respect if he regards no circumstances as shame-producing. Loss of self-respect and the loss of the capacity for shame go hand-in-hand. The close connection between the two makes it clear why shame is often thought to be so valuable.³⁷ To respect the self is not to think either favourably or unfavourably of the self, but is rather to abstain from injuring or destroying them, whether physically or morally. Shame is also the "emotion of self-protection": it may prevent the person concerned from putting himself into a certain position, or make him aware that he ought not to be in the position which he finds himself.³⁸ In his complementary assessment, Bernard Williams claims that the root of shame lies in exposure or in being at a disadvantage: what he calls, in a very general phrase, "a loss of power."

³⁶ "Shame, n.," *Oxford English Dictionary Online* (Oxford University Press, 2009); available from www.oed.com, accessed Oct. 25, 2009; "Shame, v.," *ibid*.

³⁷ Taylor, *Pride, Shame, and Guilt: Emotions of Self-Assessment*, p. 80.

³⁸ *Ibid*, p. 81.

According to Williams, the sense of shame is a reaction of the subject to the consciousness of this loss.³⁹ Beyond these basic structures of shame, other philosophers have suggested that there are different kinds of shame; for example, we should distinguish between moral and natural shame.⁴⁰ Shame is conceived in similar terms in the Islamic *akhlāq* tradition, and knowledge thereof was acknowledged to have been inherited from previous prophesy, as well as existing in two primary forms: natural shame, rooted in one's innate character; and acquired shame, learned internally by faith and externally by practice of the Sharī'ah.⁴¹

In the Arabic language, the positive expression of shame, in the sense of modesty, is expressed through the noun *ḥayā'*, whereas its negative expression, in the sense of dishonour, is expressed through *'ayb* and *khizy*, which may also be expressed verbally.⁴² In the Qur'an, *ḥayā'* is cast as honourable feminine diffidence (28:20-5) and shyness (33:53), whereas *khizy* is often associated with God's punishment (e.g., 20:134). God will bring shame upon the evildoers on the Day of Judgment (16:27), and their stay in Hell is, among other things, a state of shame (3:192; 9:63)—although heavy physical punishments are enumerated for them there, it is not this pain that is emphasized, but the shame.⁴³ Amongst Sunnī scholars,

³⁹ Williams, *Shame and Necessity*, p. 220.

⁴⁰ John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971), Ch. 7.

⁴¹ Ṣāliḥ ibn 'Abd Allāh ibn Ḥumayd wa 'Abd al-Raḥmān ibn Mullūḥ, "Ḥayā'," *Mawsū'at Naḍrat al-Nā'im fī Mukārim Akhlāq al-Rasūl al-Karīm* (Jiddah: Dār al-Wasīlah, 2010/1431), vol. 5, p. 1795.

⁴² J. Lecerf, "Ḥayy," *EF* (Leiden: E. J. Brill, 1971), vol. 3, p. 330; Hans Wehr, "Ḥayā'," J. Milton Cowan, ed., *A Dictionary of Modern Written Arabic* (Ithaca: Spoken Language Services, 1994), p. 256; Edward William Lane, "Ḥayy," *Arabic-English Lexicon* (London: Williams and Norgate, 1863), Book 1, pp. 681-3.

⁴³ Wim Raven, "Reward and Punishment," *EQ* (Brill Online, 2009), available from www.pauylonline.brill.nl, accessed 25/10/2009.

twenty-nine *ḥadīths* are commonly cited as pertaining to *ḥayā'*,⁴⁴ of which the following demonstrates the role of modesty as a warner in every Muslim's heart:

The Prophet said: "God has laid down the parable of a straight path. On each side is a wall with open doors and curtains hanging down over the open doors. At the top of the path there is a caller saying: 'Go straight on the path, all of you, and do not deviate.' Above him is another caller who says whenever anyone every tries to open any of these doors, 'Woe unto you! Do not open it, for if you (do so), you will go through it.' The path is Islam, the open doors are the things that God has forbidden, and the curtains hanging down are the limits of God. The caller at the top of the path is the Qur'ān and above him is the (one who) admonishes for God's sake and who is present in every Muslim's heart."⁴⁵

Ibn Taymīyah acknowledges this as part of the normal functions of the heart, and addresses it in his discussion of *īmān*, because *ḥayā'* is part of faith.⁴⁶ He generally describes *īmān* as love (*ḥubb*) and respect (*birr*) of that which is permitted by the Qur'ān and Sunnah, as well as fear (*taqwā*) of transgressing their prohibitions.⁴⁷ Although *īmān* is a broad subject with over seventy themes according to the Qur'ān and Sunnah, he claims that among the best of these include the testimony of faith (*shahādah*), all that God loves, and the forbiddance of evil (by the heart).⁴⁸ In line with these characteristics and themes, he defines *īmān* more concisely by pointing out two things known without a doubt: first, it is belief by the heart and its affirmation and knowledge or intellect, which he refers to as *tawḥīd*; second, it is also the work of the heart, expressed through activity like reliance upon God alone (*tawakkul*), sincerity in work for God alone (*ikhhlāṣ*), love of God and his Prophet,

⁴⁴ Ibn Ḥumayd wa Ibn Mullūh, "Ḥayā'," pp. 1795-1814.

⁴⁵ Musnad Aḥmad, no. 16976, 16978, authenticated in Muḥammad Nāṣir al-Dīn al-Albānī, *Ṣaḥīḥ al-Jāmi' al-Ṣaḡhīr* (Dimashq: al-Maktab al-Islāmī, 1969), vol. 2, pp. 721-2, no. 3887.

⁴⁶ Ibn Taymīyah, *Kitāb al-Īmān* (Bayrūt: al-Maktab al-Islāmī, 1988).

⁴⁷ Ibn Taymīyah, *Majmū' al-Fatāwā* (al-Qāhirah: Idārat al-Masāḥat al-'Askariyah, 1404), vol. 7, no. 179.

⁴⁸ Ibid.

love of what God and his Prophet love, and hatred of what God and his Prophet hate.⁴⁹ The latter functions as criterion for determining disgraceful behaviour and situations to guide admonition, for one must hate that which is forbidden because God has forbidden only shameful deeds (Q. 7:33).⁵⁰ While this healthy condition is associated with God's reward, those who commit forbidden acts lose their sense of shame and are no longer affected by any kind of admonition, thus demonstrating signs of a diseased heart and God's punishment.⁵¹

Also in the Ḥanbalī tradition, scholarly commentary on the virtue of *ḥayā'* is often focused upon the famous *ḥadīth* narrated by al-Bukhārī: "Among that which people knew from the words of former prophesy is: When you feel no shame, then do whatever you wish."⁵² In his commentary on this *ḥadīth*, Ibn Rajab (d. 795/1393) interprets it to have two meanings: first of all, as a prohibition, in the sense of a threat, i.e. if you feel no shame over your evil deeds and intentions then do as you will, for God will punish you accordingly; as well as a statement of fact, i.e. a person who has no shame will disregard everyone including God, and will do whatever he pleases. Secondly, he interprets it as a permission, i.e., if that which a person considers doing will not cause him any shame before other Muslims and particularly before God then he may proceed.⁵³ Ibn Qayyim al-Jawzīyah (d. 751/1350), however,

⁴⁹ Ibid, no. 187.

⁵⁰ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, Ch. 7.

⁵¹ Ibn Taymīyah, *Amrāḍ al-Qulūb wa Shifā'uhā*. See also Muḥammad ibn Qayyim al-Jawzīyah, *Ighāthat al-Lahfān min Maṣāyid al-Shaytān* (al-Rīyāḍ: Maktabat al-Ma'ārif, n.d.), vol. 1, p. 548.

⁵² Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Bayrūt: Dār al-Kutub al-'Ilmiyah, 2002), vol. 4, book 56, ḥadīth no. 690, 691; Abū Zakarīyah Yaḥyā ibn Sharaf al-Nawawī, *The Forty Ḥadīth of al-Imām an-Nawawī*, Umm Muḥammad, transl. (Jeddah: Abū al-Qāsim, 1999), ḥadīth no. 20.

⁵³ 'Abd al-Raḥmān ibn Rajab, "al-Ḥadīth al-'Ishrūn," *Jāmi' al-'Ulūm wa-al-Ḥikmah fī Sharḥ Khamsīn Ḥadīthan min Jawāmi' al-Kalim* (al-Rīyāḍ: Mu'assasat al-Amīrah al-'Anūd, 1426), pp. 442-47.

interprets it more singularly as a threat.⁵⁴ He considers the sense of shame as the most important virtue, and the criterion for true humanity: "Those who are shameless have no humanity except flesh and blood".⁵⁵ Ibn Qayyim thus identifies ten categories pertaining to *hayā'*: felony, negligence, arrogance, liberality, indecency, disparagement, passion, subservience, glory and honour, and embarrassment to oneself.⁵⁶

For al-Ghazālī, the virtues and sensibilities required of a Muslim are acquired through a profound sense of respect that involves conceiving God as the "Great Being" (*'aẓamat Allāh*), an essential attribute that establishes a particular relation of power between an inferior and superior. Also integral to this relationship is a deep sense of awe and reverence (*haybah*) accompanied by an equal measure of shame (*ḥayā'*), in the sense of an awareness of one's own shortcomings.⁵⁷ For al-Ghazālī, *ḥayā'* represents a consciousness of a founding ethic that underlies all other performances. In other words, this interior orientation inspires the desire for ethical training and self-improvement, laying the foundation for the proper pursuit of other obligations—the seeds of ethical conduct thus lie herein.⁵⁸ Also in the Shāfi'i tradition, Ibn Ḥajar al-ʿAsqalānī (d. 852/1448), defined *ḥayā'* succinctly as the source of restraint from dishonour, which enables the heart's orientation towards the truth through a courageous attitude, and should not be confused with a false modesty or cowardice in the face of legitimate rights and obligations.⁵⁹

⁵⁴ Ibn Qayyim al-Jawziyyah, "al-Ma'āṣī Tudhhib al-Ḥayā' aw Tuḍa'ifuhu," *al-Jawāb al-Kāfi li-man Sa'ala 'an al-Dawā' al-Shāfi'* (al-Qāhirah: Dār al-Tawzī' wa-al-Nashr al-Islāmiyyah, n.d.), p. 39.

⁵⁵ Ibn Qayyim al-Jawziyyah, *Kitāb Miftāḥ Dār al-Sa'ādah li-Ibn al-Qayyim* (Bayrūt: Dār al-Kutub al-ʿIlmiyyah, 1974), p. 277.

⁵⁶ Ibn Qayyim al-Jawziyyah, *Madārij al-Sālikīn* (Bayrūt: Dār al-Jīl, 1991), vol. 2, p. 272.

⁵⁷ Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 1, p. 212.

⁵⁸ Hallaq, *Sharī'a and the Fashioning of the Moral Subject*, p. 22.

⁵⁹ Ibn Ḥajar al-ʿAsqalānī, *al-Iṣābah fī Tamyīz al-Ṣaḥābah* (Bayrūt: Dār al-Jīl, 1992).

1.2.3. Techniques of the Self

Techniques of the self, or ethical work, consists of self-forming activities or ascetic practices meant to ensure one's own subjection to a moral authority and transform oneself into an autonomous ethical agent. In the Islamic *akhlaq* tradition, moderate ascetic practices are regulated by the principle of mutual self-discipline expressed in the duty of all Muslims to enjoin virtue and forbid vice (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*). The performance of this duty causes shame (*'ayb, khizy*) and cultivates modesty (*ḥayā*) through embodying the role of "watcher" or "warner." As such, an awareness of the constant desire for, and pursuit of, the "care of the self" is refined, achieved principally through acts of worship (*'ibādāt*), as constituted by the Five Pillars (i.e. the testimony of faith, ritual prayer, alms, fasting during Ramaḍān, and pilgrimage). Although the scope of enjoining virtue and forbidding vice embraces the entire Sharī'ah, including civil transactions (*mu'āmalāt*), *'ibādāt* forms the moral basis of the law, and is usually classified as "religion" (*dīn*). *Dīn* is primarily concerned with the human subject and its ethical formation—ethical autonomy being bounded by the Sharī'ah and its presuppositions concerning human and divine agency.⁶⁰ Enjoining virtue and forbidding vice may generally take the form of moral exhortation, counsel, instruction, admonition, or more particularly by legal intervention. In special circumstances, such as in the absence of public authority, it may be applied by force if possible, or even by revolt against invalid public authority according to a minority of scholars. Within these broad parameters considerable theoretical variation existed in pre-modern history, which historians have examined according to three main issues: who may and who must fulfill this

⁶⁰ Bernard G. Weiss, *The Spirit of Islamic Law* (Athens: University of Georgia Press), p. 146.

duty; with what means may this duty be fulfilled; and the extent to which violence is permissible.⁶¹

In the English language, the verbal meaning of shame mentioned above, as feeling or conceiving shame, is joined to another meaning in the causative form: to cause to feel shame, or to tell the truth boldly in defiance of temptation to the contrary, thus inflicting dishonour.⁶² Taylor elaborates upon this distinction within a framework that anthropologists call a "shame-culture." The distinguishing mark of a shame-culture, and that which makes it different from so-called "guilt-culture," is that here public esteem is the greatest good, and to be ill spoken of is the greatest evil.⁶³ Public esteem for the individual, or the lack of it, depends on that individual's success or failure judged on the basis of some moral code which embodies that society's values. Whoever fails to meet the categorical demands engendered by that code ruins his reputation and loses the esteem of other group members; in fact, he loses his honour, which is synonymous with public reputation here.⁶⁴ The overriding importance for every member of the group is not how he appears in public, nor the inner person—this formulation implies precisely the distinction between appearance and reality, or between public and private, which is unacceptable within the framework of the shame culture. There can be no such distinctions, for on the present hypothesis a person can assess himself only in terms of what the public thinks of him. The public in this case constitutes an honour group.⁶⁵ Membership

⁶¹ Abdelsalam, p. 547.

⁶² "Shame, v.," *Oxford English Dictionary Online* (Oxford University Press, 2009); available from www.oed.com, accessed Oct. 25, 2009;

⁶³ Jon P. Mitchell, "Honour and Shame," Alan Barnard and Jonathan Spenser, eds., *Encyclopedia of Social and Cultural Anthropology* (New York: Routledge, 1996), pp. 280-1.

⁶⁴ Taylor, *Pride, Shame, and Guilt*, p. 54.

⁶⁵ *Ibid*, p. 55. An example often quoted are the heroes in Homer's *Iliad*; e.g. E. R. Dodds, *The Greek and the Irrational* (Berkeley: University of California Press, 1951), Ch. 2.

allows him no status at all as an individual that is in any way independent of his member-status; hence, if he loses his status as a member, he also loses his status as an individual, and loss of honour is total extinction of the individual that existed as a member of the honour group.⁶⁶ The shame culture with its honour-code and consequent demands on the individual provides a clear case of what it is for one of its members to be shamed: he is seen to have failed to meet the demands. The feeling of shame is the response on the part of the agent to the situation seen this way. The idea that shame requires an audience reflects the importance of the public and public esteem. The agent is seen as deviating from some norm, and in feeling shame he will identify with the audience's view and the consequent verdict that he has lost status.⁶⁷

Taylor identifies two basic elements in each case of shame at work in the framework of a shame-culture. First of all, there is the self-directed adverse judgement of the person feeling shame: he feels himself degraded, not the sort of person he believed, assumed, or hoped he was or anyway should be. This judgement is constitutive of the emotion—it is the person's identificatory belief. Secondly, there is the notion of the audience, which has a role to play in the explanation of the self-directed judgement. The notion of the audience is itself complex, and consists of two distinguishable points of view. The first point of view audience sees the agent under some description, which may or may not involve some assessment of the agent. The seeing may be indifferent, friendly or hostile in some way, which impacts upon the agent's self-critical judgment. As such, the second point of view audience concerns itself with the relation between the agent and the first audience. It views

⁶⁶ Taylor, p. 56.

⁶⁷ Ibid, p. 57.

the different forms of seeing, and always views them critically: to be so seen is to be exposed, for the agent should not be in this way. This point of view is always needed as a step towards the self-realization that is expressed in the person's self-directed judgment, which is a state of self-consciousness centrally reliant upon the concept of another.⁶⁸ Williams describes this state as self-consciousness of the loss of power "in the eyes of another," which allows a process of internalization and "bootstrapping" to proceed in terms of increasing ethical content given to the occasions of shame.⁶⁹

The conception of ethical work in pre-modern Islamic intellectual history was regulated within categories generally corresponding to the moral anthropology outlined above: enjoining virtue and forbidding vice was concomitant with self-forming ethical activities, contextualized by a shame-culture; it was evident at the individual and societal levels, and also in relation to the cosmos as a whole. First of all, the Qur'ān provided believers with a cosmology entirely grounded in moral natural laws, centered around an all-pervasive narrative of "doing good." This is perhaps most potently captured in the opening verses of *Sūrat al-Mulk*, where God's omnipotence is casually and exclusively tied to the natural project of generation and corruption, which is in turn causally connected to the challenge God poses to humans to acknowledge his existence do good works. If God's laws of nature are grounded in co-native moral principles, then the universe is imbued with, and woven from, a moral fibre whose warp and woof are designed to enjoin virtue and forbid vice.⁷⁰ In the same sense, Ibn Kathīr (d. 774/1373) writes that God created people for the

⁶⁸ Ibid, p. 65.

⁶⁹ Williams, *Shame and Necessity*, p. 221.

⁷⁰ Hallaq, "Groundwork of the Moral Law," p. 264.

express purpose of worship and establishing His commands on earth, which is realized when people choose to believe and perform good deeds.⁷¹

Secondly, the Muslim community (*Ummah*) can be understood as a type of honour group founded upon the Sharī'ah, the demands of which moral agents are judged and judge themselves. The *raison d'être* of the *Ummah* is described in the Qur'ān: "Let there arise out of you a group of people inviting to all that is good, enjoining virtue and forbidding vice. And it is they who are the successful" (3:104). According to commentators, such as al-Ṭabarī (d. 310/923), al-Baghawī (d. 515/1122) and al-Ṣāwī (d. 1761/1865), here "all that is good" (*al-khayr*) is synonymous with Islam and the Sharī'ah, which includes enjoining virtue and forbidding vice as ordained within it.⁷² The prototypical Qur'ānic description of the *Ummah* also occurs in Āl 'Imrān: "You are the best community ever raised up for humanity. You enjoin virtue and forbid vice, and you believe in God" (3:110). According to commentators such as Mujāhid (d. 103/722), al-Qurṭubī (d. 671/1273) and al-Rāzī (d. 605/1209), here enjoining virtue and forbidding vice is distinguished as the preeminent characteristic of the *Ummah*, the neglect of which will deprive it of the honourable title of "the best community."⁷³ Moreover, this verse is considered

⁷¹ Ismā'īl ibn 'Umar ibn Kathīr, *Tafsīr Ibn Kathīr* (al-Rīyāḍ: Dār al-Furqān lil-Nashr wa-al-Tawzī', 2000), vol. 2, p. 397.

⁷² Muḥammad Ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān 'an Ta'wīl al-Qur'ān* (al-Qāhirah: Dār al-Ma'ārifah, 1955), vol. 4, p. 24; al-Ḥusayn ibn Mas'ūd al-Baghawī, *Ma'ālim al-Tanzīl* (Bayrūt: Dār al-Ma'ārifah, 1986), vol. 4, p. 245; Aḥmad ibn Muḥammad al-Ṣāwī, *Ḥāshiat al-Ṣāwī 'alā Tafsīr al-Jalālayn* (Bayrūt: Dār al-Fikr, 2001), vol. 1, p. 152.

⁷³ Mujāhid ibn Jabr, *Jāmi' al-Bayān fī Tafsīr al-Qur'ān* (Bayrūt: al-Manshūrāt al-'Ilmiyah, 1977), vol. 4, p. 28; Abū 'Abd Allāh al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān* (al-Qāhirah: al-Hay'ah al-Miṣrīyah lil-Kitāb, 1977), vol. 4, p. 173; Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-Ghayb* (al-Qāhirah: al-Maṭba'ah al-Bahīyah al-Miṣrīyah, 1934-38), vol. 4, p. 578.

to have portrayed the *Ummah* analogous to the prophets—like prophets, Muslims are not only divinely guided, but they also become guides to others.⁷⁴

Finally, at an individual level, Muslims are called by the Qur'ān to imitate the prophets, whose principal aim was to enjoin virtue and forbid vice: "For he [Muḥammad] commands them to do what is virtuous and forbids them to do what is evil" (7:157). According to classical commentators, in this duty lies the main significance of prophethood; it was entrusted to the People of the Book, and assuming this mission entitles Muslims to be successors of the Prophet.⁷⁵ In the Qur'ān, Luqmān advised his son to enjoin virtue and forbid vice, and explained to him that doing this calls for courage and patience, which is characteristic of true believers: "O my son! Establish prayer; enjoin virtue and forbid vice; and bear with patience whatever befalls you, for these are some of the most important commandments" (31:17). Though Luqmān was not a prophet, he was a righteous believer. His mention in the Qur'ān is mainly aimed at persuading believers to follow this important advice, as scholars have pointed out.⁷⁶ The Muslim is supposed to lead a life of piety and righteousness, but also to guide others to all that is good and enjoin virtue and forbid vice; he is supposed to play the roles of worshipper and guide simultaneously. In Luqmān's advice to his son, he refers to both the performance of prayer and enjoining virtue and forbidding vice—these two activities symbolize the states of perfection of the self and the perfection of others, which are mutual corollaries.⁷⁷

⁷⁴ Al-Ṣāwī, *Gharā'ib al-Qur'ān*, vol. 6, p. 135.

⁷⁵ E.g., al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, vol. 4, p. 47.

⁷⁶ E.g., Aḥmad ibn 'Alī al-Jaṣṣāṣ, *Kitāb Aḥkām al-Qur'ān*, (Bayrūt: Dār al-Kitāb al-'Arabī, 1978), vol. 3, p. 592

⁷⁷ Ibid.

The qualities of righteous believers, as followers of the prophets, are elaborated elsewhere in the Qur'ān: "Those that turn to God in repentance, who worship Him, who praise Him, who fast, who bow down in prayer, who enjoin virtue and forbid vice, and observe the limits set by God, [these do rejoice]; so proclaim the glad tidings to the Believers" (9:112). Some of the qualities mentioned in this verse involve self-reflexive ethical work, such as repentance, prayer, and fasting. The virtue which benefits others is described generally as enjoining virtue and forbidding vice. Regarding these verses, Ibn Kathīr has remarked on what constitutes righteous believers:

They help people by enjoining virtue and forbidding vice and lead people to obey God. They distinguish well between good and evil. Being aware of the Law, they follow it both theoretically and practically. Thus, in addition to worshipping God, they perform acts of benevolence for humankind. On account of performing this role, "glad tidings" have been promised to them. Faith, being an all-embracing phenomenon, includes all virtues, and deliverance is for those who embody these virtues.⁷⁸

Other scholars have summed up this point, remarking that righteous believers work to perfect themselves and also help perfect others.⁷⁹ In accord with the Qur'ānic verses, there are many sayings of the Prophet Muḥammad that shed light on the importance of enjoining virtue and forbidding vice.⁸⁰ Therein, this activity is ranked alongside other virtues like consciousness of God and knowledge of religion, sharing overlapping aspects of meaning. A true believer is described as a pious worshipper, as well as a preacher and guide. Any Muslim found negligent of this activity cannot

⁷⁸ Ibn Kathīr, *Tafsīr Ibn Kathīr*, vol. 2, p. 397.

⁷⁹ Shihāb al-Dīn al-Sayyid Maḥmūd al-Ālūsī, *Rūḥ al-Ma'ānī fī Tafsīr al-Qur'ān al-'Aẓīm wa-al-Sab' al-Mathānī* (Deoband: Muḥammad Ghānim ibn 'Abd al-Aḥad, 1970-77), vol. 2, p. 32.

⁸⁰ Thirty-three ḥadīths are commonly cited by Sunnī scholars in relation to enjoining virtue and forbidding vice. For a full compilation of these as well as commentary thereupon, see Ṣāliḥ ibn 'Abd Allāh ibn Ḥumayd wa 'Abd al-Raḥmān ibn Mullūḥ, "al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Mawsū'at Naḍrat al-Na'im fī Mukārim Akhlāq al-Rasūl al-Karīm*, vol. 3, pp. 525-39.

be an ideal member of the community, as its performance is obligatory and its neglect blameworthy.⁸¹ Based on evidence in the Qur'ān and Sunnah, pre-modern scholars unanimously considered enjoining virtue and forbidding vice to be a fundamental obligation in Islam.⁸² Al-Ghazālī, for example, called this duty "the primary axis upon which Islam rotates."⁸³ Al-Nawawī also supported this, remarking that "The Qur'ān, the Sunnah and consensus of the *Ummah* all bear testimony to the significance of enjoining virtue and forbidding vice; religion stands for sincere guidance (*al-naṣīḥah*) and this duty aims at it."⁸⁴

"Virtue" (*ma'rūf*) was basically defined as encompassing all acts of approach and submission to God, both internally and externally, or ethically and legally.⁸⁵ Virtuous disposition and conduct (*akhlāq*) is acquired as a matter of training, which is the meaningful result of moral exhortation, counsel and educational instruction. In fact, acquisition of *akhlāq* begins with attentive listening of the heart and its willingness to accept counsel found in the Qur'ān and Sunnah, or by way of other Muslims. This training consists of a scrupulous process of subjecting the self to repeated exercises that shape and form the soul, so that *akhlāq* becomes like a second nature. The spectrum of training described in scholarly accounts extends over the entire range of human acts; however, the five pillars represent the principal means of acquiring *akhlāq*, as a set of well-defined acts: the confession of faith (*shahādah*), the ritual prayer (*ṣalāt*), the paying of alms to the needy (*zakāt*), the fast (*ṣawm*) of Ramaḍān, and the pilgrimage to Mecca (*ḥajj*). These are the minimal required

⁸¹ E.g. *Musnad Aḥmad*, vol. 4, p. 432.

⁸² E.g. Ibn Abī 'Aṣim al-Ḍaḥḥāk al-Shaybānī, *al-Āḥād wa-al-Mathānī* (al-Rīyāḍ: Dār al-Rāyah, 1411, 1991). See also 'Alī Aḥmad ibn Ḥazm, *al-Faṣl fī-al-Milal*, vol. 4, p. 171; c.f. Umari, p. 41, 26ff.

⁸³ Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, Bk. 2, p. 206.

⁸⁴ Al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (Bayrūt: Dār al-Fikr, n.d.), vol. 1, p. 5130.

⁸⁵ Ibn Manẓūr al-Ifriqī, *Lisān al-'Arab al-Muḥīṭ*, vol. 5, p. 2900; Muḥammad ibn Mufliḥ al-Maqdisī al-Ḥanbalī, *al-Ādāb al-Sharīyah* (Bayrūt: Dār al-Kutub al-'Ilmiyah, 1996), vol. 1, p. 174.

devotional practices in exoteric Islam, and are collectively referred to as *‘ibādah*, because they indicate and affirm the worshippers status as a servant before God. *Ṣalāt* is considered to be the most important of all devotional acts because prayer is the most basic criteria for determining faith in practice, as based upon the oft quoted *ḥadīth*: "Between a man, disbelief and paganism is the abandonment of *ṣalāt*."⁸⁶

Al-Ghazālī recognizes that ethical training extends to all aspects of human life, but is ultimately subsumable and implied within the scope of the five pillars. He discusses the five pillars from both a juristic and ethical perspective in order to detail both the outer and inner aspects of these acts for the individual subject.⁸⁷ Prayer, for example, is constituted by external acts, including speech, kneeling and prostration, as well as by the "works performed by the heart," which means that the heart must be simultaneously present when it is performed. This presence is represented by the "intention" (*niyyah*), which is of the essence, defining the precondition of prayer. Associated with pure intention are moral sentiments like modesty (*ḥayā*), the importance of which has been discussed above. Ibn Taymīyah also recognizes the preeminent role played by the Five Pillars in ethical training. As such, he elaborates upon virtuous acts and beliefs that stem from these fundamental practices, which it is incumbent upon Muslims to enjoin:

The five prayers at their appointed times, obligatory charity, fasting during Ramaḍān, and the pilgrimage to Mecca; belief (*īmān*) in God, His angels, His messengers, the Day of Judgment, and predestination—both the good and evil thereof. Exemplifying beauty (*iḥsān*), which is to worship God as though you see Him; if you do not see Him, indeed, He sees you. To exemplify what God has commanded through His messengers of hidden and manifest affairs. To exemplify the

⁸⁶ *Ṣaḥīḥ Muslim*, Bk. 1, no. 0147. For a discussion on this point, see ‘Abd al-‘Azīz al-‘Abd al-Laṭīf, *Nawāqid al-īmān al-Qawfīyah wa-al-‘Amalīyah* (al-Riyāḍ: Dār al-Waṭan, 1414).

⁸⁷ Al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, Bk. 3, 4.

purity of God's religion and reliance upon God; love of God and His Messenger, which are synonymous; hope for God's mercy and fear of His punishment; and patience for God's judgment. Submission to God's command; demonstration of belief in Prophetic tradition; loyalty through commitment; repayment of debts to their owners; respect for parents; fostering the bonds of kinship; cooperation through respect and fear of God; kindness to neighbours, orphans, the poor, and brothers in Islam; just opinions and actions, expressed in a merciful manner; welcoming those who betray you; giving to those who deny you; forgiving those who oppress you; and enjoining for the harmony and accord of society.⁸⁸

The Five Pillars, which comprise the concept of *islām*, are followed consequentially by *īmān* and *iḥsān*, from which stem all categories of good deeds, both apparent and hidden (with several examples provided thereof), and from which all sciences of the Shari'ah are derived.

The Arabic term *munkar* generally embraces all acts that would be considered wrong and evil, being synonymous with that which is offensive, shameful, ignorant, repulsive, and loathsome.⁸⁹ More specifically, pre-modern scholars conceived *munkar* as all action governed by sound reason, which is offensive or halting in its condemnation of shamefulness, determined ultimately by offence to the Shari'ah.⁹⁰ In terms of the cognitive criteria for its determination, "People of Faith" (*Ahl al-Imān*) are considered able to judge what is morally wrong by recognizing transgressions of the Shari'ah as "ugly" (*qabīḥ*).⁹¹ According to Ibn Taymīyah:

Vice (*munkar*) is all that which God prohibits and His messengers describe as polytheism (*shirk*) towards God. It is thus the association of another god with God, such as the sun, the moon, the planets, an angel, a prophet, a pious man, one of the *jinn*, an icon, a grave, or otherwise; it is supplicating for their help, or prostrating to them. Vice includes all that is

⁸⁸ Ibn Taymīyah, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*, pp. 15-6.

⁸⁹ Ibn Jarīr al-Ṭabarī, *al-Qāmūs al-Muḥīṭ*, vol. 2, p. 148.

⁹⁰ Al-Rāghib al-Iṣfahānī, *al-Mufradāt fī Ghariḥ al-Qur'ān* (Bayrūt: Dār al-Ma'rifah, n.d.), p. 505.

⁹¹ Al-Ṭabarī, *Jāmi' al-Bayān 'an Ta'wīl al-Qur'ān*, vol. 4, p. 30.

forbidden by God, such as killing people unlawfully; or taking people's money through illegitimate means, such as by force, usury, gambling, or through other transactions forbidden by the Messenger of God. Likewise, vice includes severing the bonds of kinship, disrespect towards parents, corruption of weights and measures, debauchery, and prostitution. It also includes innovations in religion (*bid'ah*), which are not authorized by God and His Messenger.⁹²

This comprehensive understanding of vice, along with that of virtue, was thus understood as forming an indivisible whole.⁹³ The most complete expression of enjoining virtue and forbidding vice was considered to be *jihād*, and, likewise, external struggle against oppression was considered the corollary of internal struggle against capriciousness or selfish love and hate. Through performing obligatory and supererogatory acts of worship, especially prayer and charity, it was considered possible to cultivate knowledge, gentleness and patience, which along with modesty enabled a faithful heart to enjoin virtue and forbid vice.⁹⁴ Considering the upshot of this process, Ibn Ḥajar argued that *ḥayā'* specifically was cultivated from enjoining virtue and forbidding vice, adopting a courageous attitude toward the truth and studying *fiqh*.⁹⁵ He stressed that true modesty should not be confused with weakness and cowardice that inhibits enjoining virtue and forbidding vice, requesting scholarly instruction and guidance, or claiming other legitimate rights—although modesty is attenuated honourably towards leaders, it does not conform to illegitimate demands.

The concept of *ḥisbah* also expresses the moral accountability demanded by the forbiddance of vice, with perhaps a more clearly defined relation to the mode of subjection. Etymologically, *ḥisbah* is derived from *iḥtisāb*, which in turn is derived

⁹² Ibn Taymīyah, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*.

⁹³ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, p. 87.

⁹⁴ Ibid, Ch. 7.

⁹⁵ Ibn Ḥajar al-ʿAsqalānī, *al-Iṣābah fī Tamyiz al-Ṣaḥābah*.

from *ḥasb*.⁹⁶ Numerous meanings are synonymous with *iḥtisāb*, including: "request for reward" (*ṭalab al-ajr*),⁹⁷ "test" (*ikhtibār*),⁹⁸ "forbiddance" (*inkār*),⁹⁹ "belief" (*ẓun*),¹⁰⁰ "calculating" (*i'tidād*),¹⁰¹ and "contentedness" (*iktifā'*).¹⁰² The superlative form of the root *ḥasb* is expressed in the Qur'ān as one of God's names, *al-Ḥasīb*, "Bringer to Account" (4:6; 4:86; 33:39), providing an archetype for the attribute of *iḥtisāb*.¹⁰³ Three main terminological definitions are discernable for *iḥtisāb*.¹⁰⁴ First of all, it is calculation of reward from God through patience during tribulation, which is characteristic of major prophets. Secondly, it is the calculation of reward from God for works of obedience, in hope of recognition from Him; for example, in the fast of Ramaḍān there is calculation and reward in this sense. Finally, it is the calculation of God, supporting and aiding His servants, with consideration paid to their different trials by way of preventing fear or harm from befalling them; in other words, God's satisfaction with His servants. The title of *muḥtasib* is applied to the practitioner of *iḥtisāb*, as derived from these definitions: it conveys the meaning of "whom can expect a reward for exercising patience and obedience in the face of trial,

⁹⁶ Ibn Manẓūr al-Ifriqī, "Ḥasab," *Lisān al-ʿArab al-Muḥīṭ*, vol. 1, p. 620; Aḥmad ibn Muḥammad al-Fayūmī al-Maqrī, "Ḥasab," *al-Miṣbāḥ al-Munīr* (Bayrūt: Maktabat Lubnān, 1987), p. 52; Muḥammad al-Dīn al-Fayrūzābādī, "Ḥasab," *al-Qāmūs al-Muḥīṭ* (Bayrūt: al-Mu'assasat al-ʿArabīyah lil-Ṭibā'ah wa-al-Nashr, n.d.), vol. 1, p. 26.

⁹⁷ *Lisān al-ʿArab al-Muḥīṭ*, vol. 1, p. 630; Ibn Ḥajar al-ʿAsqalānī, *Fath al-Bārī* (al-Rīyāḍ: Ri'āṣah Idārāt al-Buḥūth al-ʿIlmīyah wa-al-Iftā' wa-al-Da'wah wa-al-Irshād, n.d.), vol. 11, p. 242.

⁹⁸ *Lisān al-ʿArab al-Muḥīṭ*, vol. 1, p. 631.

⁹⁹ Ibid., vol. 1, p. 632.

¹⁰⁰ See exegesis of Q. 65:2-3, 39:47 and 59:2 in Imām al-Jalālayn, *Tafsīr al-Jalālayn*, ʿAbd al-Karīm al-Rifāʿī, ed. (Dimashq: Dār Iḥyāʾ ʿUlūm al-Dīn, n.d.), p. 213.

¹⁰¹ Maḥmūd ibn ʿUmar al-Zamakhsharī, *Asās al-Balāghah*, (Bayrūt: Dār al-Maʿrifah, 1402), p. 83.

¹⁰² Ibid.

¹⁰³ Ibn al-Athīr, vol. 1, p. 381; *Lisān al-ʿArab al-Muḥīṭ*, vol. 1, p. 312.

¹⁰⁴ Ibn Fāris, *Muʿjam al-Maqāyīs fī al-Lughah*, vol. 2, p. 61; Abū Bakr Muḥammad ibn Durayd, *al-Jamhurah fī al-Lughah*, vol. 1, p. 221; *Lisān al-ʿArab*, vol. 1, p. 316.

as calculated by God".¹⁰⁵ It simultaneously expresses forbiddance in the sense of describing "who repudiates people from performing shameful acts."¹⁰⁶

All pre-modern scholars share the opinion that enjoining virtue and forbidding vice is an obligation upon Muslims; however, they differ when it comes to categorizing it as either an individual responsibility (*farḍ 'ayn*) or as the Muslim community's collective responsibility (*farḍ kifāyah*). Its necessity is founded upon the idea that if corruption prevails amongst a people they will be held to account by God collectively: because of disastrous consequences forewarned in the Qur'an, opposing vice, whether actively or passively, is considered vital.¹⁰⁷ The overwhelming majority of scholars hold the view that enjoining virtue and forbidding vice is a collective responsibility, with a few capable members of the community being obliged to perform it, like *jihād*; nevertheless, it is not entirely like *jihād*, as it contains aspects of both individual and collective responsibility, and scholarly opinion varies as to its exact determination, especially concerning the degree of personal autonomy *vis-à-vis* prescriptive authorities like the '*ulamā'*' and *muḥtasib*.¹⁰⁸ Enjoining virtue and forbidding vice may be a difficult and complicated task, requiring knowledge of *fiqh* and human nature, as well as the physical ability to intimidate or coerce. Classification of this duty is often based on the *ḥadīth*: "Whoever of you sees wrong, let him change it by his hand; and if he is not able, then with his tongue; and if he is not able, then with his heart, and that is the weakest

¹⁰⁵ Maḥmūd ibn Sulaymān al-Kafawī, *Kalimāt al-Kafawī*, p. 57; Ibn al-Athīr, vol. 1, p. 382.

¹⁰⁶ *Al-Qāmūs al-Muḥīf*, vol. 1, p. 57.

¹⁰⁷ E.g., Q. 8:25; 24:64.

¹⁰⁸ For an overview of this issue, see Ibn Badrān al-Dimashqī al-Ḥanbalī, *al-Madkhal ilā Madhhab al-Imām Aḥmad ibn Ḥanbal* (Bayrūt: Mu'assasat al-Risālah, 1401/1981).

form of faith."¹⁰⁹ The first two methods of combating vice are generally considered binding upon those with the ability to effect change, and the last considered obligatory upon all Muslims without exception.

Forbiddance of vice "by the hand" is generally reserved for those who are able to deal with a problem directly and are likely, but not necessarily, in a position of authority, whose order is normally obeyed. It involves not only commanding cessation, but also enforcing it as far as possible. Forbiddance by the hand might include the destruction of what is instrumental to the vice, such as containers of intoxicants, or subversive literature, a brothel, and so forth. The most extreme of such measures is carrying out legal punishments against convicted criminals, and *jihād*, as mentioned above. Enforcement of the Sharī'ah is the responsibility of any Muslim head of state; however, Sunnī scholars have generally been of the opinion that negligent or oppressive Muslim rulers should not be forcibly removed due to several *ḥadīths* urging patience in the face of such trials, and the fear that such action might lead to greater evils, like civil strife and excessive bloodshed. Physical prevention of vice by rulers is usually restricted to preventing their acts of injustice by destroying their unlawful possessions if possible. In any case, physical force, when feared to cause greater harm, is no longer permissible.

Forbiddance of vice "by the tongue" is used by those who either do not have the direct ability to abolish the evil by themselves, or have witnessed what cannot be changed with physical force, such as deception, backbiting, or adherence to religious innovations, or by those who occupy subordinate positions. In such cases persons can only warn or advise the offending party or the public-at-large about the apparent

¹⁰⁹ Muslim, *Ṣaḥīḥ Muslim*, Bk. 1, ḥadīth no. 49.

wrong in hope that it will cease. The guidance of wrongdoers is an obligation upon all knowledgeable believers. Once a person or a group has performed this duty, they are not accountable if the offender does not comply, since the removal of vice will depend upon other than themselves. Scholars are at pains to stress the imperative need for insight and diplomacy to be used on such occasions in order to avoid angry reactions and obstinacy on the part of those being warned, with the exception of one who shamelessly flaunts his sin publicly.¹¹⁰ Otherwise, one must be convincing, which requires knowledge of the rulings derived from the Qur'ān and Sunnah, oratory skill, as well as psychological insight into human motives. Verbal opposition to vice may be addressed to a general audience in the case of *da'wah* ("proselytization") to non-Muslims or a *khutbah* ("sermon") to Muslims, or to specific persons who commit wrongs.

Fear of insult or disdain by evildoers will not absolve the qualified person from this duty, contrary to the threat of bodily harm—according to scholars, no Muslim is under obligation to endure torture or unjust imprisonment, despite historical acts to the contrary.¹¹¹ The Prophet's statement that the best *jihād* is a word of truth spoken before a tyrant, with knowledge that the speaker exposes himself to danger and possibly death, is generally considered to be a meritorious rather than obligatory act.¹¹² Several scholars have added that one who is certain his advice will not be

¹¹⁰ E.g. Ibn Taymīyah, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*, pp. 21-22; *al-Ḥisbah fī al-Islām*, Ch. 7; al-Nawawī, *The Forty Ḥadīth of al-Nawawī*, p. 124.

¹¹¹ E.g., the Goldsmith of Marw; see, Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, Ch. 1.

¹¹² Ibn Ḥanbal, *Musnad* (Būlāq, 1313), 3:19.16, 61.24, 4:314.28, 315.2, 5:251.8, 25.18; Ibn Mājah, *Sunan*, M. F. 'Abd al-Bāqī, ed. (al-Qāhirah, 1972), p. 1329, no. 4011, p. 1330, no. 4012; c.f. Ḥumayd wa Ibn Mullūh, "al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar."

accepted due to the hostility of evildoers is also exempted from the obligation.¹¹³

Both forbiddance by the hand and tongue are binding upon those with the ability to effect change. Inability is related to lack of knowledge or proficiency, physical limitations, and the expectation of harmful repercussions.

Forbiddance "by the heart" is an obligation upon every Muslim without exception—even if one is unable to change an evil by means of the hand or tongue, one cannot accept it in the heart and remain a believer. This is clear from the Prophet's reference to this form of forbiddance as "the weakest of faith," meaning that without objection and disapproval in the heart, faith does not remain. Imām al-Nawawī explained that this does not mean a person who opposes wrongdoing in his heart because he is unable to effect change by other means is weaker in faith than another. Rather it means that the least one can do in such a situation is to bear unwillingly with the conviction that were it possible for him to stop it in some way, he would do so, and that this kind of faith is weakest only because it does not, in fact, alter the status quo, so it is weakest in effect.¹¹⁴

1.2.4. *Telos*

The *telos* or teleology of an ethics is the ideal mode or state of being toward which one strives or aspires to in their ethical work. This goal of self-realization corresponds with the greater purpose or design of the universe.¹¹⁵ *Imān*, in the sense of true belief or a state of total surrender to God, as both an inner action and outer

¹¹³ Some others, however, disagree, quoting verse 164 of Sūrat al-Aʿrāf and pointing out that the duty is to remind and advise, absolving oneself before God, and not to ensure acceptance of the advice; c.f. al-Nawawī, *The Forty Ḥadīth of al-Nawawī*, p. 125.

¹¹⁴ Ibid.

¹¹⁵ Aristotle, "Generation of Animals," transl. W. D. Ross, *The Organon and Other Works* (OpenSource collection; available at <http://archive.org>, accessed 21/5/2012), v. 8, p. 789a8-b15; "Physics," *ibid*, 2.8, 199b27-9, 2.5-6.

adherence to the message of the Prophet Muḥammad, can be considered the *telos* of Islamic ethics. In other words, *īmān* includes all the acts of the heart and beliefs of a person, as well as encompassing all the outward acts of submission to God that are considered exclusively part of *islām*. Evidence of this principal objective is found in the Qurʾān and Sunnah, as well as the tradition of commentary thereupon. Its theological elaboration is framed by three basic principles, which comprise the "fundamentals of religion" (*uṣūl al-dīn*): belief in the sovereignty of a monotheistic God, who is omnipotent, omniscient and simultaneously transcendent and immanent (*tawḥīd*); belief in prophets (*nubuwwah*); and belief in the Day of Judgment (*qiyāmah*). Together these necessitate obedience to God's will for all worship: every human being should aspire to live as a servant (‘*abd*’) of God. Required ritual acts are thus referred to collectively as ‘*ibādah*’ ("worship" or "service"), and serve two interrelated purposes: they fulfill God's commandments, standing as evidence in preparation for the Day of Judgment; and also transform the worshipper, bringing him or her into greater conformity with the divine will.¹¹⁶ Amongst the schools of *fiqh* and *kalām*, the Ḥanbalīs, Shāfiʿīs and Ashʿarīs have made a careful distinction between the interrelated states of *islām* and *īmān*, with Ḥanbalīs especially having required the fulfilment of exterior acts of submission as prerequisite for true belief.

Qurʾānic references to *islām* stress the quality of its interiority in the Muslim ("one who submits to *islām*"): "Whomsoever God desires to guide, He expands his breast to *islām*" (6:25); *islām* is a "call" from God, which must prohibit falsehood (59:7) and which places whoever receives it "in a light from his Lord" (39:22). Three

¹¹⁶ Vernon J. Schubel, "Worship and Devotional Life: Muslim Worship," *ER* (New York: MacMillan, 2005), pp. 9815-9820. See also, ‘Abd al-Raḥmān ‘Ayād, *Aḥmīyat al-‘Ibādah* (al-Rīyāḍ: Hayʾat al-Amr bi-al-Maʾrūf wa-al-Nahy ‘an al-Munkar, n.d.).

other texts, constantly quoted through the centuries, stress the connection between *islām* and *dīn* ("religion"): "Today, I have perfected your religion for you; I have completed My blessings upon you; I have approved *islām* for your religion" (5:3); and "the religion in the eyes of God, is *islām*" (3:19); as well as, "The surrender of the whole self to God can alone render to Him the worship which is His due; whosoever should seek another religion, his search would not be approved" (3:85). Moreover, according to the Qur'ān, the action that operates *islām* supposes a "return" to God (*tawbah*), or a conversion (e.g. 9:74; 69:17), as well as a distinction between *islām* and *īmān*; for example: "The Bedouins say: 'we believe.' Say: you do not believe; rather say, 'We surrender' (*aslamnā*); faith has not yet entered into your heart" (69:14). The Qur'ānic statements themselves urge men to make *islām* not merely a general act of surrender to God, and not merely obedience to God's commandments, but also an affirmation that grants admission to the *Ummat al-Nabī* ("People of the Prophet") with the inner disposition of faith.¹¹⁷ Virtuous acts (*ṣāliḥāt*) are explicitly described as earning the doer paradise (e.g. 2:25; 5:93; 18:107), and their twinning with *īmān* led Izutsu to speculate that *ṣāliḥ* is the outward expression of faith enjoined by the Qur'ān.¹¹⁸

Within the Prophetic Sunnah, *islām* is defined as submission to God as expressed by deeds: above all, the prescribed acts of worship, including the adoration of One God, but also through *khayrāt* ("good works"). The "*ḥadīth* of Gabriel" is principal text in this regard: when the Prophet is asked to define *islām*, he responds that, "*Islām* is to testify that there is no god but God and that Muḥammad is the

¹¹⁷ L. Gardet and J. Jormier, "Islām," *EF* (Leiden: Brill, 1978), vol. 4, p. 171.

¹¹⁸ Toshihiko Izutsu, *Ethico-Religious Concepts in the Qur'ān* (Montreal: McGill University Press, 1966), p. 204.

messenger of God, to establish prayer, to give *zakāt*, to fast Ramaḍān, and to make the pilgrimage to the House if you are able to do so."¹¹⁹ But, as mentioned elsewhere, it is also "to give food (to the hungry) and to give the greeting of peace (*salām*) to those one knows, just as to those one does not know."¹²⁰ And the best *islām* will be that of the Muslim of whom one has to "fear neither the hand nor the tongue."¹²¹ In close association with *islām*, *īmān* is then defined by its contents: "It is to believe in God, His angels, His books, His messengers, and the Last Day; and to believe in predestination, both the good and evil thereof."¹²² Lastly, the derivative concept of *iḥsān* is addressed: "It is to worship God as though you see Him; if you do not see Him, indeed He sees you."¹²³ The Prophet thus describes *islām* as the execution of God's ordinances, at least outwardly. *īmān*, on the other hand, is correct and complete inner belief, which is necessarily proven by certain actions. So both include deeds; however, those of a *Mu'min* ("true believer") supersede those of a Muslim. Every *Mu'min* is a Muslim, but not every Muslim is a *Mu'min*. As God will reward according to both deed and intention, the higher in rank and preferable to God is the *Mu'min*, that is, the Muslim with true faith. As the highest degree of religion, *iḥsān* is that which perfects every deed of both *islām* and *īmān*. It is reflected in a willingness to do more than one's duty, and being satisfied with less than one's right while seeking the acceptance of God. In this way, everyday dealings

¹¹⁹ Muslim, *Ṣaḥīḥ Muslim*, Bk. 1, ḥadīth no. 1. See also, al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, vol. 1, pp. 151-152; Jamaal al-Din M. Zarabozo, *"He Came to Teach You Your Religion": The Hadith of Angel Gabriel Explaining the Foundations of Islam, Imaan and Ihsaan* (Boulder, CO: al-Basheer, 1997).

¹²⁰ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bk. 2, ḥadīth no. 5.

¹²¹ Ibid., no. 4.

¹²² Muslim, Bk. 1, ḥadīth no. 1.

¹²³ Ibid. See also, al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bk. 2, no. 47.

become acts of worship and a rewarded as such. *Iḥsān* is an outward expression of *taqwá* and awareness of God's all pervading knowledge.¹²⁴

The schools of *fiqh* and *kalām* are divided upon the question of the distinction between *islām* and *īmān*, and their specific connection. Unlike the Mu'tazilīs and many Ḥanafīs, who consider *islām* and *īmān* to be synonymous, Ḥanbalīs make a clear distinction between the two states. Ḥanbalīs insist upon affirmation of faith by the tongue (*qawl*) and by deeds (*a'māl*), either with or without the addition of adherence of the heart (*taṣdīq*). *Islām* in the sense of observance thus becomes the guarantee of faith. Ash'arīs and Shāfi'īs also make a distinction between *islām* and *īmān*, but, unlike the Ḥanbalīs, claim that faith can exist without *islām*. For both Ḥanbalīs and Ash'arīs *islām* and *īmān* imply one another without becoming identical: *islām* is the external and, so to speak, social application of the law, and *īmān* is the interiorization of *islām*.¹²⁵ In this way, therefore, *islām* is "to give oneself unconditionally to God"; so much so, as the Ḥanbalīs often said, "the religion of all the prophets is *islām*."¹²⁶ But it is the "seal of the prophecy," manifested in the Qur'ān, which was to "perfect the religion." According to the first part of a much quoted *ḥadīth*, "the best of all things is *islām*; the foundation of *islām* is the ritual prayer," and, with *ṣalāt*, all the other obligations (*'ibādāt*) prescribed by the Law. As such, it is the observance of the Law, its external and so to speak social application, which is the binding force of the Community of the Prophet.¹²⁷

¹²⁴ Al-Nawawī, *The Forty Ḥadīth of al-Nawawī*, p. 11.

¹²⁵ Gardet and Jormier.

¹²⁶ George Makdisi, *Ibn 'Aqīl et la résurgence de l'Islam traditionaliste au XI^e siècle* (Paris: Librarie d'Amerique et d'Orient, 1963), p. 324.

¹²⁷ Henri Laoust, *Contribution á une étude de la methodologie de Taḳī-d-Dīn Aḥmad b. Taimīya* (Caire: Imprimerie de l'Institut français d'archéologie orientale, 1939), p. 74, n. 3.

In the Ḥanbalī tradition, appeal was made to the early scholarly saying: "*īmān* is statement and action."¹²⁸ For the sake of clarity, over time these two main aspects were broken down into the three essential components of *īmān*: belief in the heart, profession by the tongue, and performance of deeds by the physical parts of the body. Belief in the heart is considered to have two aspects: the statement of the heart, including recognition, knowledge and affirmation; and the actions of the heart, including commitment, voluntary submission and acceptance (*iltizām*, *inqiyād* and *taslīm*). According to Ibn Taymīyah, the first aspect should actually lead directly to the second aspect, unless the heart is diseased and refuses to follow the truth.¹²⁹ In terms of the relationship between belief in the heart and its expression by word and deed, he claims there is no such thing as a true or strong *īmān* being in the heart that is not reflected outwardly; indeed, *īmān* must be reflected in ritual acts such as prayer and fasting because God made these obligatory.¹³⁰ Ibn Taymīyah's definition of *īmān* later influenced Muḥammad ibn 'Abd al-Wahhāb's teachings, the core of which was made up of the concept of *tawḥīd* ("monotheism") and its opposite (*kufī*).¹³¹ Like *īmān*, Ibn 'Abd al-Wahhāb's concept of *tawḥīd* had primarily two aspects.¹³² First of all, *tawḥīd al-rubūbiyah* was the profession of the unity of God with regard to His divinity, and constituted the mere verbal profession that God is

¹²⁸ Ibn Qayyim al-Jawzīyah, *al-Fawā'id*, p. 107; c.f. Muḥammad 'Abd al-Hādī al-Misrī, *Ḥaqīqat al-īmān 'inda Ahl al-Sunnah wa-al-Jamā'ah* (al-Qāhirah: Dār al-Furqān, 1991), p. 41. Abū Zur'a and Abū Ḥātim, two of al-Bukhārī's most important teachers, narrated that the scholars that they met from Ḥijāz, Iraq, Greater Syria, and Yemen all said, "īmān is statement and action; it increases and decreases." See, Abū al-Qāsim Hibat Allāh al-Ṭabarī, *Sharḥ Uṣūl I'tiqād Ahl al-Sunnah wa-al-Jamā'ah* (al-Rīyāḍ: Dār Ṭaybah, 1423/2003), vol. 1, p. 176.

¹²⁹ Ibn Taymīyah, *al-īmān al-Awsaṭ* (Bayrūt: Risālah, 2004), p. 79. See also, al-Misrī, p. 28.

¹³⁰ Ibn Taymīyah, *Majmū' al-Fatāwā*, vol. 7, p. 611.

¹³¹ Muḥammad ibn 'Abd al-Wahhāb, *Kitāb al-Tawḥīd alladhī huwa Ḥaqq Allāh 'alā al-'Abīd* (al-Rīyāḍ: 'Alim al-Kutub lil-Ṭabā'ah wa-al-Nashr wa-al-Tawzī', 2002); W. Ende, "Wahhābiyya," *EF* (Leiden: Brill, 2002), vol. 11, p. 40.

¹³² He only touched upon a third category, *tawḥīd al-asma' wa-al-sifāt* (the unity of God's names and attributes as laid down in the Qur'ān without interpretation), which was later specified by his descendents.

the only, almighty creator and lord of the world. Secondly, *tawḥīd al-ulūhīyah* was the profession of the unity of God by serving Him alone, and proof of *tawḥīd al-ulūhīyah* through the deeds of the believer, especially acts of worship. According to him, this was the decisive dimension of *tawḥīd*, and only its fulfillment formed the distinctive mark between *islām* and *kufī*.

1.3. Law of *Ḥisbah*

As previously mentioned, an ethics-based understanding of *ḥisbah* existed alongside law-based notions of *fiqh*, through which obligations arising from this virtue were articulated for the *muḥtasib*. Administrative and procedural aspects of the *muḥtasib* as a state agent were also elaborated from this basis, including discretionary penalties. The *muḥtasib*'s jurisdiction, however, also included *siyāsah* legislation: as both an executive and judicial officer, he enforced and adjudicated substantive law that included rules prescribed by both jurists and rulers. Despite great historical variation in these features, it is possible to distil general characteristics of the pre-modern law of *ḥisbah* by surveying historiography on the field as well as consulting pertinent primary sources. Moreover, despite the *muḥtasib*'s role as a coercive and disciplinary agent, it is important to remember that the Sharī'ah was quite different from modern legal systems with their associated mechanisms of control. In classical and medieval history, absolutism was mitigated by the limits of government: the sovereign himself was subject to the Sharī'ah and the principles of rule were part of and subordinate to the divine, cosmo-theological order of the world. Foucaultian notions of autonomous rationality, inconspicuous punishment, hegemony, and subordination of the docile subject were then absent. In contrast to the nation-state, regimes lacked the necessary surveillance techniques that would permit direct

control of social groupings by which society organized itself. Pre-industrial Muslim societies were thus only marginally subject to government intervention, and disputes were resolved through a minimum of legislative guidance, with the determining factors having been informal mediation, arbitration and legal proceedings. This informality combined with morality, especially in its religious variety, to mitigate against intrusive aspects of the *muhtasib*'s jurisdiction.

1.3.1. Enforcement

As mentioned above, the majority of Muslim scholars classified enjoining virtue and forbidding vice as a collective duty (*farḍ kifāyah*) incumbent upon ability, and public responsibility was ascribed to the *muhtasib*. Representing the jurisdiction of *ḥisbah*, this officer basically functioned as the market inspector and moral censor, who enforced fair dealings and saw that the religious precepts of Islam were obeyed.¹³³ The role of market inspector probably evolved from pre-Islamic origins, with the *muhtasib* likely being the successor of the *agoranomos* of the Hellenistic cities.¹³⁴ Modern historians agree that the *muhtasib*'s prototype, the *ṣāhib* or *ʿāmil al-sūq*, existed at the Prophet's time in Medina and transformed into the *muhtasib* during the ʿAbbāsid caliphate about the time of al-Ma'mūn (r. 197-217/813-833). The new title appeared with the addition of religious duties within the framework of the Islamization of institutions occurring at that time. Thereafter, the *muhtasib* was a constant feature throughout Muslim societies until the reforms of the modern period, which saw its disappearance along with the general usurpation of the Sharīʿah by institutions of the nation-state. It was, however, more or less prominent during this

¹³³ This section relies largely upon Tyan's comprehensive overview of the subject. See, Tyan, "La Hisba et l'administration municipale."

¹³⁴ Glick, "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion."

broad span of history; for example, the *muḥtasib* increased in prestige and status during the Fatimid period, becoming a dignitary of great influence. On the other hand, at the end of the Middle Ages, along with the general economic decline and social crises then existing, the office often declined in esteem; for example, under the Mamlūks it was, like other offices, obtained by payment, with the purchaser recouping himself from the merchants through illegal taxes.

The *muḥtasib* was appointed by the ruler, sometimes directly, but more often through an *amīr*, *wazīr* or *qāḍī* whom officially delegated the function of *ḥisbah*. In turn, the *muḥtasib* could also delegate his responsibilities to subordinate representatives whom he was responsible for overseeing. Likewise, in the majority of Muslim states, the *muḥtasib* of the capital city was invested with a certain responsibility for the supervision of those in provincial towns. Ruling authorities were doubtlessly at pains to ensure their selection of the only operating *muḥtasib*: enjoining virtue and forbidding vice could be grasped at by the hand of the fanatic, and used as a slogan by reactionary or extreme groups to publicly impose their view.¹³⁵ According to *ḥisbah* treatises, in addition to being a free Muslim, like all holders of public office, prospective candidates were usually required to be of high moral standing with competent knowledge of the law. Generally, he was a *faqīh*, although this was less often insisted upon than an experienced professional life and knowledge of commercial affairs, which resulted in many *muḥtasibs* being chosen from amongst the merchants. The *muḥtasib* was classified as a religious (*dīnīyah*) office with both judicial and executive powers, commanding a jurisdiction that lay

¹³⁵ H. F. Amedroz, "The Hisba Jurisdiction in the Ahkam Sultaniyya of Mawardi," *JRAS* (1916): 292; M. A. Shaban, *Islamic History: A New Interpretation* (New York: Cambridge University Press, 1976), p. 46.

between the *qāḍī* and *shurṭah*, with a degree of overlapping duties, which fostered a close association amongst them. The office of *qāḍī* preceded the *muḥtasib* in rank and, in fact, sometimes both roles were executed by one man; for example, the Geniza records bear witness to the sometimes purely nominal nature of the *muḥtasib*'s office.¹³⁶

1.3.2. Procedure

Because the division between the *muḥtasib*'s duties and those of the *qāḍī* and *shurṭah* was not clearly defined, it is difficult to discern an intrinsic nature to his responsibilities; however, the *muḥtasib*'s duties can be distinguished principally by the method of approach: he concerned himself with infractions to the Sharīʿah and *qānūn* as determined by obvious and incontestable facts. The *muḥtasib* possessed extensive powers to intervene on his own accord for a wide variety of offences without waiting for a formal complaint, but he could only act if the facts of the case were undisputed, such as when the perpetrator had been caught in *flagrante delicto*. As such, he did not have the authority to carry out inquiries or supervise formal litigation like a *qāḍī* concerning judicial matters or the *shurṭah* concerning offences and crimes that demanded police intervention. This approach was also strictly limited to public space (except for very specific exceptions), and he was strictly forbidden to spy. In addition to this approach, the *muḥtasib* was generally characterized by the integration of his roles as market inspector and moral censor. Within most *ḥisbah* treatises and certificates of investiture, the tasks of market inspection are more formally defined; however, in practice, emphasis upon either this

¹³⁶ S. D. Goitein, *A Mediterranean Society* (Berkeley: University of California Press, 1971), vol. 4, p. 40.

role or moral censorship varied according to factors such as personal inclination, government injunction and different circumstances occasioned by the social, political and economic environment.¹³⁷

In terms of market inspection, according to al-Māwardī, the *muḥtasib* shared with the *qāḍī* the function of hearing disputes in three specific domains: foul play with respect to weights and measures; fraud in the sale and pricing of merchandise; and refusal to pay back debts when the debtor was solvent.¹³⁸ Other treatises elaborate upon these functions; for example, including the supervision of *Dār al-ʿIyār* ("Office of Weights and Measures"), the mint, and coinage in general amongst his duties. Policing of fraudulent commercial practices included the prohibition of usury, and was also extended beyond the *sūq* to include the *sawāḥil* ("port"), where the *muḥtasib* was expected to supervise commerce like a port authority.¹³⁹ In addition to these tasks, the *muḥtasib* was charged with ensuring public safety in the building and repair of houses and shops, as well as ensuring the maintenance and repair of streets and city walls, and supply and regular distribution of water. As such, these tasks have sometimes caused the *muḥtasib* to be considered as a municipal officer, although he was not appointed by any urban or professional organization, and was exclusively concerned with urban matters.¹⁴⁰ Moreover, the *muḥtasib* was responsible for the regulation of trades and professions, ensuring standards of quality were met, including apothecaries and doctors, as well as other judicial personnel.¹⁴¹ In fact, *muḥtasibs* may have brought government officials to

¹³⁷ E.g. Stilt, *Islamic Law in Action*; "Price Setting and Hoarding in Mamluk Egypt."

¹³⁸ Al-Māwardī, *al-Aḥkām al-Sulṭānīyah*, Ch. 20, sect. 2.

¹³⁹ Buckley, "The Muḥtasib."

¹⁴⁰ Cahen and Talbi.

¹⁴¹ Surty.

court on charges of corruption and abuse of power.¹⁴² On the other hand, they may also have suppressed solidarity and political opposition amongst the guilds, as an instrument of executive authority.¹⁴³

Apart from market inspection, the *muhtasib* was also charged with functioning as a *censor morum*, that is, enforcing public morality and religious obligations. First and foremost, the *muhtasib*'s religious concerns centered upon the mosque, where he was responsible for ensuring the performance of congregational worship on Fridays and the five daily prayers; correct maintenance and seemly behaviour; as well as the probity of its officials, such as *imāms* and *mu'adhdhins*.¹⁴⁴ He was responsible for enforcing discriminatory measures against *dhimmīs*, which ensured the differentiation between Muslims and non-Muslims. While most *ḥisbah* treatises deal with this topic, especially in relation to *jizyah* tax collection, it would appear that in practice there was no real desire to apply them outside of major cities like Baghdād;¹⁴⁵ for example, even under the strict Tughluq *sulṭāns* in 6th/12th century India, *ḥisbah* was enforced only in the case of Muslims, with non-Muslims being subject to their own religious or personal laws, or the common law of the land.¹⁴⁶ He was particularly concerned with ensuring proprietary relations between the sexes, which were to be strictly segregated. The public bath (*ḥammām*) was also the focus

¹⁴² E.g. al-Shayzarī, *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*, p. 113; 'Abd al-'Azīz ibn Murshid, *Nizām al-Ḥisbah fī al-Islām: Dirāsāt al-Muqāranah* (MA Thesis, Jāmi'at al-Imām Muḥammad ibn Sa'ūd al-Islāmīyah, 1393), pp. 135-6.

¹⁴³ Hamdani.

¹⁴⁴ Buckley, "The Muhtasib," pp. 99-101.

¹⁴⁵ Weigert, "A Note on the Muhtasib and Ahl al-Dhimma," pp. 331-37.

¹⁴⁶ Ibn Baṭṭūṭah, *The Travels of Ibn Baṭṭūṭah, 1325-1354*, H. A. R. Gibb and C. F. Beckingham, transl. and eds. (London: Hakluyt Society, 1929), vol. 3., p. 292, s. vv. "Ghiyāth Dīn Tughluq" and "Muḥammad ibn Tughluq"; Aḥmad al-Qalqashandī, *An Arab Account of India in the 14th Century: Being a Translation of the Chapters on India from al-Qalqashandī's Subḥ al-A'shā*, Otto Spies, transl. (Stuttgart: Verlag von W. Kohlhammer, 1936), p. 72; Aḥmad ibn Faḍl Allāh al-'Umārī, *Masālik al-Aḥsār*, Abdur Rashid, transl. (Aligarh, 1944, n.p.), p. 32; A. S. Bazmee Ansari, "Ḥisbah: The Indian Subcontinent," *EF*, vol. 3, p. 485.

of his attention, being an obvious arena for immoral behaviour.¹⁴⁷ Finally, several other miscellaneous prohibitions of a predominantly religious nature (i.e. applicable to Muslims in particular) were associated with the *muḥtasib*'s jurisdiction: censure of religious innovations, like interpretations of the Qur'ān contrary to its obvious meaning; forbiddance of singing and musical instruments; drinking alcohol; gambling; chastising women in violation of their waiting period before re-marriage; and the collection of *zakāt* and *ṣadaqah* (under certain circumstances).¹⁴⁸

1.3.3. General Principles of Substantive Law

The *muḥtasib*'s jurisdiction pertained to discretionary punishments on the strength of *ta'zīr*, that is, a form of discipline encompassing any offence forbidden by the Sharī'ah, but not classified under *ḥadd* or *qisās*.¹⁴⁹ As such, the *muḥtasib* had great latitude in imposing punishment: for sentences of *ta'zīr* strict rules of evidence did not apply, and circumstantial evidence was allowed, especially assumptions based on a person's reputation. Such assumptions also played a role in the assessment of evidence and the acceptance of statements at their face value without any proof.¹⁵⁰ The *muḥtasib* had the power to administer a wider and more varied range of discretionary punishments under *ta'zīr* than those stipulated under *ḥadd* and *qisās*; however, they could not exceed or even match the *ḥudūd* in severity.¹⁵¹

¹⁴⁷ Buckley, "The Muḥtasib," pp. 105-6.

¹⁴⁸ Ibid, pp. 103-107.

¹⁴⁹ M. Y. Izzi Dien, "Ta'zīr," *EF* (Leiden: Brill, 2000), vol. 10, p. 405. *Ḥadd* (pl. *ḥudūd*) refers to a fixed punishment for certain crimes (i.e. *ḥadd* crimes), mentioned in the Qur'ān and Sunnah. *Qisās* refers to retaliation for homicide or wounding.

¹⁵⁰ Peters, p. 16; Hallaq, *Sharī'a: Theory, Practice, Transformations*, pp. 322-3.

¹⁵¹ Lashes, therefore, range from a minimum of three to a maximum of thirty-nine. 'Abd Allāh Maḥmūd ibn Mawdūd Mūṣilī, *al-Ikhtiyār li-Ta'ālī al-Mukhtār* (al-Qāhirah: Muṣṭafā Bābī al-Ḥalabī, 1951), vol. 4, p. 92.

The principal objective of *ta'zīr* was to prevent the perpetrator from repeating an offence and, therefore, had two aspects relative to *ḥisbah*: it could be punishment for conduct witnessed by the *muḥtasib*, with the aim of reform and restraint from reoffending; or it could have the character of a coercive measure to force a person to carry out a duty, such as obligatory prayer or fasting. Retribution also played a role in the selection of appropriate punishment for *ta'zīr*: it would be more severe if the accused was a repeat offender or if the offence was widespread and an example needed to be set. Additionally, an important factor in selecting the punishment was the personal situation of the offender. The crucial question in determining the type and severity of the penalty was a practical one: Was the chosen punishment suitable to prevent the individual culprit from repeating his sinful behaviour?¹⁵²

The *muḥtasib*'s jurisdiction also pertained to discretionary punishments on the strength of the ruler's *siyāsah* ("practical demands of governance"), a form of discipline that could be administered for any act threatening public order.¹⁵³ Like *ta'zīr*, the *muḥtasib* meted out *siyāsah*-based justice according to simple procedures without formal rules of evidence. Unlike *ta'zīr*, *siyāsah* was administered as a supplement to the Shari'ah in order to protect society from persons whose acts constituted a danger to law and order (*fitnah*). *Siyāsah* punishments thus served as putative measures for political expediency or the maintenance of public security. *Fiqh* writings on *siyāsah* deal extensively with non-*qāḍī* jurisdictions like *ḥisbah* that employ *siyāsah* procedurally and substantively, expressing concern that such tribunals are conducted in line with the Shari'ah. Some scholars called for the

¹⁵² Peters, pp. 19, 31.

¹⁵³ Ibn Qayyim al-Jawziyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn* (al-Qāhirah: Maktabat al-Tijārīyat al-Kubrā, 1955), vol. 4, p. 372; Frank E. Vogel, "Siyāsa shar'iyya," *EF* (Leiden: Brill, 1997), vol. 9, pp. 695-6.

harmonization of *fiqh* and *siyāṣah*, while others granted executive officials powers under the Shari'ah to transgress particular procedures in their adjudications, as long as categorical rules were not broken.¹⁵⁴ During the Ottoman Empire, *siyāṣah* became a relatively ordered system of statute law called *qānūn*, which was applied alongside *fiqh* by *muḥtasibs* as well as *qāḍīs*. *Qānūn* often merely asserted the provisions of religious law as a matter of establishing the rulers legitimacy, but it also added to it, especially in areas having to do with public order. In fact, *siyaset*, the penalties associated with *qānūn* in Ottoman times, became synonymous with capital or severe corporal punishment.¹⁵⁵

1.3.4. Discretionary Punishment

The range of discretionary punishments that the *muḥtasib* could impose as *ta'zīr* was almost unlimited. The most common forms included public rebuke (*tawbīkh*), exposure to public scorn (*tashhīr*, *tajrīs*), flogging (*jald*), banishment (*nafy*, *taghrīb*), and imprisonment (*ḥabs*) until repentance.¹⁵⁶ Over the course of history jurists tried to impose restrictions on the discretionary powers of *muḥtasibs*, with some becoming generally accepted: penalties could not exceed or match those of *ḥudūd* and *qisās*, with the exception of the Malikīs, and no corporal punishments were allowed aside from flogging, again excepting the Malikī *madhhab*, which allowed amputation of the right hand in the case of forgery.¹⁵⁷ As such, limits were set for

¹⁵⁴ E.g., Ibn Taymiyah, *al-Siyāṣah al-Shar'īyah*, pp. 98-100; contrast with al-Māwardī, *al-Aḥkām al-Sulṭānīyah*, pp. 219-21.

¹⁵⁵ Y. Linant de Bellefonds, "Qānūn: Law," *EF²* (Brill Online, 2012), <http://referenceworks.brillonline.com>, accessed 22/5/2012; Halil İnalcik, "Qānūn: Financial and Public Administration," *ibid.*; Heyd, p. 264.

¹⁵⁶ For an overview of the subject, see Peters, pp. 33-35, 65-67.

¹⁵⁷ Mūṣīfī, *al-Ikhtiyār li-Ta'ālī al-Mukhtār*, vol. 4, p. 92. Under Islamic law, the type of theft that involves *ḥadd* punishment (*sariqah*) is very restrictive in scope and more akin to burglary, and does not include forgery; however, in the Malikī *madhhab*, if the value of the documents represented is

the maximum number of lashes that could be administered on the strength of *ta'zīr*.¹⁵⁸ According to Abū Ḥanīfah, the maximum number is thirty-nine—one less than the smallest number allotted for a *ḥadd* crime (i.e. the penalty for drinking alcohol by a slave); but according to Abū Yūsuf this is seventy-nine or seventy-five, since a person's normal state is that of freedom, not slavery. According to the Shāfi'ī *madhhab*, the punishment for drinking alcohol is forty lashes, therefore some Shāfi'ī scholars argue the maximum is thirty-nine for free persons and nineteen for slaves. Other Shāfi'īs and some Ḥanbalīs claim that the maximum number is ten, based on the *ḥadīth*: "No one is to be flogged with more than ten lashes, except in cases of *ḥadd* crimes."¹⁵⁹ Finally, some Ḥanbalīs and Shāfi'īs argue that the maximum number depends on the kind of offence: if it is an offence related to a *ḥadd* crime, the number of lashes must not exceed the number designated to the fixed penalty; for example, not more than seventy-nine for drinking alcohol or defamation.

The question of whether or not capital punishment is a lawful *ta'zīr* penalty was another controversial matter amongst jurists. After serious debate, all schools of law ended up allowing it for repeat offenders and other serious crimes such as manslaughter, spying for the enemy, spreading heresies, homosexual acts, and sorcery.¹⁶⁰ Although theoretically these penalties fell within the scope of the *muḥtasib's* powers if apprehended in *flagrante delicto*, in practice disciplinary measures seem most often to have lacked obvious physical violence. Since personal honour was a precious commodity, with higher stakes for the higher social classes,

more than the *niṣāb* (i.e. the minimum stipulated value), a case of forgery can be considered analogous to *sariqah*.

¹⁵⁸ For an overview of the subject, see al-Māwardī, *al-Aḥkām al-Sulṭānīyah*, Ch. 19, pt. 6; see also, Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, pp. 61-4.

¹⁵⁹ Ibn Ḥajar al-ʿAsqalānī, *Bulūgh al-Marām min Adillat al-Aḥkām* (al-Qāhirah: Dār al-Fikr, n.d.), no. 1072.

¹⁶⁰ Peters, p. 67.

publically tarnishing their honour was an effective method of inflicting punishment.¹⁶¹ Moreover, unintended death or bodily injury resulting from a *ta'zīr* punishment by the *muḥtasib* entitled the victim's kin to demand pecuniary damages from the sovereign.¹⁶²

1.4. Practice of *Ḥisbah*

1.4.1. *Fiqh* of *Ḥisbah* in Historical Context

While *fiqh* maintained undisputed authority over ritual and family law, and clear *siyāsah* jurisdiction existed over governmental organization and administration, other areas were rife with conflict; for example, hybrid jurisdictions like *ḥisbah*, which inspired a genre of *fiqh* writings on *siyāsah*. While the *muḥtasib* employed *siyāsah* procedurally and substantively, 'ulamā' were concerned that *ḥisbah* was applied in agreement with the Shari'ah, including the regulation of discretionary punishments.¹⁶³ As a result, two general categories of writings on *ḥisbah* emerged. The first group comprised of more theoretical treatments of enjoining virtue and forbidding vice, and obligations arising from it for the *muḥtasib*. These works of *fiqh* dealt with the ethical and legal aspects of *ḥisbah*, although administrative details were sometimes addressed. The second comprised of more practical guides concerning the details of supervision exercised by the *muḥtasib*. These works were primarily administrative manuals specifically intended for *muḥtasibs*, although written in conformity with *fiqh*. Principal examples of the first group include *al-*

¹⁶¹ E.g. Radhika Singa, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 1998), pp. 11-12.

¹⁶² Abū Ishāq Ibrāhīm al-Shīrāzī, *al-Muḥadhdhab fī Fiqh al-Imām al-Shāfi'ī* (Bayrūt: Dār al-Kutub al-'Ilmiyah, 1995), vol. 5, pp. 462-64; Ibn Naqīb Miṣrī, *Umdat al-Sālik*, transl. and ed. N. H. M. Keller, *The Reliance of the Traveller* (Evanston, IL: Sunna Books, 1991), p. 619.

¹⁶³ E.g. Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, p. 16; Ibn Khaldūn, *al-Muqaddimah* (Bayrūt: al-Maktabah al-'Aṣriyah, 1995), p. 206.

Aḥkām al-Sulṭānīyah by al-Māwardī, *Iḥyā' 'Ulūm al-Dīn* by al-Ghazālī and *al-Ḥisbah fī al-Islām* by Ibn Taymīyah, while *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah* by al-Shayzarī is a seminal example from the second group. Further analysis of their contents will provide insight into works that proved influential upon the pre-modern conception of *ḥisbah*, as well as upon the CPVPV; for example, they demonstrate variation of emphasis upon the functions of market inspection and moral censorship, as well as concerning the role of the individual in relation to the *muḥtasib*. Moreover, examining the historical context within which these works were composed will help reveal how they responded to contemporary political, social and economic realities.

1.4.1.1. Al-Māwardī

As previously mentioned, the term *ḥisbah* first appeared in the first phase of the 'Abbāsīd period during the reign of Caliph al-Manṣūr (r. 136/754-158/775). Then, in the reign of Caliph al-Mahdī (r. 159/775-169/785), a system of bureaus was introduced to the jurisdiction of the markets by appointment of the caliph. Between the 3rd/7th and 6th/10th centuries, the general literary examination of *ḥisbah* emerged, especially *al-Aḥkām al-Sulṭānīyah* by al-Māwardī (d. 450/1058). Al-Māwardī was a Shāfi'ī *faqīh*, who lived during the Būyid occupation of Baghdād, when the 'Abbāsīd Caliphate became a purely titular institution representing the headship of Sunnī Islam. The Caliphate acted as a legitimating authority for the numerous rulers who exercised effective sovereignty, both in the provinces and in the capital. Except for a brief revival at the end of the period, the caliphs themselves were at the mercy of

these rulers who appointed and deposed them at will.¹⁶⁴ The Būyids, in fact, were a Shī'ite dynasty like the Idrīsids, Fāṭimids and Ḥamdānids, who also ruled over the 'Abbāsīd caliphs at this time. This has led scholars to refer to the period from the mid-6th/10th to mid-7th/11th century as the "Shī'ite century".¹⁶⁵ Al-Māwardī's work was composed within this broader historical context at the request of two 'Abbāsīd caliphs known for their pro-Sunnī policy, who employed him for the purpose of restoring Sunnism.

Al-Aḥkām al-Sulṭānīyah thus starts from the premise that authority was delegated by God to the *imām*, and that he alone could delegate this to others—here al-Māwardī is primarily concerned to defend the theoretical validity of the caliph's authority against its usurpation by others.¹⁶⁶ The juridical tenor of his work is also clearly Sunnī, accounting for the composition of this manual propounding the doctrines of each of the four orthodox schools. In his chapter specifically devoted to the *muḥtasib*, al-Māwardī reinforces the state-sanctioned nature of the duty as part of his effort to shore-up the authority of the 'Abbāsīd state.¹⁶⁷ He sets out nine differences between the individual and official duties; for example, *ḥisbah* is to be considered an individual duty for the *muḥtasib*, but a collective one for others, and he alone can be paid a salary from the public treasury.¹⁶⁸ The overall effect is to lower the profile of the duty for the individual Muslim, which is hardly accidental within a handbook written to instruct the political authorities.

¹⁶⁴ Bernard Lewis, "'Abbāsids (Banu 'l-'Abbās)," *EF*, vol. 1, p. 15.

¹⁶⁵ Louis Massignon, "Mutannabī devant le siècle ismaélien de l'Islam," *Ecrits Mémorables* (Paris: Robert-Laffont, 2009), vol. 2, pp. 646-7.

¹⁶⁶ Al-Māwardī, *al-Aḥkām al-Sulṭānīyah wa-al-Wilāyāt al-Dīnīyah*, Ch. 1.

¹⁶⁷ *Ibid.*, Ch. 20.

¹⁶⁸ *Ibid.*, Ch. 20, sect. 1.

As such, legal as opposed to ethical aspects of enjoining virtue and forbidding vice form the basis of al-Māwardī's chapter on *ḥisbah*, which are elaborated to define the duties of the official *muḥtasib*. In order to prevent institutional encroachment by this hybrid jurisdiction, al-Māwardī carefully delimits the *muḥtasib*'s duties in relation to those of the *qāḍī*. The *muḥtasib* shared with the *qāḍī* the function of hearing disputes in three specific domains: foul play with respect to weights and measures; fraud in the sale and pricing of merchandise; and refusal to pay back debts when the debtor was solvent.¹⁶⁹ Within these categories, judgement is restricted to cases apprehended in *flagrante delicto*, and al-Māwardī clearly prohibits the *muḥtasib* from spying. The duties of market inspection were integrated with the additional tasks of moral censorship, which required the *muḥtasib* to enjoin such obligations as congregational and individual prayers, as well as forbid infractions like improper rites of worship, unqualified teaching of *fiqh*, fraternization between the sexes, consumption of alcohol, and performance of musical instruments. Enforcing standards of public safety formed the final main aspect of the *muḥtasib*'s duties, which al-Māwardī extended to such matters as the availability of drinking water, maintenance of city walls and roads, labour rights, and the prevention of animal cruelty. Moreover, al-Māwardī emphasizes the limitation of discretionary punishments to the strength of *taʿzīr* as opposed to *siyāsah*, and drew special attention to the maximum number of lashes that may be administered according to the four Sunnī *madhhabs*.

¹⁶⁹ Ibid., Ch. 20, sect. 2.

1.4.1.2. *Al-Ghazālī*

Unlike al-Māwardī's emphasis upon the legal factors pertaining to *ḥisbah* as an official function of the caliph's authority, al-Ghazālī's account of *ḥisbah* focuses more upon ethical aspects and legal factors pertaining to enjoining virtue and forbidding vice as an individual duty; indeed, al-Ghazālī does not address *ḥisbah* as a function of the *muḥtasib*'s office, but extends the duty to everyone, not just state agents and scholars. As such, al-Ghazālī rethought the subject in a way that was to prove immensely influential both within and far beyond the boundaries of his own Shāfiʿī *madhhab*, with his approach often drawn from (at least selectively). His account takes up the nineteenth book of *Iḥyāʾ ʿUlūm al-Dīn*, which is highly organized and written in a manner that elaborates on earlier themes; for example, his survey of commonly encountered wrongs. Equally striking is the freedom with which al-Ghazālī brings psychological insights to bear in doctrinal questions, as in his remarks on the subjectivity of expectations, the psychology of ignorance, and the lure of the ego trip.¹⁷⁰ Al-Ghazālī also deploys a very real sense of what can and cannot be determined by laying down rules in advance. He has a vivid awareness that life is full of problematic cases and grey areas, and that individuals have to make judgments about them as best they can.

A major aspect of al-Ghazālī's approach is the impressive architecture of his account. He operates with two distinct structural levels: the four basic components (*arkān*) of *ḥisbah* and, within each, a set of subordinate elements—conditions (*shurūṭ*), levels or qualities (*marātib*), as the case may be.¹⁷¹ This type of schema in which a topic is broken down into a small number of components—usually between

¹⁷⁰ Al-Ghazālī, *Iḥyāʾ ʿUlūm al-Dīn*, Bk. 19, p. 450.

¹⁷¹ Ibid., vol. 2, bk. 19, pp. 285-307.

three and five—is also common in his handbook of Shāfiʿī *fiqh*.¹⁷² The second chapter of *Iḥyāʾ* Book 19, which treats the basic components and conditions of the duty, in fact, represents the analytical core his work, functioning as an efficacy-harm matrix. There are five levels of the duty: (1) informing, (2) polite counselling, (3) harsh language, (4) physical action against inanimate objects, and (5) the threat or use of violence against the person.¹⁷³ With regard to the first four, there is no question of the need for the ruler's permission; thus, we know that harsh language may be used against the ruler himself. The fifth level is problematic: it may require gathering helpers, and this can lead to fighting and armed conflict, and so to general disorder (*fitnah*). But in general, according to al-Ghazālī, the early Muslim performance of the duty against rulers demonstrates their consensus that no such permission was needed for them, which he supports with reference to three historical anecdotes.¹⁷⁴

Al-Ghazālī's more egalitarian approach to *ḥisbah* has been described by some historians as marked by a certain flirtation with radicalism, as the duty is not restricted to the official *muḥtasib* and 'ulamā', but extended to all.¹⁷⁵ More remarkably, he is prepared to allow individual subjects recourse to weapons where necessary, and even to sanction the formation of armed bands to implement the duty without the permission of the ruler.¹⁷⁶ And while there is no question of approving rebellion (Muslims are counselled to hesitate before replacing a corrupt ruler who pays no heed to *ḥisbah*, and focus on reforming him first), al-Ghazālī is not inclined

¹⁷² Al-Ghazālī, *al-Waḥīz fī Fiqh al-Imām al-Shāfiʿī* (Bayrūt: Dār al-Arqām, 1997).

¹⁷³ Al-Ghazālī, *Iḥyāʾ 'Ulūm al-Dīn*, vol. 2, bk. 19, p. 289.3.

¹⁷⁴ Ibid., p. 289.18.

¹⁷⁵ Wilfred Madelung, "Amr be Ma'rūf," *Encyclopaedia Iranica* (London: Routledge Kegan & Paul, 1985), vol. 1, p. 994; Ann K. S. Lambton, *State and Government in Medieval Islam* (New York: Oxford University Press, 1981), p. 312.

¹⁷⁶ Al-Ghazālī, *Iḥyāʾ 'Ulūm al-Dīn*, vol. 2, bk. 19, p. 304.33.

toward accommodation: he displays great enthusiasm for men who risk their lives by rebuking unjust rulers in harsh and uncompromising terms.¹⁷⁷ Moreover, he fails to explain why he applies the term *ḥisbah* to the promotion of virtue and prevention of vice, and the modern reader tends to assume an analogy between the duty of the individual and the obligation of the officially appointed *muḥtasib*.¹⁷⁸

In this al-Ghazālī may have owed something to his teacher al-Juwaynī, or he may have been reacting to Ḥanafī chauvinism of the Seljūq rulers of his day. In espousing such views, he may have been pushing against the limits of Sunnī political attitudes to established authority.¹⁷⁹ Al-Ghazālī himself says he was afraid that he was going to hell, and he has much criticism for the corruption of the '*ulamā'*' of his time.¹⁸⁰ So, it may well be that the whole organized legal profession in which he was involved was so corrupt that the only way of leading an upright life, as he conceived it, was to leave the profession completely.¹⁸¹ *Iḥyā' 'Ulūm al-Dīn* was, in fact, composed during al-Ghazālī's period of seclusion as a Ṣūfī.¹⁸² Although al-Ghazālī's career was spent during the halcyon days of Seljūq power, signs of civil strife had begun to mark social life, and the first crusade had appeared in Syria, indicating a decline in effective leadership.¹⁸³ After the death of Sulṭān Malik Shāh in 484/1092, the Seljūq Empire dissolved into smaller warring states, as Malik Shāh's brother and

¹⁷⁷ Ibid. Al-Ghazālī forgets the need to respect the majesty of rulers in this chapter on rebuking them.

¹⁷⁸ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, p. 447.

¹⁷⁹ C. E. Bosworth, "Saldjūkids," *EF*, vol. 8, p. 936.

¹⁸⁰ E.g., al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 1, bk. 1;

¹⁸¹ On al-Ghazālī's departure from Baghdad and the legal profession, see R. J. McCarthy, *Freedom and Fulfillment: An Annotated Translation of al-Ghazālī's al-Munqidh min al-Ḍalāl* (Boston: Twayne, 1980). See also, Leonard Binder, "al-Ghazālī's Theory of Islamic Government," *MW* 65 (1955): 229-41. Binder argues that al-Ghazālī had an axe to grind with Sunnī '*ulamā'*' in his attempt to reform political theory in terms acceptable to traditional thought, emphasizing the need to resist the blandishments of the sulṭān and preserve scholarly independence.

¹⁸² W. Montgomery Watt, "al-Ghazālī, Abū Ḥāmid Muḥammad b. Muḥammad al-Ṭūsī," *EF*, vol. 2, p. 1038.

¹⁸³ D. B. MacDonald, "The Life of al-Ghazzālī," *JAOS* 20 (1899): 71-132; MacDonald suggests that contemporary political events made al-Ghazālī apprehensive.

four sons quarrelled over the apportioning of the Empire between themselves. The disunity in the Seljūq lands contributed to the success of the first crusade, with the capture of Jerusalem in 492/1099 and the massacre of its inhabitants. Crowds of exiles sought refuge in Baghdād, and despite cries for war against the Franks, neither the sulṭān nor the caliph were interested in sending an army west.¹⁸⁴ Moreover, the effects of sectarian-social rivalries between the Sunnī theological and legal schools, and the Shī'ah and Karāmīyah, were visible in the social and religious turmoil in many of the towns.¹⁸⁵

1.4.1.3. Al-Shayzarī

The meagre historical accounts about early *muḥtasibs* stands in contrast to the Fāṭimid period (296-554/909-1160), when much greater attention in the office commenced. During this time, the *muḥtasib* achieved a position in society which his predecessors did not, becoming a grand dignitary and possessing great influence. This process of aggrandizement continued under the Ayyūbid (557-647/1161-1250) and Mamlūk (647-922/1250-1517) dynasties, when the Egyptian *Muḥtasib* was the fifth ranked of all judicial posts, coming immediately below the head of the Public Treasury, or even above him if he was learned. *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah* is an influential manual on *ḥisbah* composed during the Ayyūbid period, which served as the prototype for numerous subsequent treatises on the subject.¹⁸⁶ Its author, the Shāfi'ī scholar 'Abd al-Raḥmān ibn Nāṣir al-Shayzarī (d. 589/1193), was

¹⁸⁴ M. G. S. Hodgson, "The Expansion of Islam in the Middle Periods," *The Venture of Islam* (Chicago: University of Chicago Press, 1974), vol. 2, pp. 42-61.

¹⁸⁵ Wilfred Madelung, *Religious Trends in Early Islamic Iran* (Albany: Persian Heritage Foundation, 1988), pp. 22-38.

¹⁸⁶ Al-Shayzarī, *Kitāb Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah; The Book of the Islamic Market Inspector*, transl. R. P. Buckley (New York: Oxford University Press, 1999).

a contemporary of Ṣalāḥ al-Dīn Yūsuf ibn Ayyūb (d. 589/1193), as another of his books, *al-Nahj al-Maslūk fī Siyāsat al-Mulūk*, contains a dedication to him from the author.¹⁸⁷ This, in addition to Ṣalāḥ al-Dīn's renown as a reformer, suggests that the *Nihāyah* may have been composed at the leader's request.¹⁸⁸

The *Nihāyah* is a treatise specifically for the *muḥtasib* and his deputies, and, while it is in agreement with Shāfi'ī *fiqh*, is of an administrative and not a strictly legal character. It divides the duties attached to the office of the *muḥtasib* into two broad categories: those concerned with the orderly and equitable running of the market, and those which have as their aim the maintenance of public morals and the correct execution of *'ibādāt* and *mu'āmalāt*. Given the *Nihāyah*'s chiefly practical nature, it is primarily focused on the technical details of the supervision that must be exercised over commercial dealings in the marketplace, particularly over the trades. Al-Shayzarī deals with a great number of trades and professions along with their most common deceitful practices, in order to enable the *muḥtasib* to monitor these and detect and remedy the swindles associated with them. Al-Shayzarī's emphasis upon subjects of direct relevance to commercial dealings contrasts with the accounts of al-Māwardī and al-Ghazālī, which place much more stress upon the moral and religious functions of *ḥisbah*, relatively speaking.

Despite historical sources only occasionally reporting incidents to which the *muḥtasib* actually attends to some of the more important functions of his office, of the *Nihāyah*'s significance there can be little doubt. Its constant injunctions against certain practices are evidence that they existed, and that the *muḥtasib* is constantly

¹⁸⁷ Al-Shayzarī, *al-Nahj al-Maslūk fī Siyāsat al-Mulūk* (Jerusalem: Jewish and National University Library, Yahuda Collection, n.d.), microfiche, 457.

¹⁸⁸ The CPVPV accepts this as a fact in its official history of *ḥisbah*. See, *al-Ri'āṣah al-'Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā – A 'māluhā*, p. 91.

enjoined to attend to these affairs indicates that at least at times he, and/or his deputies, probably did so. Historical sources commonly portray Ṣalāḥ al-Dīn as a reformer who, after seizing power in Egypt, fought to re-establish *ḥisbah* to the same level of importance that previously existed; he reconfirmed the earlier standards established through the "House of Measures" under the direction of the *muḥtasib*, in addition to encouraging scholarship on the subject of *ḥisbah* for the first time in the history of Egypt, such as by al-Shayzarī.¹⁸⁹

1.4.1.4. Ibn Taymīyah

Ibn Taymīyah's treatise, *al-Ḥisbah fī al-Islām*, bears much in common with the earlier works in this field discussed above, but distinguishes itself as part of a broader reform program aimed at religion, law and statecraft. Like al-Māwardī, Ibn Taymīyah elaborates upon enjoining virtue and forbidding vice to define duties incumbent upon the *muḥtasib*. Unlike al-Māwardī, his primary concern was not to bolster law and order in service of the caliphate, but rather to establish a just economic order that may serve as an authoritative basis for rule; for example, he declares his opposition to "pious tyranny," and advocates sanctions against a broader concept of *ribā*.¹⁹⁰ Like al-Ghazālī, Ibn Taymīyah addresses ethical aspects of *ḥisbah*; however, he does so in relation to the *muḥtasib*'s cultivation of *akhlāq* as a necessary component of his duties.¹⁹¹ Like al-Shayzarī, Ibn Taymīyah is also concerned with practical aspects of the *muḥtasib*'s jurisdiction, although certainly not to the same degree of focus. In general, Ibn Taymīyah reasserted the *muḥtasib*'s traditional duties of market inspection and moral censorship; for example, enjoining

¹⁸⁹ Ibid., pp. 91-2.

¹⁹⁰ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, p. 9.

¹⁹¹ Ibid., Ch. 7.

obligatory prayer, supervising the probity of religious officials, exacting truthful reports and the discharge of trusts, as well as proscribing commercial fraud, such as tampering with weights and measures. More particularly, for Ibn Taymīyah *ḥisbah* is an integral component of his theory of *siyāsah sharī'ah*, by which he advances a more expansive vision of *fiqh* and also a constitutional theory by which the excesses of rulers may be curtailed and Shari'ah legitimacy extended to actual states; in fact, he claims that the entire purpose of the Islamic state is to enjoin virtue and forbid vice.¹⁹² Moreover, Ibn Taymīyah's approach to *ḥisbah* is a milestone in the evolution of Ḥanbalī *fiqh*, which subsequently served as the basis for Wahhābī reform campaigns.

The posthumous founder of the Ḥanbalī *madhhab*, Aḥmad ibn Ḥanbal (d. 241/855) famously opposed 'Abbāsīd caliph al-Ma'mūn (d. 217/833) during the *Mihnah*, as one of the few scholars to refuse to admit that the Qur'ān was created rather than uncreated in defiance of the caliph.¹⁹³ It would be a mistake, however, to imagine that his ideas about the relationship between the state and forbidding wrong, especially regarding the recourse to violence, are necessarily in accord with later developments in the Ḥanbalī *madhhab*. With the passage of time, posterity was to transform Ibn Ḥanbal into the founder and leader of a well-defined and often aggressive community, in terms of enjoining to virtue and forbidding vice.¹⁹⁴ While early Ḥanbalism had formed in the metropolis of an empire, in the 4th/10th and 5th/11th centuries, by contrast, the Caliphate was a third-rate state whose powers

¹⁹² Ibid., pt. 1, pp. 22-23; see also, Ibn Taymīyah, *al-Siyāsah al-Sharī'ah*.

¹⁹³ M. Hinds, "Mihnah," *EF*, vol. 7, p. 2.

¹⁹⁴ Ibid., p. 116; see also, Ignaz Goldziher, "Review: Aḥmed ibn Ḥanbal and the Mihnah," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 52 (1898): 158, where this development of aggressive Ḥanbalism was already noted caustically by Goldziher, who spoke of an evolution from an *ecclesia pressa* to an *ecclesia militans*, with a penchant for "fanatical terrorism."

were extensively, though unevenly usurped by military regimes. A certain bond was thus established between the Ḥanbalīs and the ‘Abbāsīd Caliph in order to face local Shī‘ites and alien military rulers.¹⁹⁵ By the 6th/12th century, Ḥanbalism had undergone a significant evolution, bringing it out of the sectarian ghetto and into mainstream Muslim life. In part, this was the result of increased size, power and influence that the Ḥanbalī community had come to enjoy in Baghdād, but also a matter of concessions on their part.¹⁹⁶

In the first centuries of Mamlūk rule (658/1260-922/1516), conditions between the ruling authorities and the Ḥanbalī community appeared favourable. Although they did not generate anything resembling the intimacy between the Ḥanbalīs and the state in late ‘Abbāsīd Baghdād, they were not deeply alienated from it either. At first, the celebrated scholar Ibn Taymīyah (d. 728/1328) seems out of place in this increasingly integrated setting, with his notorious disposition to rock the boat. As Donald Little puts it: "It is Ibn Taymīyah's distinction that he opposed by word and deed almost every aspect of religion practiced by the Mamlūk Empire."¹⁹⁷ According to Michael Cook, however, overall Ibn Taymīyah's confrontations with the authorities were a prominent, but in a sense episodic, feature of his career. Underlying them was a structural disposition to cooperate with the state, and it is cooperation rather than confrontation that is the keynote of his political thought;¹⁹⁸

¹⁹⁵ Ibid., p. 122. Glassen claims that this strengthened bond simultaneously widened the gap between the Ḥanbalī elite and masses; see E. Glassen, *Der mittlere Weg: Studien zur Religionspolitik und Religiosität der späteren Abbasiden-Zeit* (Wiesbaden: Steiner, 1981), pp. 61, 113.

¹⁹⁶ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 140-1. Cook argues that Abū al-Faraj ibn al-Jawzī's (d. 597/1201) work represents the culmination of this trend of conciliation between Ḥanbalīs and the ruling authorities; e.g., Abū al-Faraj ibn al-Jawzī, *al-Shifā' fī Mawā'iz al-Mulūk wa-al-Khulafā'*, ed., F. A. Aḥmad (Alexandria, 1978, n.p.), which is full of panegyrics for monarchs and dubious public figures.

¹⁹⁷ D. P. Little, "Religion under the Mamluks," *MW* 73 (1983): 180.

¹⁹⁸ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, p. 150.

for example, he makes much of the duty of *ḥisbah*, which he considers the purpose of all state power to carry out.¹⁹⁹ He sees it as a duty to be performed first and foremost—though not exclusively—by what the Qurʾān calls "those in authority" (*ulū al-amr*). He further specifies this category as the scholars, political and military rulers, and the elders of every community.²⁰⁰ The reconstruction of the state, along with the formulation of creed, and the rehabilitation of *ijtihād*, were indeed part of what can be defined as Ibn Taymīyah's program of "conservative reformism."²⁰¹ He considered religion and the state to be indissolubly linked—without the coercive power of the state, religion is in danger; and without the discipline of the revealed Law, the state becomes a tyrannical organization. Moreover, while recognizing the legitimacy of the Rāshidūn, Ibn Taymīyah never upheld the principle of the permanence of the caliphate, instead pointing out that the profession of faith (*shahādah*) requires obedience only to God and His Prophet.²⁰²

During Ibn Taymīyah's lifetime there was a high degree of internal stability within the Mamlūk Sultanate, in contrast with previous decades. For instance, during the reign of Baybars (r. 658-675/1260-1277) the Mamlūks achieved substantial military victories against the crusaders, and under al-Nāṣir Muḥammad (r. 692-693/1293-1294, 698-708/1299-1309, 708-741/1309-1341) Mamlūk power reached its apogee, with internal problems, such as corruption, being addressed by the sulṭān.²⁰³ Nevertheless, the Mamlūk Sulṭānate was an embattled power, threatened by Mongol Ilkhānids in the east, by the remains of the Frankish states on

¹⁹⁹ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, p. 23.

²⁰⁰ Ibid.

²⁰¹ Henri Laoust, "Ibn Taymiyya," *EF*, vol. 3, p. 951.

²⁰² Ibn Taymīyah, *al-Siyāsah al-Sharʿīyah*.

²⁰³ P. M. Holt, "Mamlūks," *EF* (Leiden: Brill, 1991), vol. 6, p. 321.

the Syro-Palestinian coast, and internal political instability.²⁰⁴ Toward the end of the Middle Ages, with the economic and social crises then existing, the Office of the *muhtasib* suffered a general decline in esteem.²⁰⁵ Under the Mamlūks it was often, like other offices, obtained by payment, with the purchaser recouping himself from merchants by means of illegal taxes.²⁰⁶ It is also clear, however, that the duties of the *muhtasib* increased in this period compared to past ages, and many of its functions appeared in written form.²⁰⁷ The reign of Baybars in particular exerted a great influence upon the development of *ḥisbah*, being hailed by reports of security and social tranquility, and judgement executed upon many vices; the prohibition of alcohol and prostitution, and the seclusion of women until marriage are especially prominent in historical sources.²⁰⁸

1.4.2. Substantive Law of *Ḥisbah* in the Ottoman Empire

In this section, I will briefly examine how *ḥisbah* was legally formulated and applied in the Ottoman Empire. Despite a great deal of regional and temporal variation, the Ottoman *muhtasib* provides a good example of *ḥisbah*'s practice in the pre-modern period for four main reasons. First of all, the Ottoman Empire is of great significance to Islamic history in general and Islamic legal history in particular. As the longest ruling dynasty in Islam, the Ottomans governed vast territories from Ḥijāz to Eastern Europe; central to their model of governance was engaging legists within the body politic, with the Sharī'ah and its servants playing an indispensable

²⁰⁴ Ibid.

²⁰⁵ Cahen and Talbi.

²⁰⁶ Buckley, "The Muhtasib," pp. 10-11.

²⁰⁷ E.g., Ibn al-Ukhuwwah, *Mu'ālim al-Qurbah fī Ahkām al-Ḥisbah*; Ibn Bassām, *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*; cf. 'Alī ibn Ḥasan al-Qarnī, *al-Ḥisbah fī al-Māḍī wa-al-Ḥāḍir bayna Ṭhabāt al-Ahdāf wa-al-Uslūb* (al-Rīyāḍ: Maktabat al-Rushd, 1415/1994), vol. 2, p. 557.

²⁰⁸ Ibid., vol. 2, p. 561.

role to political rule. Secondly, although Ottoman *muhtasibs* themselves did not keep records, documentary evidence on their activities in the form of *qānūnnāmes* and *fermans* promulgated during the sixteenth century is readily accessible;²⁰⁹ provisions pertaining to the *muhtasib* have been edited and translated into English, as well as relevant historiography based on accounts of European travellers and court records.²¹⁰ Thirdly, these documentary sources contain a systematic record of *siyāseh* legislation, or *qānūn*, pertaining the *muhtasib*, and thus more comprehensively define his jurisdiction than other periods, which lacked this more codified legal record. Finally, the Ottoman Empire immediately preceded the Saudi regime in the Arabian Peninsula and, therefore, provides a chronologically and geographically pertinent example of the practice of *hisbah*. Moreover, examination of the Ottoman *muhtasib* in relation to his Saudi counterpart casts interesting relief on the question of modernization: some historians consider the Ottoman Empire to have constituted an "early modern state" because of characteristics like more codified law and centralized government;²¹¹ however, it lacked fully modern

²⁰⁹ E.g. Tevkiî Abdürrahman, "Osmanlı Kanunnameleri," *MTM* (1331/1912-13): 49-112, 305-48, 497-544; Mehmed Ârif, "Kanunname-i Âl-ı Osman," *TOEM*, suppl. 3 (1330/1912); Abülaziz Bayındır, *İslam muhakeme huku: Osmanlı dervi uygulaması* (Istanbul: İslami İlimler Araştırma Vakfı, 1986); Ebussuud Efendi and Mehmet Ertuğrul Düzdâğ, *Şeyhülislam Ebussuud Efendi Fetvaları* (Istanbul: Enderun Kitabevi, 1983); Ahmet Mumcu, *Osman devletinde siyaseten katl* (Ankara: Ankara Üniversitesi, Hukuk Fakültesi, 1963).

²¹⁰ E.g. Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Oxford University Press, 1973); Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997); Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003); Eyal Ginio, "The Administration of Criminal Justice in Ottoman Selanik (Salonica) During the Eighteenth Century," *Turcica* 30 (1998): 185-210; Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003); Richard Repp, "Qānūn and Shari'a in the Ottoman Context," in *Islamic Law: Social and Historical Contexts*, A. Al-Azmeh, ed. (London: Routledge, 1988), pp. 124-46; H. A. R. Gibb and Harold Bowen, *Islamic Society and the West* (New York: Oxford University Press, 1950-57), vol. 1, pp. 1, 155-6, 168, 279, 287-8, 292, vol. 2, pp. 7-9, 12, 15, 34, 80, 116, 129.

²¹¹ Rifa'at 'Ali Abou-El-Haj, *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries* (Syracuse: Syracuse University Press, 2005).

techniques of surveillance and bureaucracy, and the trajectory of its *muḥtasib*'s development was terminated with the advent of the Turkish nation-state.

1.4.2.1. Enforcement

In the Ottoman Empire, *ḥisbah* was referred to as *iḥtisāb* in the registers and documents of state administration, and the *muḥtasib* was referred to as *mühtesib*, *iḥtisāb ağası* or *iḥtisāb emīni*. Like the *muḥtasib* throughout pre-modern Islamic history, he generally served as the superintendent and inspector of markets and members of trade guilds, as well as supervisor of public morality. Likewise, his office had both judicial and executive aspects, or both *fiqh*-based and *siyāṣah*-based facets respectively pertaining to the jurisdiction of *ḥisbah*; the *muḥtasib*'s wide discretionary powers overlapped those of the Shari'ah judge (*qāḍī* or *cadi*) and the chief of police (*shurṭah* or *subaşı*). Particular to the Ottoman Empire, the *muḥtasib*, along with the guilds and neighbourhood administration in general, became more closely tied to the *qāḍī*'s court; in fact, the *muḥtasib* was officially classified as a legal specialist immediately responsible to the *qāḍī*.²¹² As such, the *qāḍī* appears to have functioned as a counterbalance to the *muḥtasib*'s discretionary powers, sometimes even having performed *ḥisbah* in his place.²¹³

An official *muḥtasib* was appointed to every town, often by imperial edict. The *muḥtasib*'s office was farmed out annually (*iltizām*), the holder receiving official nomination after approval from the *qāḍī*, Grand Vizier or provincial governor, and payment of a certain sum. The *muḥtasib*'s right to farm taxes was a characteristic

²¹² Mantran.

²¹³ Galal H. el-Nahal, *The Judicial Administration of Ottoman Egypt in the Seventeenth Century* (Chicago: Bibliotheca Islamica, 1979), p. 26; Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), p. 69.

feature of the Ottoman office, with fines being affixed to *siyāṣah*-based discretionary punishments, and record of their collection centered upon violations of trade standards and commercial regulations. Also unlike previous *muḥtasibs*, the Ottoman office was usually not occupied by a member of the ‘*ulamāʾ*’, but probably from amongst the merchants.²¹⁴ In the event that a *muḥtasib* failed to check violations in the market, such as pricing regulations, or abused his powers of taxation, he was to be punished or dismissed by the *qāḍī*, as apparent from court records. The system of farming-out *ḥisbah* was abolished in Istanbul in 1826/1242 and replaced with an administration controlled by a government official called the *iḥtisāb nāẓiri*, which itself was abolished in 1854/1271 with powers over *ḥisbah* passing into the hands of the police or vanishing entirely.²¹⁵

1.4.2.2. Procedure

Like the *muḥtasib* throughout pre-modern history, in the Ottoman Empire his duties were principally defined according to procedure: he was responsible for carrying out discretionary punishments on offenders who were caught in *flagrante delicto*, who admitted their guilt, or whose offence was otherwise notorious, patent, or established by the *muḥtasib* himself while performing his duties; however, he could sentence an accused person on the strength of indirect or circumstantial evidence within these parameters. He had to report other crimes to the *qāḍī*, to whom he was subordinate. Spying or investigating crimes also lay outside his competence, and he could not hear legal evidence or administer oaths. Generally, the *muḥtasib* dealt with market violations and moral offences independently by way of immediate application of

²¹⁴ Heyd, p. 232.

²¹⁵ Mantran.

ta'zīr or *siyāṣah* penalties; in the Ottoman case, the former duties occupy a more prominent place within the official definition of his duties, as well as appearing more frequently in accounts of the *muḥtasib*'s practice. In cases involving more serious violations or requiring further investigation, he often performed the duty of *iḥdār*, that is, presenting the accused person before the *qāḍī* for trial. If convicted the culprits were often given the bastinado²¹⁶ on the spot and then handed over to the *muḥtasib* or his representative, who then administered any pertinent *siyāṣah*-based punishment. Sometimes the *muḥtasib* inspected the market along with the *qāḍī* and various other senior executive officials and soldiery; likewise offenders were punished on the spot, and condemned officials were brought to the Grand Vizier's mansion and punishment was applied to them there. Soldiers and recipients of a government salary (*dirlik*) were handed over to their officers for punishment by the *muḥtasib*.²¹⁷

1.4.2.3. Substantive Law

The substantive law of *ḥisbah* in the Ottoman Empire, or the laws that were actually applied by *muḥtasibs*, were principally drawn from *iḥtisāb qānūnnāmes*. By the early sixteenth century, separate *iḥtisāb qānūnnāmes* had been promulgated for the three capitals of the empire, Istanbul, Bursa and Edirne. Along with other *qānūnnāmes* in this field they were incorporated into the Criminal Code of Sülaymān the Magnificent (hereafter referred to as OCC) to form two chapters under the headings of "*Iḥtisāb*" and "The Tradesmen, and Their Offences."²¹⁸ These *qānūnnāmes* consist

²¹⁶ The bastinado was a wooden stick or cudgel used to administer blows, especially upon the soles of the feet or the buttocks.

²¹⁷ Heyd, pp. 231-2.

²¹⁸ Heyd, p. 230.

of a comprehensive codification of duties: the *muḥtasib* could find all the rules related to his responsibilities of supervision, inspection, punishment, and the levying of taxes. As such, elements of both *fiqh* and *siyāsah* legislation were integrated within this *qānūn*. It resulted from the interaction between Ḥanafī jurists and state officials, who aimed to transform legal discourse into a body of unambiguous and consistent legal rules, with enacted laws supplementing the Sharī‘ah to give law enforcement authorities like the *muḥtasib* specific instructions upon matters which *fiqh* is silent. Although the *qāḍī* is addressed by this *qānūn*, it was primarily intended for the *muḥtasib* and other executive officials for two reasons: it was just as much a tax code as a criminal code; and if penalties other than flogging are mentioned, the instructions are addressed to executive officials, as such punishments derived from *siyāsah*.

On one hand, the *iḥtisāb qānūnnāmes* included a list of the prices which had to be observed for the sale of commodities, manufactured goods or other articles, the permitted profit margins, and the penalties to be exacted from delinquent traders and artisans. On the other hand, they also gave the total amount or the percentage of taxes, dues, charges, and other contributions collected in the name of *iḥtisāb* and levied upon members of the trade guilds.²¹⁹ The most important offences against public interest included selling at a price higher than the market price fixed by the local *qāḍī* and *muḥtasib*, which would normally allow a profit margin of 10-12%; profiteering; using false or unregistered weights or measures; and producing or selling adulterated, spoiled or otherwise inferior wares. Other punishable offences included the failure of tailors to deliver garments by the promised date; labourers and

²¹⁹ OCC, art. 123; c.f. Heyd, p. 129.

construction workers demanding more than their fixed wages per day; slave dealers confiscating a slave's clothing before delivery to the purchaser; public bath attendants using the same toiletries for both non-Muslims and Muslims; and the abuse of animals, such as overloading horses, mules and donkeys.²²⁰ Moreover, other regulations pertained to lepers, false testimony, forgery of documents, neglect of obligatory prayer, failure to fast during Ramaḍān, and usury.²²¹ Though *qānūn* functioned to show the *muḥtasib* what the state wanted punished, acts not mentioned in the OCC could still be punished at his discretion.

1.4.2.4. Discretionary Punishment

As mentioned above, *ta'zīr* penalties were mainly reformatory, principally aimed at preventing the individual perpetrator from re-offending, and with strict limitations placed on the severity and form of capital and corporal punishments. *Siyāṣah* (Tk. *siyaset*) penalties, however, were basically punitive, principally aimed at deterrence and incapacitation, and with no limits to its severity other than those set by the ruler; indeed, the very term *siyāṣah* has become synonymous with capital or severe corporal punishment because of its application by the Ottoman *muḥtasib* and other executive officials to supplement penalties on the strength of *ta'zīr*.²²² While the infliction of physical pain undoubtedly comprised a large part of punishments administered by the *muḥtasib*, non-violent sanctions seem to have played at least an equal role, with two types being especially prominent. First of all, he employed public rebuke (*tawbīkh*) to prevent crimes and instruct errant individuals. This could vary according to the culprit's status and class; for example, according to OCC,

²²⁰ Ibid.

²²¹ OCC, arts. 95, 98, 101, 102, 103 respectively; c.f. Heyd, pp. 120-122.

²²² Heyd, pp. 264-75.

religious officials were not to be flogged, as the dishonour inflicted by public reprimand was sufficiently painful given their rank and the cost to their reputation.²²³ Secondly, fines comprised an integral part of Ottoman justice as administered by the *muhtasib*, despite the fact that it was a controversial punishment amongst jurists. One of the main functions of Ottoman *qānūn*, in fact, was to regulate this type of penalty.²²⁴ Offenders, who were usually punished with flogging on the strength of *ta'zīr* or beating, usually had to pay a fine as well, the amount of which depended upon the number of strokes inflicted.

Other common punishments included exposure to public scorn (*tashhīr, tajrīs*), which was often imposed along with other penalties by the *muhtasib*. In cases involving infractions of market regulations, an offender was sometimes led around with his defective goods hanging from his nose, which had been pierced for this purpose; or an offender's head was put through a very heavy wooden board to which a placard was affixed and upon which his faulty merchandise was placed. Other times such culprits had their ears nailed to the doorposts of their shops with their feet barely touching the ground and were left there for some time.²²⁵ Banishment (*nafy, taghrīb*) is also mentioned in several OCC articles as a punishment for those who unintentionally set fire to houses, for negligent guards who fail to prevent arson, gypsies, lepers, and irreligious or immoral people.²²⁶ Imprisonment (*habs*) is hardly mentioned in the OCC. Prison sentences did not usually specify a term, but stipulated that the prisoner would be released when it had become clear that he had

²²³ OCC art. 123; c.f. Heyd, p. 129.

²²⁴ Imber, *Ebu's-Su'ud*, pp. 224-5; Heyd, pp. 275-299.

²²⁵ Ignatius M. d'Ohsson, *Tableau général de l'empire othoman* (Paris: De l'imprimerie de monsieur Firman Didot, 1788-1824), vol. 2, p. 112.

²²⁶ OCC, arts. 92-6, 124; c.f. Heyd, pp. 119-20, 130.

sincerely repented of his crimes;²²⁷ however, if he was sentenced to penal servitude in the galleys, the average time was eight years. The latter sentences applied to a variety of crimes that the *muhtasib* may have encountered, included apostasy, homosexual intercourse, drunkenness, gambling, and swearing at a *mu'adhdhin*.²²⁸

Otherwise, flogging (*jald*) was the most common form of punishment by the *muhtasib* as well as beating with the bastinado. While Ḥanafī *fiqh* sets the maximum number of lashes at either thirty-nine or seventy-five lashes for flogging, beatings on the strength of *siyāṣah* could be administered additionally.²²⁹ Moreover, capital punishment was normally beyond the powers of the *muhtasib*: in the Ottoman Empire death sentences were intimately linked with the power of the sovereign and had to be approved by the *sulṭān* or a high ranking official.²³⁰ Technically, however, capital punishment was a possible form of *ta'zīr* or *siyāṣah* penalty, and there were instances of its application by *muhtasibs* during market inspection with other high ranking officials for offences caught in *flagrante delicto*. The *muhtasib*, in fact, was regularly accompanied by other officials like the Grand Vizier and *qāḍīs* on tours of the market, during which discretionary powers were administered on the spot.²³¹

1.5. Conclusion

As a preliminary study, this chapter served to identify the basic characteristics of *ḥisbah* in pre-modern history and provide a basis for comparison and contrast in order to determine what it has become in Saudi Arabia. Theoretical and practical

²²⁷ Heyd, pp. 301-303.

²²⁸ Mehmet Ipşirli, "XVI. Asrının ikinci yarısında kürek cezası ile ilgili hükümler," *Tarih Enstitüsü Dergisi* 12 (1982): 204-48.

²²⁹ Heyd, pp. 271-5; d'Ohsson, vol. 1, pp. 274-5, vol. 2, p. 112.

²³⁰ Peters, p. 101.

²³¹ Heyd, pp. 231-2.

dimensions of *ḥisbah* were thus uncovered from a survey of key primary and secondary sources, which identified constant and variable aspects of this jurisdiction in both moral and legal terms, as well as the enforcement of substantive law by *muḥtasibs*. As such, three main aspects appear to define *ḥisbah* in pre-modern history: its moral basis, embodied in the duty to enjoin virtue and forbid vice (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*); its legal basis, expressed through *fiqh* and *siyāsah* legislation; and its practical application, including the historical context of its conception and its actual enforcement by *muḥtasibs*.

The moral basis of *ḥisbah* in pre-modern history is revealed through analysis of the four elements of ethical relations surrounding the duty to enjoin virtue and forbid vice, which illustrates the specific kind of ethical subject that was intended through the cultivation of *akhlāq* and practice of *fiqh*. This was expressed through a common understanding of ethical substance (ontology), mode of subjection (deontology), ethical work (ascetics), and *telos* (teleology). More specifically, first of all, the ethical substance, or those aspects of the self that pertained to the domain of ethical judgement, was considered to be the "heart" (*qalb*) and "soul" (*nafs*). Reflection on these and the desire for their transformation was of central concern in *akhlāq* literature, in which Muslim scholars referred to psychological illnesses as "diseases of the heart" or "soul ailments" that should be managed first before attending to physical illnesses. Within these general parameters, the exact form, function, processes, dysfunction, and treatment of the heart and soul were subject to variation amongst scholars. Principal examples of this scholarship include al-Ghazālī's *Iḥyā' 'Ulūm al-Dīn*, and Ibn Taymīyah's *Amrāḍ and Qulūb*.

Secondly, in terms of the mode of subjection, or how people are called upon to recognize their moral obligations, the pre-modern Islamic tradition holds that an act is morally valorized for a Muslim to the extent that it is produced out of respect for God's will as revealed through the Shari'ah. Generally, this is conceived as a result of faith (*īmān*) and functions as a conscience, being the mutual corollary of the external practice of *islām*. More particularly, the decisive aspect of faith in this regard is a sense of modesty or shame (*ḥayā'*) through which a believer's heart acts as a guide to honourable conduct. Its importance is commonly acknowledged as an intellectual consciousness of the constant desire for, and pursuit of, the "care of the self"; however, varying degrees of attention are paid to *ḥayā'* as an individual virtue and component of broader reform. Evidence for this is found especially in Ḥanbalī and Shāfi'ī scholarship, such as discussions of faith by Ibn Taymīyah, Ibn Qayyim al-Jawzīyah, Ibn Rajab, al-Ghazālī, and Ibn Ḥajar.

Thirdly, in terms of the ethical work, the pre-modern Islamic tradition of *akhlaq* prescribes moderate ascetic practices regulated by the principle of mutual self-discipline expressed through the duty to enjoin virtue and forbid vice. The performance of this duty causes shame (*'ayb, khizy*) and cultivates modesty (*ḥayā'*) through embodying the role of a "watcher" or "warner". As such, an awareness of the constant desire for, and pursuit of, the "care of the self" is refined, achieved principally through acts of worship (*'ibādāt*) as constituted by the Five Pillars. Although the scope of enjoining virtue and forbidding vice embraces the entire Shari'ah, including civil transactions (*mu'āmalāt*), *'ibādāt* forms the moral basis of the law, being primarily concerned with the human subject and its ethical formation as "religion" (*dīn*). Enjoining virtue and forbidding vice may take the form of moral

exhortation, counsel, instruction, admonition, or more particularly by legal intervention. In special circumstances, like the absence of public authority, it may be applied by force if possible, or even by revolt against invalid public authority according to a minority of scholars. Within these broad parameters considerable theoretical variation existed in pre-modern *fiqh*, which historians have examined according to three main issues: who may and who must fulfill this duty; with what means may this duty be fulfilled; and the extent to which violence is permissible.

Finally, the *telos* or teleology of pre-modern Islamic ethics can be considered *īmān*, in the sense of true belief, or a state of total surrender to God as both an inner action and outer adherence to the message of the Prophet Muḥammad. In other words, *īmān* includes all the acts of the heart and beliefs of a person, as well as encompassing all the outward acts of submission to God that are considered exclusively part of *islām*. Evidence for this principal objective is found in the Qur'ān and Sunnah, as well as the tradition of commentary thereupon, and its theological elaboration is found throughout scholarship on the "fundamentals of religion" (*usūl al-dīn*). Amongst the schools of *fiqh* and *kalām*, the Ḥanbalīs, Shāfi'īs and Ash'arīs have made a careful distinction between the interrelated states of *islām* and *īmān*, with Ḥanbalīs especially having required the fulfillment of exterior acts of submission as a prerequisite for true belief. Ibn Taymīyah's definition of *īmān* is a strict example of this trend, which later influenced Muḥammad ibn 'Abd al-Wahhāb's teachings, the core of which was comprised of the concept of *tawḥīd* ("monotheism") and its opposite (*kufī*).

Examination of *ḥisbah*'s moral basis in pre-modern history draws attention to commonalities with its expression in Saudi Arabia, in addition to several issues that

bear importance to its specific development there. Namely, the variation of emphasis that existed historically upon particular virtues appealed to and vices condemned; for example, *ḥayā'* was understood by some as a key element of moral psychology, but was praised by others as supreme virtue. The degree of recognition for individual versus collective agency differed concerning enjoining virtue and forbidding vice: ethical autonomy was conceived as operating according to varying degrees of independence within the bounds of the *Sharī'ah*. Also, the exact configuration of theistic teleology affected the austerity of ethics and its emphasis upon acts of worship.

The moral basis of *ḥisbah* in pre-modern history existed alongside its legal basis in *fiqh*, through which obligations arising from this virtue were articulated for the *muḥtasib*. Administrative and procedural aspects of *ḥisbah* as a state office were also elaborated upon this basis, including discretionary punishments. The *muḥtasib's* jurisdiction, however, also included *siyāsah* legislation (*qānūn*): as both a judicial and executive officer, he adjudicated and enforced substantive law that included regulations prescribed by both jurists and rulers. Despite great historical variation in these features, it is possible to distil general characteristics of the pre-modern law of *ḥisbah* from a survey of historiography and pertinent primary sources. The *muḥtasib's* duties can thus be distinguished by his method of approach: he concerned himself with infractions based on obvious and incontestable facts, such as when a perpetrator was caught in *flagrante delicto*, over which he possessed extensive powers to intervene of his own accord and apply a wide variety of penalties, ranging from public rebuke to corporal punishment. Within this scope, his duties were generally associated with two main categories: market inspection, which included

the prohibition of fraud in commercial transactions, supervision of public safety standards, and regulation of trades and professions; as well as moral censorship, which included enforcing public morality and religious obligations like sex segregation, performance of the five daily prayers, and so forth. Moreover, intrusive aspects of the *muḥtasib*'s powers were mitigated by several factors, including the prohibition against spying, limitations of pre-modern government, informality of legal proceedings, and coherence between law and society through a shared morality.

Examination of *ḥisbah*'s legal basis in pre-modern history draws attention to similar aspects of its expression in Saudi Arabia, in addition to several issues relevant to its specific development there. More precisely, the degree to which the *muḥtasib* may legitimately prosecute offences on his own accord, or regulations concerning his level of coercive and disciplinary powers; the aims, type and severity of authorized discretionary punishments in relation to both *fiqh* and *siyāsah* legislation; and the exact categorization of the *muḥtasib*'s duties, especially concerning his two primary roles as moral censor and market inspector, and the relatively greater historical emphasis upon the latter.

In terms of the practical basis of *ḥisbah* in pre-modern history, on one hand, it is possible to discern variable elements in the law of *ḥisbah* more clearly in relation to different social, political and economic factors that contextualized *fiqh* on the subject. Evidence for this lies in the circumstances that surrounded the works of al-Ghazālī, al-Māwardī, Ibn Taymīyah, and al-Shayzarī as determined by historiography. This helps illustrate the interaction of legal and extra-legal factors in the conception of *ḥisbah*, showing how this jurisdiction changed in response to different problems affecting public morality, as well as the relationship between it

and different regimes. On the other hand, it is possible to discern aspects convergence and divergence between the *fiqh* of *ḥisbah* and its historical application through examination of substantive laws, i.e. both *fiqh* and *siyāsah* legislation (*qānūn*), and their application in a specific period. Evidence for this lies in the laws of *ḥisbah* contained in *iḥtisāb qānūnnameleri*, the Ottoman Criminal Code, as well as accounts of its execution by Ottoman *muḥtasibs* in the sixteenth and seventeenth centuries from historical chronicles and court records. This helps provide a clearer account of the concrete moral acts of the *muḥtasib* as a historical law enforcement agent, as well as its relationship between the *fiqh* of *ḥisbah* and the actual legislation of rulers.

Examination of *ḥisbah*'s practical basis in pre-modern history highlights a pattern of variability that marked its earlier conception and application, which yields insightful to its development in Saudi Arabia. Several issues stand out as particularly relevant in this respect, namely, the conflict and cooperation between scholars and rulers to exert influence over contemporary moral and legal problems; the crucial role of *siyāsah sharʿīyah* in forging compromise between these parties; and the importance of extra-legal factors surrounding *ḥisbah*'s application, especially in relation to changes in state and society. The latter issue in particular calls to mind the ultimate scope of the *muḥtasib*'s coercive and disciplinary powers as an office of state, as well as changes resulting from the processes of modernization. Foucaultian notions of autonomous rationality, inconspicuous punishment, hegemony, and subordination of the docile subject were absent in pre-modern Islamic history, as earlier regimes lacked the necessary surveillance techniques that would permit direct control of social groupings by which society organized itself; however, such issues

must be considered in the case of the CPVPV as an organ of the modern Saudi nation-state.

2. Conceptualizing *Hisbah* in Saudi Arabia

2.1. Introduction

The importance of *hisbah* in its general sense as enjoining virtue and forbidding vice was widely remarked by pre-modern scholars; for example, al-Ghazzālī considered it the very axis upon which Islam was founded.¹ ‘*Ulamā*’ in Saudi Arabia also acknowledge the importance of this duty, and have gone so far as classifying it as the sixth Pillar of Islam.² Like their forbearers, they consider enjoining virtue and forbidding vice as an integral part of the work needed for a Muslim's ethical formation, as well as embodying the prophetic ideal of leadership. The collective expression of this duty through the CPVPV is likewise considered to be a pillar of the Saudi state upon which its legitimacy depends, and through which it aspires to lead the *Ummah*.³ In the face of radical changes that have affected notions of law and morality in modern history, especially throughout Muslim societies, this prominent assertion of enjoining virtue and forbidding vice appears like a conservative bulwark; however, its very conception in such a different environment also suggests a reorientation. How exactly has the concept of *hisbah* been reformulated in Saudi Arabia? Does this understanding gain new significance in light of the modern separation between law and morality? What spectrum of debate exists concerning notions of *hisbah* in Saudi Arabia?

¹ Al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, Bk. 2, p. 306.

² Abd al-‘Azīz ibn Aḥmad al-Mas‘ūd, *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar wa Atharahumā fī Ḥifẓ al-Ummah*, Ph.D. dissertation, al-Jāmi‘ah al-Islāmīyah, 1412, pp. 12-13.

³ Al-Ri‘āsah al-‘Ammah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar, *Kalimāt Sajjallahā al-Ta’rīkh; Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa ‘Ināyat al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah, al-Rīyāḍ, 11-12/4/1431*; al-Baqamī, *al-Taṭbīqāt al-‘Amaliyah lil-Ḥisbah fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah min ‘ām 1351-1408*, p. 10.

Ḥisbah is a vast topic of scholarship in Saudi Arabia, with a huge number of books and graduate dissertations devoted to it, as well as entire journals and websites. Even more books and articles have been written on the interrelated topic of enjoining virtue and forbidding vice, which focus on the individual as moral actor, but often refer to the *muḥtasib* in this context and provide indirect commentary on the CPVPV. In addition to '*ulamā*', other intellectuals, activists and radicals also address *ḥisbah* as a key concern. As a topic of scholarly discourse in Saudi Arabia, *ḥisbah* is significant in terms of both justifying the CPVPV and challenging official policy, as well as its global influence upon Muslims in general and Salafīs in particular. Despite the importance and scope of this literature, very little attention has been paid to it in historiography, Middle Eastern studies and Islamic studies. Moreover, the existing work has not approached the legal and moral elements of *ḥisbah* in an integrated manner.

In his intellectual history of enjoining virtue and forbidding wrong, Michael Cook recognizes Wahhābism's unusual penchant for this duty, and its prominent place during the second Saudi state (1818-1891) because *jihād* was not an option.⁴ Cook's focus, however, is not primarily the office of *muḥtasib* and its administration, nor does he attempt to provide a detailed record of relevant literature in Saudi Arabia, especially since 1932.⁵ Otherwise, the ambiguous influence of Wahhābism on global Salafism has been noted, but without specifying exactly how beyond the promotion of creedal reform: *ḥisbah* is acknowledged to have its own particular

⁴ Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 175-92

⁵ Ibid, p. xii.

genealogy within Saudi Arabia that can be transformed into a political tool allowing active interference in the public sphere, but no detailed record thereof yet exists.⁶

I aim to fill this lacuna through an overview of scholarly discourse on *ḥisbah* in Saudi Arabia, in both its general sense as the moral duty to enjoin virtue and forbid vice, as well as its specific sense as the derivative function of the *muḥtasib*. I thus hope to discover key points of *ḥisbah*'s conceptualization from both official and unofficial sources, providing a more detailed historical record of its theorization in terms of both *akhlāq* and *fiqh*, as well as commentary thereupon. In so doing, I also hope to identify elements of continuity and change between *ḥisbah* in Saudi Arabia and in pre-modern history.

In this chapter, I will argue that in Saudi Arabia *ḥisbah* is understood as a linchpin between morality and law. In other words, enjoining virtue and forbidding vice, as both an individual duty and function of the *muḥtasib*, is considered as a main mode by which individual ethical subjects are called upon or incited to obey the Shari'ah and cultivate an honourable disposition. Literature on *ḥisbah*, including both *akhlāq* and *fiqh*, thus serves as a guide to ethical work required for reform of the self and society as the counterpart of *jihād* during peacetime. *Ḥisbah* in Saudi Arabia is founded upon notions that are generally rooted in pre-modern Islamic tradition; however, its conception in terms of both virtue ethics and law also displays elements of variation, including a more prominent expression than in the past, which simultaneously struggles against being categorized in modern terms.

⁶ Roel Meijer, "Introduction," *Global Salafism: Islam's New Religious Movement*; "Commanding Right and Forbidding Wrong as a Principle of Social Action: The Case of the Egyptian al-Jama'a al-Islamiyya"; Bernard Haykel, "On the Nature of Salafi Thought and Action," *Global Salafism*.

The ethical substance officially recognized in Saudi Arabia, or morally problematic aspects of the self as pertains to ethical judgment, is consonant with the pre-modern *akhlaq* tradition: the "heart" (*qalb*) and "soul" (*nafs*). Reflection on these and the desire for their transformation is of central concern in Saudi literature, which maintains a theory of human nature based on innate disposition and the cultivation of virtuous character through "care for the self", drawing especially from earlier Ḥanbalī and Shāfiʿī scholarship; however, this approach to ethics is applied to problems faced by contemporary individuals and society. The mode of subjection, or how the individual is called upon to establish its relation to moral obligations, remains respect for God's will as revealed through the Sharīʿah, generally, and a sense of modesty or shame (*ḥayāʾ*) as part of faith (*īmān*) in the heart, particularly. The sentiment of shame, however, assumes a heightened centrality in the Saudi context, and is especially attenuated to its devotional, sexual and authoritarian aspects, as a cardinal virtue that enables reform. Evidence for this lies in Saudi *akhlaq* literature, including treatises issued by the CPVPV and endorsed by the High Council of Islamic Scholars (*Hay'at Kibār 'Ulamāʾ*).

The techniques of the self, or operations performed on the self in order to ensure one's subjection to a moral authority and transform oneself into an autonomous ethical agent, remain largely unchanged in Saudi Arabia. Like the pre-modern tradition, these practices center upon acts of worship (*ʿibādāt*), which form the moral or religious basis of the law (*dīn*), and are constituted principally by the Five Pillars (although their scope technically embraces the entire Sharīʿah, including civil transactions, or *muʿāmalāt*). These practices are likewise regulated by the principle of mutual self-discipline expressed in the duty of all Muslims to enjoin

virtue and forbid vice (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*), or *ḥisbah* in its general sense, which itself constitutes a virtuous act. The performance of this duty causes shame (*'ayb, khizy*) and cultivates modesty (*ḥayā*) through embodying the role of "watcher" or "warner." The individual subject and its ethical formation is also conceived as operating in a context where autonomy is bound by the Sharī'ah and its presuppositions concerning human and divine agency.

On the other hand, the prominent role of enjoining virtue and forbidding vice in Saudi Arabia stands out from previous history: the muscular Ḥanbalī tradition has been adapted to an institutionalized role in a modern state under the prescriptive agency of an official *'ulamā'* and the CPVPV, thus generating intensive discourse on the topic. Within this context a spectrum of opinions are expressed by scholars and public figures, ranging from support for the religious establishment's collective responsibility over *ḥisbah*, to concern over restrictions to individual ethical agency and the limited focus of CPVPV activities. Some critics stress the need to broaden the scope of *ḥisbah* to include more aspects of *mu'āmalāt*. Knowledgeable practice of the duty is also advocated, which includes *ādāb* ("good manners") and ethical preparedness, while more radical voices advocate the intensification of forbidding vice by force on an individual level. Evidence for this lies in CPVPV literature on enjoining virtue and forbidding vice, in addition to discourse on the topic by Saudi *'ulamā'*, political activists and radicals.

The *telos* of ethics, or ideal mode or state of being toward which one strives or aspires to in their ethical work, is recognized as *īmān* by Saudi *'ulamā'*, that is, true belief, or a state of total surrender to God, as both an inner action and outer adherence to the message of Prophet Muḥammad. In other words, their concept of

īmān includes all the acts of the heart (*qalb*) and beliefs of a person, as well as encompassing all the outward acts of submission to God that are considered exclusively part of *islām*. This falls in line with pre-modern Ḥanbalī notions of *īmān*, which required the fulfillment of exterior acts of obedience as the prerequisite for true belief: *islām* in the sense of ritual observance is the guarantee of faith. More particular to Saudi Arabia, however, is the Wahhābī expression of the interrelated states of *īmān* and *islām* through the concept of *tawḥīd* ("monotheism") and its opposite (*kuffī*), and the associated focus upon strict enforcement of *‘ibādāt* and *‘aqīdah* ("creed") as objects of *ḥisbah*, which comprise the main focus of its reform program. Scholarly opinion on this focus ranges from conservative confirmation and desire for its intensification, to reaction against it and desire to expand the ethical and legal conception of *ḥisbah* in order to address broader issues of social, economic and political reform. Evidence for this lies in literature and public commentary related to *ḥisbah* and reform by Saudi ‘ulamā’, intellectuals and activists.

Inquiry will focus upon enjoining virtue and forbidding vice in relation to both the elements of ethical relations and codified morality as well as law according to notions previously outlined. In other words, investigation will center upon treatments of *ḥisbah* in both Saudi *akhlāq* literature and *fiqh* in terms of the individual ethical agent as actor, as well as the *muḥtasib*. This should not be confused, however, with the substantive law of *ḥisbah* in Saudi Arabia or the concrete acts of moral agents (although these will be indirectly addressed at times): the governing constitution and bylaws of the CPVPV, which are neither *akhlāq* nor *fiqh* strictly speaking but rather *siyāsah* legislation or *nizām*, in addition to its historical activities will be addressed in subsequent chapters. My analytical

framework will be applied here to a survey of pertinent books, treatises, *fatāwā*, and sermons from leading Saudi ‘*ulamā*’, intellectuals, and activists, as well as official publications from the CPVPV. The preliminary chapter on *ḥisbah* in pre-modern history provides the backdrop for comparison and contrast, with the present chapter focused on theoretical developments from about 1926 onward.

My claims will be established over the course of three main sections, the first of which concerns the ethical foundations of enjoining virtue and forbidding vice in Saudi Arabia, paying particular attention to key works of *akhlāq* literature. The second section examines the official definition of enjoining virtue and forbidding vice by the CPVPV. The third section is a survey of Saudi scholarship on enjoining virtue and forbidding vice by major ‘*ulamā*’, intellectuals and activists, which is subdivided according to earlier scholars, more recent ones, and activists and radicals.

2.2. Ethical Foundations of Enjoining Virtue and Forbidding Vice

Much contemporary Muslim scholarship, such as by followers of Ibn Miskawayh and in semi-juristic works of the "*Makārim al-Akhlāq*" genre, insist that the term "*akhlāq*" is equivalent to our modern term "moral";⁷ however, as demonstrated by Hallaq, this claim can be easily falsified on both historical and philosophical grounds.⁸ The pre-modern concept of *akhlāq* was actually associated with innate qualities having to do more with nature (*ṭabʿ*) and disposition or character (*sajīyyah*)

⁷ E.g. Raḡī al-Dīn ibn Ḥasan al-Ṭabarsī, *Makārim al-Akhlāq* (Bayrūt: Muʿassasat al-Khurasān lil-Maṭbūʿah, 1427/2006); ʿAbd Allāh ibn Abī al-Dunyā, *Makārim al-Akhlāq*, Bashīr ʿUyūn, ed. (Dimashq: Maktabat al-Fārabi, 1423/2002). See also, Ṭāhā ʿAbd al-Raḥmān, *Rūḥ al-Ḥadāthah: al-Madkhal ilā Taʾsīs al-Ḥadāthah al-Islāmīyah* (Dār al-Bayḍāʾ: al-Markaz al-Thaqāfi al-Maghribī, 2006); *Suʾāl al-Akhlāq: Musāhamah fī al-Naqd al-Akhlāqī lil-Ḥadāthah al-Gharbīyah* (Dār al-Bayḍāʾ: al-Markaz al-Thaqāfi al-Maghribī, 2000).

⁸ Hallaq, "Groundwork of the Moral Law: A New Look at Qurʾān and the Genesis of Sharīʿa," pp. 257-8.

than with ethics and morality as they have acquired modern meanings.⁹ As discussed in the first chapter, *akhlāq* was subject to acculturation and refinement in a manner revolving around the absence of distinction between law and morality, and contained a heavy legal and theological component that modern notions of morality lack.¹⁰ This pre-modern conception of *akhlāq* is shared by Saudi scholarship; for example, in a standard reference work endorsed by the Saudi-based World Association of Muslim Youth (WAMY), Mānī' al-Juhanī defines it as a branch of practical philosophy that consists in defining innate characteristics of the heart (*qalb*) and soul (*nafs*), and the method of moderating and controlling them for individuals and society.¹¹ This definition, in fact, is explicitly distinguished from modern notions of morality, with al-Juhanī remarking that Western moral theory is generally divorced from the social phenomena and interior aspects of the human constitution treated by *akhlāq*, and that it denies the possibility of the constancy of such structures and recurrence of their affects throughout history.¹² The theory of human nature operable in this understanding of *akhlāq* is shared amongst Saudi scholars, who build upon earlier work by Ḥanbalī and Shāfi'ī scholars, but with *ḥisbah* as a central topic of concern, and with emphasis placed upon a particular constellation of virtues and practices, such the cultivation and enforcement of modesty (*ḥayā*); as such, these works of *akhlāq* form an archetype for the *fiqh* of *ḥisbah* in Saudi Arabia, at least at an official level.

⁹ Ibn Manẓūr, *Lisān al-ʿArab*, vol. 10, pp. 86-7.

¹⁰ E.g. Sayyid ʿAbd al-Ḥayy al-Ḥasanī, *Tahdhīb al-Akhlāq* (London: UK Islamic Academy, 2003); compare with Ṭāhā ʿAbd al-Raḥmān, *Rūḥ al-Ḥadāthah*.

¹¹ Mānī' ibn Ḥammād al-Juhanī, "Akhlāq," *al-Mawsūʿah al-Muyassarah fī al-Adyān wa-al-Madhāhib wa-al-Aḥzāb al-Muʿāṣirah* (al-Riyāḍ: Dār al-Nadwah al-ʿĀlamīyah lil-Ṭibāʿah wa-al-Nashr wa-al-Tawzīʿ, 1424/2003), vol. 2, pp. 948-9.

¹² Ibid.

Shaykh Ṣāliḥ ibn Ḥumayd, *imām* and *khaṭīb* at the Grand Mosque in Mecca as well as member of the High Council of Islamic Scholars, is author of the influential encyclopaedia of *akhlāq*, *Mawsūʿat Naḍrat al-Naʿīm fī Mukārim Akhlāq al-Rasūl al-Karīm*, which has been endorsed by the General Presidency for Scholarly Research and *Iftāʾ*.¹³ Therein, Ibn Ḥumayd begins with an overview of *akhlāq* in which he characterizes *iḥtisāb* as a central means by which Muslims should deal with situations of adversity or trial. Ibn Ḥumayd relies upon Ibn al-Athīr to define *iḥtisāb* as patience and calculation in the face of adversity or, more precisely, the conditions resulting from adversity, such as boredom, anxiety, disorganization, and obsession. Here patience is understood as forbearance towards God and His sufficiency, and calculation as the estimation of His reward. As such, a practitioner of *iḥtisāb*, or a *muḥtasib*, "can expect a reward for exercising patience and obedience in the face of tribulation, as calculated by God."¹⁴ In a similar, but more emphatically causative sense, the modern formation of the root *mutaṭawwiʿ* ("those who perform supererogatory deeds of piety, over and above the duties laid upon them by the Sharīʿah"), which was used historically to denote volunteer fighters, is *muṭawwaʿ* ("one who compels obedience"), used in contemporary Saudi Arabia to designate *muḥtasibs*.¹⁵

According to Ibn Ḥumayd, if a Muslim disobeys the Sharīʿah or encounters another Muslim doing this, the first step in dealing with it is to induce shame

¹³ Ṣāliḥ ibn ʿAbd Allāh ibn Ḥumayd wa ʿAbd al-Raḥmān ibn Muḥammad ibn ʿAbd al-Raḥmān ibn Mullūḥ, *Mawsūʿat Naḍrat al-Naʿīm fī Makārim Akhlāq al-Rasūl al-Karīm* (Jiddah: Dār al-Waṣīlah, 2010/1431), 12 vols.

¹⁴ Al-Kafawī, p. 57; Ibn al-Athīr, vol. 1, p. 382.

¹⁵ C. E. Bosworth, "Mutaṭawwiʿa," *EF* (Leiden: Brill, 1993), vol. 7, pp. 776-7.

towards God and the forbidden act; this process enables the separation of oneself from the worldly pleasure at the root of disobedience and its cessation:

Verily, people will not avail on the Day of Judgement except those approaching God with a healthy heart (*qalb*)... The heart's peace is incomplete until it abandons five things: *shirk* in opposition to *tawhīd*; meek disagreement with the Sunnah; desire to disagree with authority; inattention to that which contradicts the Qur'ān; and love of the self that belies devotion to the lusts of this world. These five veils are from God in order for the Muslim to save himself through seeking His assistance.¹⁶

In his account of *ḥayā'*, Ibn Ḥumayd is at pains to stress that modesty in its true sense does not prevent enjoining virtue and forbidding vice—the failure to do so results in failure and disgrace, and is definitely a separate matter than *ḥayā'* in its legitimate meaning. Here Ibn Ḥumayd relies upon Ibn Qayyim al-Jawzīyah's discourse on the virtue of modesty, in which he extols it above all others, and clarifies that "it does not come except by goodness."¹⁷ Ibn Ḥumayd provides examples focused particularly on the importance of veiling and guarding against sexual immodesty, as well as respect for authority, as indicative of true *ḥayā'*,¹⁸ however, other types of *ḥayā'* specified by Ibn Qayyim al-Jawzīyah are decidedly absent, including its elaboration in relation to honest dealings.

The Salafī Shaykh Muḥmūd al-Khazindār's (d. 2001) book *Hāthihī Akhlāqunā*, is a popular example of the genre in Saudi Arabia, now in its eleventh edition.¹⁹ Al-Khazindār relies upon Ibn Ḥajar in ascribing central importance to the virtue of *ḥayā'*. As such, he considers it the chief source of self-restraint, founded upon the

¹⁶ Ibn Ḥumayd wa Ibn Mullūḥ, "Ta'āmal al-Muslim ma'a Mawāqif al-Ibtilā'," *Mawsū'at Naḍrat al-Na'im fī Makārim Akhlāq al-Rasūl al-Karīm*, vol. 1, p. 38.

¹⁷ Ibn Qayyim al-Jawzīyah, *Kitāb Miftāḥ Dār al-Sa'ādah*, p. 277; c.f. Ibn Ḥumayd wa Ibn Mullūḥ, "al-Ḥayā'," *Mawsū'at Naḍrat al-Na'im fī Makārim Akhlāq al-Rasūl al-Karīm*, vol. 5, p. 1802.

¹⁸ Ibid, p. 1800.

¹⁹ Maḥmūd Muḥammad al-Khazindār, *Hāthihī Akhlāqunā* (al-Rīyāḍ: Dār Ṭaybah lil-Nashr wa-al-Tawzī', 1428/2007).

abandonment of that which is shameful, as well as the principle virtue of Islam.²⁰ In line with Ibn Hajar, al-Khazindār claims that *ḥayā'* is cultivated in three main ways: enjoining virtue and forbidding vice, adopting a courageous attitude towards the truth, and studying *fiqh*. Thus, abstention from asking and offering guidance or claiming legitimate rights is not derived from a true sense of shame, but rather is from weakness and dishonour: the lawful elicits honour and dignity, while that causing the abandonment of legal command is disgraceful. Moreover, al-Khazindār associates *ḥayā'* with an attitude of coolness and forbearance (*ḥilm*), as well as a sense of honour (*murū'ah*).²¹

In terms of the reflection of *ḥayā'* in society, al-Khazindār claims that deviant customs cannot be traced to it because "*ḥayā'* is beautiful and is not associated with disgrace and perversity."²² *Ḥayā'* in its true sense can be discerned from prophetic guidance, which designates it as the worthiest of virtues. Prophets warned that it forms a division, like faith in God (*īmān*), between the believer and transgression; breaking the barrier of *ḥayā'* causes the individual and society to fall into iniquity. From this basis, al-Khazindār argues that *ḥayā'* should be expressed through honour and respect for leaders, as well as by support for *mutaṭawwi'īn*, or fellow Muslims engaged in the greater *jihād* over their souls (*nufūs*) and enjoining virtue and forbidding vice; however, he stresses that the latter duty must be expressed within the limits of good manners (*ādāb*). Moreover, al-Khazindār emphasizes that modesty

²⁰ Ibn Hajar, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī*, vol. 10, p. 522, vol. 1, p. 229; c.f. al-Khazindār, p. 321.

²¹ Al-Khazindār, pp. 322-3.

²² Ibid., pp. 324-5.

requires veiling (*ḥijāb*) and chastity (*ʿiffah*), for their abandonment "reveals scandals and blemishes of the soul, which are concealed by the cloak of *ḥayāʾ*."²³

Al-Akhlāq fī al-Islām is another contemporary example from this genre of literature, composed by ʿAbd Allāh ibn Dāwūd al-Fāyiz (b. 1373/1954), and issued by the CPVPV.²⁴ Al-Fāyiz is a Saudi *faqīh*, who has spent his career working in the Ministry of Municipal Affairs, and as Undersecretary to the *amīrs* of Mecca and Medina. This treatise is an example of *akhlāq* applied to the ethical subject at both the individual and societal levels, with theoretical and practical aspects discussed concerning the cultivation of virtuous conduct. As such, it bares much in common with pre-modern works by such authors as al-Ghazālī, Ibn Rajab and Ibn Taymīyah, but is written from a more modern administrative perspective. Moreover, from within this scheme, al-Fāyiz grants the virtue of *ḥayāʾ* a far more central role than his predecessors, and also emphasizes the associated importance of *iḥtisāb* under official state control.

For al-Fāyiz, *akhlāq* "consists of principles and rules of organization for human behaviour, which define order in such a way as to confirm the purpose of worldly existence on the basis of the completion and perfection of human nature."²⁵ The Islamic system of ethics is thus distinguished by two primary characteristics: God's divine and unchanging character (*fiṭrah*), and the human reflection of his moral characteristics. The nature of human behaviour is such that it possesses an equal inclination towards good and evil, right guidance and going astray, and is capable of distinguishing between good and evil oftentimes. Alongside these latent inborn

²³ Ibid., p. 326.

²⁴ ʿAbd Allāh ibn Dāwūd al-Fāyiz, *al-Akhlāq fī al-Islām* (al-Rīyāḍ: Hayʾat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar, n.d.).

²⁵ Ibid., p. 1.

abilities is a conscious strength, which may be applied to heeding recommendations for one's soul (*nafs*) and its purification from evil—anyone who extinguishes this strength, fails God's judgment.²⁶ Moral virtues spring from belief and are linked continuously to the Shari'ah through the faithful practice of *'ibādāt* and *mu'āmalāt*. The role of the Law in the completion of innate human nature (*fiṭrah*) is defence of the intellect (*'aql*) and establishment of a general sense of control, thus developing the moral quality of the individual and society. If a naturally strong disposition is not placed in service of the intellect, it does not realize its true function; hence, revelation serves to complete human nature and intellect, through the guiding rules of the Shari'ah.²⁷

Al-Fāyiz classifies moral virtues into two types: innate and acquired. The first category provides a criterion by which to judge the superiority of created human nature, as "the best of people are those whose character is noblest."²⁸ Any person, however, may also acquire virtuous morals through education joined with desire and practice. Despite differences of ability and complexion, a general willingness towards this exists in humankind, to which is met the universal charge of the Shari'ah, which forms the basic principles of moral education. But, if this "moral compulsion" is not supported, admonition with virtuous intent will disappear, and thus all hope will be lost for establishing truth and justice in society. As a result, al-Fāyiz distinguishes the moral goodness of state power as being necessarily distinct

²⁶ Ibid., pp. 5-6.

²⁷ Ibid., p. 9.

²⁸ Ibid., p. 10.

from that of the individual subject, such that it must assume official command of admonition (*iḥtisāb*).²⁹

Al-Fāyiz then enumerates the sources from which the moral compulsion may be developed: the "religious spirit" (i.e. the pervading sense of direction in religion towards goodness and praiseworthy morals), the intellect, the compulsion to deter and the arousal of desire therein, and the compulsion to deter by force. With reference to the last source, al-Fāyiz remarks that if some people do not benefit from rational deterrence, and there is no restraint of desire or intimidation possible, then deterrence by force is a great preventative measure for their souls (in accordance, however, with legal punishments authorized by command of the ruler).³⁰

Al-Fāyiz details three cardinal virtues in relation to the preceding system: justice (*ʿadl*), modesty (*ḥayāʾ*) and forbearance (*ḥilm*). *Ḥayāʾ* is defined as forbearance from doing all that the intellect finds ugly, unacceptable to good taste, and halting in its inclination to satisfy the Creator and created. A Muslim who possesses a sense of shame is thus incapable of acting except lawfully, and it provides a truthful criterion for manners (*ādāb*) and faith (*īmān*). Al-Fāyiz argues that *ḥayāʾ* is more distinguished by Islam than any other moral virtue, based on the saying of the Prophet: "Verily, for every religion there is a character (*khuluq*), and the character of Islam is modesty (*ḥayāʾ*)."³¹ He considers the *ḥadīth*, "When you feel no shame, then do whatever you want," and, in line with Ibn Rajab's first interpretation, understands it to mean: if the virtue of modesty is strengthened in a Muslim, then his sense of shame will deter him from all indecency, but, if it is

²⁹ Ibid., p. 15.

³⁰ Ibid., p. 17.

³¹ Ibn Mājah, *al-Zuhd*, p. 4181; cf. al-Fāyiz, p. 23.

weakened, he will be covered by shamefulness. After further justifying *ḥayā'* as a blessing from God, discussion on the matter is concluded by the author's reference to the following *ḥadīth* about the truth of modesty:

It was related from the Prophet that he said to his Companions: "To be ashamed from God is the truth of modesty," and he said: O Messenger of God, verily we are ashamed from God, thanks be to Him; he said: "It is not so, but shame from God is the truth of modesty. It is that which preserves the head and what it perceives, and the stomach and what it contains, and recalls death and decay, for he who wants the afterlife abandons the adornment of the world. He who does that is ashamed from God—this is the truth of modesty".³²

Al-Fāyiz uses this *ḥadīth* to help express a particular relation of power between an inferior and superior in the case of humanity and God, as well as a deep sense of awe and reverence that is integral to this relationship, which is accompanied by an equal awareness of one's own shortcomings, i.e. *ḥayā'*. Similar to al-Ghazālī's treatment, *ḥayā'* thus represents the constant desire for, and pursuit of the "care of the self", that is to say a consciousness of a founding ethic that underlies all other performances; however, here al-Fāyiz elevates it to the level of a cardinal virtue in and of itself.

2.3. Enjoining Virtue and Forbidding Vice According to the CPVPV

In an official publication by the CPVPV, the organization has stated its definition of *ḥisbah* in terms of *fiqh*, as well as describing the lawfulness and importance of its jurisdiction.³³ Therein, the CPVPV has basically adopted al-Māwardī's and Abū Ya'lá al-Ḥanbalī's early definition of *ḥisbah*, owing to its comprehensiveness: "enjoining to virtue, if and when its abandonment appears, and forbidding from vice

³² Al-Tirmidhī, *Ṣifāt al-Qiyāmah wa al-Raqā'iq wa-al-Wara'*, ḥadīth no. 2458; cf. al-Fāyiz, pp. 23-4.

³³ *Al-Ri'āṣah al-'Ammah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluhā* (al-Riyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 1419/1999).

if and when its perpetration appears."³⁴ As apparent from Shaykh Faḍl Ilāhī's survey of *ḥisbah*'s numerous meanings in relation to their usage by contemporary 'ulamā', the same definition has factored significantly in juridical treatments of *ḥisbah*, including the works of Saudi scholars.³⁵ Although Ibn Taymīyah's work on the subject lacks a specific definition, he provides an explanation of its governing form and requirements, which also weighs heavily upon the CPVPV's conceptualization, as well as in Saudi Arabia generally.³⁶ Amongst other major influences, aspects of al-Ghazālī's chiefly moral work, *Ihyā' 'Ulūm al-Dīn*, also bear considerably upon scholarship from the CPVPV and Saudi 'ulamā'.

The CPVPV explains the linguistic meaning of "virtue" (*ma'rūf*) principally according to al-Rāghib al-Iṣfahānī, who defined it as, "cognition and awareness of a thing by thinking and calculating its effects," which is more specific than knowledge (*ilm*), being acquired through awareness of God, i.e. by calculating His attributes without awareness of His essence.³⁷ Terminologically, it is a comprehensive name for all that is known of submission to God, or, in accordance with Ibn Muflīḥ, *ma'rūf* is, "everything commanded by Him legally."³⁸ This is subsequently elaborated using Ibn Taymīyah's description of the Pillars of Faith, thus limiting description of the legal requirements to those of *'ibādāt*.

³⁴ al-Māwardī, *al-Aḥkām al-Sulṭānīyah*, p. 240. See also al-Qāḍī Abū Ya'la al-Ḥanbalī, *al-Aḥkām al-Sulṭānīyah* (Bayrūt: Dār al-Kutub al-Ilmīyah, 1403), p. 284.

³⁵ Faḍl Ilāhī, *al-Ḥisbah: Ta'rīfuhā wa Mashrū'iyatuhā wa Ḥukmuhā* (al-Rīyāḍ: Idārat Tarjumān al-Islām, 1410/1990), pp. 7-16.

³⁶ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*.

³⁷ al-Rāghib al-Iṣfahānī, *al-Mufradāt fī Ghariḥ al-Qur'ān* (Bayrūt: Dār al-Ma'rifah, n.d.), p. 331; cf. *al-Ri'āṣah al-Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluhā*, p. 15, 2ff.

³⁸ Muḥammad ibn Muflīḥ al-Maqdisī, *al-Ādāb al-Shar'īyah wa-al-Minaḥ al-Mar'īyah* (al-Rīyāḍ: Dār al-Iftā' al-Sa'ūdiyyah, n.d.); cf. *ibid.*, p. 16, 2ff.

According to the CPVPV, linguistically, "vice" (*munkar*) differs from *ma' ruf*, being associated with all that is shameful, as well as possibly indicating ignorance, offense, repulsion, and self-loathing.³⁹ Terminologically, it is considered, "all action governed by sound reason, which is offensive, or halting in its condemnation of shameful, as determined by offense to the Sharī'ah."⁴⁰ Again, al-Iṣfahānī's definition is augmented in relation to Ibn Taymīyah's description of *munkar*, being all that God forbids and His messengers identify as *shirk* ("polytheism").⁴¹

The CPVPV draws further evidence of the legitimacy and necessity of *ḥisbah* from moral psychology, stories of the prophets and social necessity, as justified by the injunctions of the Qur'ān, Sunnah, and *ijmā'*. People may leave the inclination toward goodness that exists in their *fiṭrah* in the absence of limitations established for its protection and the repression of vice, thus fomenting a state of disorder, heterodoxy and corruption, culminating in a country's destruction.⁴²

As for the governance of *ḥisbah*, the CPVPV sides with the majority of legal scholars in classifying it as a collective duty (*farḍ kifāyah*), because, the argument goes, if it is effectively performed by some, its permanence will result. In line with Ibn Taymīyah and Ibn Qudāmah, it is considered collectively obligatory in accordance with people's ability: *ḥisbah* is not assigned except as a duty upon the community for the promotion of virtue and prevention of vice, either by the hand, tongue, or heart, and is demanded against all individuals causing injury to people. In other words, it is an individual duty relative to the delegation of its command and

³⁹ Ibid., p. 17. See also, *al-Qāmūs al-Muḥīṭ*, vol. 2, p. 148.

⁴⁰ *Al-Ri'āṣah al-Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluhā*, p. 18.

⁴¹ Ibid., p. 19.

⁴² Ibid., pp. 19-26.

governance; insofar as it is commanded conditionally by strength and power, it is not otherwise considered an individual duty, nor found to be obligatory.⁴³ Moreover, the duty must only be commanded with knowledge and virtuous intent; if doubt is cast upon the integrity of command, the believer should cease performance until discerning the truth.⁴⁴

The CPVPV describes various facets associated with the merit of *ḥisbah* in the Qur'ān and Sunnah. Communal aspects of success in worship are emphasized relative to the promotion of virtue and prevention of vice as a society, since "all the descendants of Adam may not achieve their potential in the worldly life, nor in the afterlife, except through social cooperation, solidarity and cohesiveness."⁴⁵ The Qur'ān made it the first characteristic of a good society (3:110), and the Prophet "enjoined virtue, forbid vices, acquitted the decent, and admonished evils, which is obligatory upon all creatures."⁴⁶ The most meritorious benefit derived from *ḥisbah* is true sovereignty of rule and God's blessing a society.⁴⁷ Those who promoted virtue and prevented vice throughout history are depicted as receiving deliverance from God, the others as suffering destruction.⁴⁸ The danger of abandoning *ḥisbah* and the threat that accompanies it are substantiated thereafter by enumerating seven legal sanctions with a variety of associated spiritual and corporal punishments.⁴⁹

⁴³ Ibid., pp. 28-29.

⁴⁴ Ibid., p. 31.

⁴⁵ Ibid., p. 36.

⁴⁶ Ibid. See also, Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, pp. 14-17.

⁴⁷ Justified on the basis of Q. 3:114-15 and *Ṣaḥīḥ Bukhārī*, 10/447, ḥadīth no. 6021; cf. *al-Ri'āṣah al-'Ammah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluhā*, p. 37.

⁴⁸ Ibid., p. 39. See also, Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, vol. 2, p. 456.

⁴⁹ *Al-Ri'āṣah al-'Ammah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluhā*, pp. 43-9.

2.4. Enjoining Virtue and Forbidding Vice According to Saudi Scholars

Traditionally, most scholars have written about the promotion of virtue and prevention of vice, as opposed to more explicit treatments of the duty in relation to the office of the *muḥtasib*. In Saudi Arabia both are common topics, with a strong interrelationship expressed between them and a tendency to conflate the two topics. In line with the definition of the CPVPV, all Saudi '*ulamā*' agree that promoting virtue and forbidding vice is both an individual and collective duty. In addition to clear Qur'ānic injunctions that command the duty of enjoining virtue and forbidding vice (e.g. 3:104; 3:110; 9:71), the following *ḥadīth* is commonly cited in support of its universal obligation according to capability: "Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of faith."⁵⁰ Within this scheme, the division of duties is usually understood as mitigated by proximity and ability; for example, if a Muslim should witness a woman being raped, he is obliged to help her, even if that means just providing testimony on her behalf in a court of law, or calling the police (i.e. legal intervention). The use of force against other people in forbidding vice, however, is understood as normally designated to the officially sanctioned *muḥtasib*. Moreover, scholarly consensus amongst Saudi '*ulamā*' supports the notion of enjoining virtue and forbidding vice as a fundamental obligation in Islam; in fact, some Saudi '*ulamā*', such as Shaykh 'Abd al-'Azīz al-Mas'ūd, former General Director of the CPVPV, go so far as to enlist the opinions of

⁵⁰ Muslim, *Ṣaḥīḥ Muslim*, Bk. 1, ḥadīth no. 49.

Ibn Nuḥās (d. 814/1411) and Muḥammad al-Shawkānī (d. 1250/1834) to classify *ḥisbah* as the sixth pillar (*rukn*) of faith.⁵¹

The exact manner of *ḥisbah*'s application, however, is another story, with different opinions expressed by Saudi scholars. In terms of the definition of collective and individual responsibility, Muḥammad ibn Nizām al-Dīn al-Anṣārī explained it in these words:

Certain duties keep all the believers engaged constantly, such as the four obligatory acts: prayer, fasting, *ḥajj*, and *zakāt*. At the same time, other duties aim at preparing the believers for certain acts like *jihād*, which is concerned with upholding and championing the cause of Allāh. If even a few Muslims discharge this second type of duty, the purpose has been served and the community's obligations have been fulfilled.⁵²

All scholars agree on the above-mentioned differences, and Ibn Badrān's (d. 1346/1927) discussion of the issue in relation to enjoining virtue and forbidding vice is often used to elaborate the issue by Saudi scholars.⁵³ Nevertheless, whether things considered collective responsibilities are incumbent upon all or only a few is a point of controversy.

All Saudi '*ulamā'*' accept the official role of the CPVPV in enforcing *ḥisbah*, endorse its necessity for Saudi society, and publically encourage its support. All '*ulamā'*', at least privately, would also admit there have been mistakes made by the CPVPV, and that room for improvement also exists.⁵⁴ Moreover, there is a spectrum of opinion as to the degree of individual responsibility for enjoining virtue and forbidding vice, and the degree to which the state should enforce this institution.

⁵¹ Al-Mas'ūd, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar wa Atharahumā fī Ḥifẓ al-Ummah*, pp. 12-13. See also, Muḥammad al-Shawkānī, *Sharḥ Fath al-Qadīr* (al-Qāhirah: Sharikat Muṣṭafā al-Bābī al-Ḥalabī, 1349), vol. 1, p. 337.

⁵² Muḥammad ibn Nizām al-Dīn al-Anṣārī, *Fawātiḥ al-Raḥmūt bi-Sharḥ Musallam al-Thubūt* (al-Qāhirah: al-Maṭba'ah al-Amīriyah, 1322), vol. 1, p. 120.

⁵³ Ibn Badrān al-Ḥanbalī al-Dimashqī, *al-Madkhal ilā Madhhab al-Imām Aḥmad ibn Ḥanbal*.

⁵⁴ The latter claim is based upon conversations between me and numerous Saudi shaykhs.

The following examination treats a selection of key works on *ḥisbah* and the promotion of virtue and prevention of vice by prominent Saudi scholars and Islamists.

2.4.1. Earlier Saudi Scholars

The historical account of Muḥammad ibn ‘Abd al-Wahhāb's (d. 1206/1792) activities promoting virtue and preventing vice is known from his own letters and the writings of Ibn Bishr.⁵⁵ These describe his preaching of monotheism (*tawḥīd*) in Najd, which was then rife with manifestations of polytheism, his destruction of graves and trees in al-‘Uyaynah and al-Dir‘īyah that were objects of worship, and his emphasis upon the importance of tactfully performing the duty. Despite the fact that *ḥisbah* is not a prominent theme of his writings, the historical legacy concerning his activities looms over scholarship on this topic in the third Saudi state. Since *ḥisbah* in its broadest sense encompasses the very prominent field of *da‘wah*, establishing a clear relationship between it and the thought of Ibn ‘Abd al-Wahhāb has been an educational priority in Saudi Arabia.⁵⁶

Sālim ibn Shadīd al-Ḥarbī offers a representative assessment of Ibn ‘Abd al-Wahhāb's legacy concerning *ḥisbah* in a doctoral dissertation on the subject for al-Imām Muḥammad ibn Sa‘ūd Islamic University.⁵⁷ The Shaykh is presented as an exemplary reformer, who based *da‘wah* first and foremost upon the rectification and

⁵⁵ ‘Uthmān ibn Bishr al-Najdī, *‘Unwān al-Majd fī Ta’rīkh Najd* (al-Rīyāḍ: Maktabat al-Rīyāḍ al-Ḥadīthah, n.d.); E. Peskes, *Muḥammad b. ‘Abd al-wahhāb (1703-92) im Widerstreit* (Beiruter: In Kommission bei Franz Steiner, 1993), pp. 252-78. See also, Ibn Ghannām, *Rawḍah*, 1:72.18, 221-3, cf. Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 166-70.

⁵⁶ A search at the King Faisal Center for Research and Islamic Studies turned up over 70 university dissertations on the subject published by Saudi universities.

⁵⁷ Sālim ibn Shadīd al-Ḥarbī, *al-Ḥisbah fī Fikr al-Shaykh Muḥammad ibn ‘Abd al-Wahhāb* (al-Rīyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1407/1987).

correction of doctrine (*taṣḥīḥ al-‘aqīdah*), at a time when the insularity of scholars had resulted in the closure of the Gate of *Ijtihād*, and ignorance, backwardness and vice proliferated amongst Muslims. According to al-Ḥarbī, Ibn ‘Abd al-Wahhāb enjoined to virtue and forbade from vice everywhere he travelled, dispelled vice by force whenever the opportunity was present, and the *amīr* never abandon *ḥisbah* or the affiliated duty of *jihād* without first consulting him. Al-Ḥarbī thus formulates three fundamental aspects of Ibn ‘Abd al-Wahhāb's *da‘wah*: conformity with the doctrine of *tawḥīd*, opening the Gate of *Ijtihād*, and affiliation with the duty of *jihād*.⁵⁸ The pervasive influence of this historical portrait has become apparent throughout the Islamic university curriculum in Saudi Arabia.⁵⁹

Perhaps no other Saudi scholar since Ibn ‘Abd al-Wahhāb has achieved such a degree of prestige and influence as ‘Abd al-‘Azīz ibn Bāz (d. 1419/1999), former grand *mufī* and president of the Council of Senior Islamic Scholars (*Hay'at Kibār ‘Ulamā*). In a treatise entitled "*Wujūb al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar*," Ibn Bāz defines the requirements of this duty and elucidates its ultimate meaning in history.⁶⁰ The promotion of virtue and prevention of vice is related to the ultimate success of nations in general, and the nation of Saudi Arabia in particular: it must be the defining criterion for national identity, and hypocrisy concerning it must be avoided at all costs.⁶¹ Using a traditional *topos*, Ibn Bāz claims the duty continues to be neglected in our age, despite a stronger imperative to

⁵⁸ Ibid., pp. 166-69.

⁵⁹ E.g., Ma‘had Ta‘līm al-Lughah al-‘Arabīyah, *Silsilat Ta‘līm al-Lughah al-‘Arabīyah: al-Mustawā al-Thālith: al-Tawḥīd* (al-Rīyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1413/1992); *Silsilat Ta‘līm al-Lughah al-‘Arabīyah: al-Mustawā al-Rābi’: al-Da‘wah* (al-Rīyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1413/1992).

⁶⁰ ‘Abd al-‘Azīz ibn Bāz, *Wujūb al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar* (al-Rīyāḍ: Dār al-Waṭan lil-Nashr, n.d.).

⁶¹ Ibid., pp. 4-5.

do so due to the proliferation of perilous vices, such as corruption and innovation in religion, reflecting his central preoccupation with *tawḥīd*.⁶²

According to Ibn Bāz, *ḥisbah* is a collective duty, and he who commands governance has within his jurisdiction the duty of forbidding vice by force, such as an *amīr*, tribal *shaykh*, *muḥtasib*, or thereabouts. In accord with Ibn Taymīyah and al-Ghazālī, he claims it is required of the *fuqahā'* in the absence of such an authority.⁶³ Deterrence by force is of great importance for those whose hearts (*qulūb*) are sick, because they are weak in faith and do not submit willingly to the ordinances of the Qur'ān and Sunnah.⁶⁴ He emphasizes the fact that destruction of the heart occurs from not truly knowing the promotion of virtue and prevention of vice, resulting from lack of submission to the duty, or its hypocritical performance; although it is a collective duty, it must always be performed voluntarily in order to earn a reward from God (i.e. with sincerity, as opposed to instrumentally).⁶⁵ Knowledge of the promotion of virtue and prevention of vice is a necessary characteristic of those who volunteer to perform *ḥisbah*, and is an attribute of *taqwá* ("virtuous fear") which grows through the study of *fiqh* and performance of supererogatory acts of worship.⁶⁶

Muḥammad ibn Ṣāliḥ al-ʿUthaymīn (d. 2001) is another Saudi scholar of wide renown, whose teachings in *fiqh* and *usūl al-dīn* influenced a generation of students, and held great sway over public opinion and legal affairs. He classified the promotion of virtue and prevention of vice as both an individual and collective duty,

⁶² Ibid., p. 2.

⁶³ Ibid., pp. 5, 6.

⁶⁴ Ibid., p. 7.

⁶⁵ Ibid., p. 8.

⁶⁶ Ibid., pp. 9-10.

legitimate performance of which being conditional upon knowledge of what to enjoin and what to forbid, and the surrounding stipulations.⁶⁷ Authority is also conditional upon the safe discharge of this duty, since great injury must not result from its performance in order that obedience may be justified and great misguidance be avoided.

Without explicitly distinguishing the role of the '*ulamā*' or the office of the *muḥtasib*, al-ʿUthaymīn instead points to a final condition for the sound performance of the duty, which is the necessity for all knowledgeable individuals to first enjoin or forbid by the tongue if circumstances demand it:

Verily, if the illicit act was simply conferred to a magistrate, the blessings of God are removed from he who enjoined to virtue and forbid from vice. As such, he did not obey the necessary requirements for the blessing of God by ordering its forbiddance through simply conferring the transgression to a magistrate; this (performance) is obligatory for people. It is cowardly concluding it in this manner... and this is the state of affairs in our age. If it is not possible for people to effect change by their own hand, verily, they must change it buy their tongue, and the forbiddance of vice concludes by raising it with someone who is able to change it.⁶⁸

Al-ʿUthaymīn emphasizes the need for individuals to intentionally perform the duty to the full extent of their ability, engaging perpetrators as directly as possible without the use of force. He thus addressed what he believed to be the crucial problem affecting society relative to the institutionalization of *ḥisbah*. Elsewhere, he stresses the need for tactful application of force or castigation if necessary, in order to avoid the perpetration of greater harm, applying the example of Ibn Taymīyah's abeyance of the duty towards Tartar soldiers who were drinking alcohol

⁶⁷ Muḥammad ibn Ṣāliḥ al-ʿUthaymīn, "Risālah fī Wujūb al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Majmū' Fatāwā wa Rasā'il Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-ʿUthaymīn* (al-Rīyāḍ: Dār al-Thurayyā lil-Nashr wa al-Tawzī', 1430/2009), vol. 27, p. 502-4.

⁶⁸ Ibid., p. 505.

and gambling. This is cast in relation to interest-based banking in contemporary Saudi society: al-‘Uthaymīn argues that it is more beneficial for society in such cases to address the public, advocating the boycott of offending banks, rather than attacking state authorities.⁶⁹

Shaykh Ṣāliḥ al-Fawzān (b. 1933) is commonly included amongst the senior generation of Saudi scholars, and continues to maintain a prominent public role as member of the Council of Senior Islamic Scholars and the Permanent Committee for Islamic Research and *Iftā’* (*al-Lajnah al-Dā’imah lil-Buḥūth al-‘Ilmīyah wa-al-Iftā’*). In terms of the significance of forbidding vice in Islam, al-Fawzān offers an explanation in light of prophetic history, similar to Ibn Bāz:

Enjoining good and forbidding evil is a significant obligation of Islam. Those who fall short of this obligation have exposed themselves and their societies to punishment and destruction, because God has destroyed the previous nations due to their abandoning the duty of forbidding evil. God says: "So when they forgot the reminders that had been given to them, We rescued those who forbade evil, but We seized those who did wrong with a severe torment because they used to rebel." [Q. 7:165]⁷⁰

As for exactly what type of vice should be combated, al-Fawzān offers a straightforward assessment cast in light of Ibn ‘Abd al-Wahhāb's characterization of *tawḥīd* and *shirk*:

The vices to be combated include everything prohibited by God—both spoken and practiced sins—and the greatest of them is *shirk*: "Verily, associating others with the worship of God is a great wrong indeed" [Q. 31:13]. Fornication, adultery, sodomy, drug abuse, usury, negligence and laziness in establishing prayer, listening to music, watching sexually explicit movies and pictures... and other vices have become

⁶⁹ Al-‘Uthaymīn, "Naṣīḥah fī al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar," *Majmū‘ Fatāwā wa Rasā’il Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-‘Uthaymīn*, vol. 27, p. 510.

⁷⁰ Ṣāliḥ ibn Fawzān al-Fawzān, *al-Muntaqā min Fatāwā al-Shaykh Ṣāliḥ ibn Fawzān al-Fawzān* (al-Rīyāḍ: Maktabat Mishkāt al-Islāmīyah, 1425), vol. 1, p. 200.

widespread in Muslim lands, and reform must be initiated thereupon.⁷¹

Al-Fawzān offers a similarly straightforward account of the degrees of responsibility in the forbiddance of vice in line with the CPVPV, without, however, limiting its performance strictly to state officers: "He who is required to forbid by the hand is the ruler or acting authority; he who possesses knowledge but no authority should forbid by the tongue; he who possesses neither knowledge nor authority should forbid in his heart."⁷²

According to al-Fawzān, if the duty is conducted in a Muslim land, advice and reminders should first be given to an offender, and authorities informed if necessary; if a vice is resolved through counsel, then it must be concealed, but if advice is rejected, then authorities must be notified. In the case of a non-Muslim society, *da'wah* must be given through rational and thoughtful debate, in such a way that avoids *fitnah* ("disorder") and violence.⁷³ Al-Fawzān enumerates the characteristics of those who enjoin virtue and forbid vice, which includes knowledge, kindness, and patience. Moreover, al-Fawzān stresses the need to anticipate the consequences of enjoining and forbidding in advance, determining if one of three categories are applicable: (1) the vice will perish if forbidden, which requires action; (2) the vice will not entirely perish, but decrease, which also requires action; or (3) the consequence of forbiddance will be worse or equal to the current evil, which prohibits action. This process of anticipation also requires an assessment of the

⁷¹ Ibid., vol. 1, p. 201.

⁷² Ibid., vol. 1, p. 196.

⁷³ Ibid.

perpetrator to determine if they were ignorant, knowledgeable, or misinformed in order to determine culpability and appropriate repercussions.⁷⁴

2.4.2. Recent Saudi Scholars

Although they remain unanimous in their support for CPVPV custody of *ḥisbah*, a spectrum of definitions exist amongst younger scholars commenting on enjoining virtue and forbidding vice. Positions range from those re-emphasizing the collective, state-sanctioned nature of the duty prevalent in Saudi Arabia, to those who stress a more balanced approach to its performance, with voluntarism as the basis of both official and individual aspects. Finally, there are those who lobby for a more expansive conceptualization, in line with what they perceive to be historical evolution within the nation-state.

At the conservative end of this spectrum is a more strictly functional approach to the division between individual volunteers and official *muḥtasibs*, with the collective duty being delegated by rule of the state upon the CPVPV. Ḥāmid ibn Nāṣir al-ʿImār, Dean of the College of *Daʿwah*, al-Imām Muḥammad ibn Saʿūd Islamic University, characterizes *ḥisbah* thusly, stressing the monopoly over applying discretionary punishments and *ijtihād* ("independent judgement") possessed by the *muḥtasib* for matters pertaining to enjoining virtue and forbidding vice.⁷⁵ This argument is supported using al-Māwardī and Abū Yaʿlā's opinion, in a bid to bolster the official institution, "so that it may fulfill its historic role in the reform of religion, appropriately to our age." The urgency of this mission is justified in

⁷⁴ Ibid.

⁷⁵ Ḥāmid ibn Nāṣir al-ʿImār, *Ḥaqīqat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar wa Arkānuhu wa Majālātuhu* (al-Riyāḍ: Dār Ishbīlīyā lil-Nashr wa-al-Tawzīʿ, 1420/1999), pp. 19-20.

relation to the emergence of greater corruption and the need for greater priority being attached to state sponsorship of *da'wah*.⁷⁶

Likewise, Sulaymān Qāsim al-ʿĪd, Professor at the College of Education, King Saʿūd University, reasserts the authoritative role of *ʿulamāʾ* and the office of *muḥtasib* in the constitution of *ḥisbah* at an official level, in cooperation with individual performance of the duty in some respects.⁷⁷ Al-ʿĪd's approach to classifying the duty centers upon determining the desirability of its performance, for which he stipulates three conditions: (1) when the scholars rule it is desirable and the people of the country are not aware of its abandonment (i.e. enjoining a virtue or forbidding a vice); (2) when scholars rule it is obligatory; and (3) if its performance is just and done in cooperation with agents of the *muḥtasib*.⁷⁸ Moreover, consequences of abandoning or limiting the duty are elaborated in detail by al-ʿĪd in terms of Ibn Taymīyah's moral psychology, as being detrimental to faith (*īmān*) and resulting in the corruption of the heart (*qalb*) and impairment of its ability to discern truth.⁷⁹

A more thorough attempt to balance voluntary and official, or individual and collective, aspects of the promotion of virtue and prevention of vice is offered by Faḍl Ilāhī, professor at the College of *Da'wah*, al-Imām University. He accepts al-Māwardī's definition of *ḥisbah* in association with that of ʿAbd al-Fattāḥ Muṣṭafā al-Ṣayfī owing to their comprehensiveness, after an exhaustive survey of the *fiqh* of

⁷⁶ Ibid., p 171.

⁷⁷ Sulaymān Qāsim al-ʿĪd, *al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar: al-Ḥath ʿalā Fiʾluhu wa-al-Taḥdhīr min Tarkuhu* (al-Riyāḍ: Dār al-Watan lil-Nashr, 1421/2000), p. 12.

⁷⁸ Ibid., p. 13.

⁷⁹ Ibid., pp. 42, 44.

ḥisbah.⁸⁰ Similar to al-Māwardī's account, Ilāhī classifies *ḥisbah* into two parts: the enjoinder of virtue and forbiddance from vice, with each of these parts sub-divided into three sections, according to that which pertains to the rights of God, the rights of man, and rights common to both. From this scheme the individual or collective aspects of the duty are determined in detail. The traditional *topos* of contemporary moral decline is appealed to in support of the Wahhābī mission: according to Ilāhī, if the conditions requiring *ḥisbah* as an individual duty are ignored, the foundations of *daʿwah* are weakened and ignorance and vice will increase, which is a sign of our time.⁸¹ Interestingly, Ilāhī also criticizes the Iranian Department of Islamic Education for their treatment of al-Māwardī, having discounted the significance of the individual performance of *ḥisbah* in their narrower interpretation, which overemphasizes state agency.⁸²

Shaykh ʿAbd al-ʿAzīz al-Fawzān, professor of Sharīʿah, al-Imām University, member of the Saudi Human Rights Council (SHRC), and media personality at large, recognizes the necessity of state appointed officers of the *muḥtasib*, but stresses that as a sovereignty duty, *ḥisbah* is not legitimized by order of the political leader. Al-Fawzān is careful to stipulate the sovereignty of the Sharīʿah independent of the state and its organs, arguing that forbiddance by force is not the exclusive domain of the state, but universally applicable to Muslims, as argued by al-Ghazālī and al-Nawawī.⁸³ He articulates the legitimate scope of forbidding vice by the use of force upon inanimate objects (e.g. destroying objects like containers of alcohol), the threat

⁸⁰ Faḍl Ilāhī, *al-Ḥisbah: Taʿrīfuhā, wa Mashrūʿiyatuhā, wa Hukmuhā*, p. 16. See also, ʿAbd al-Fattāḥ Muṣṭafā al-Ṣayfī, *Nizām al-Ḥisbah fī al-Islām* (al-Rīyāḍ: 1396, n.p.), p. 8.

⁸¹ Faḍl Ilāhī, *al-Ḥisbah: Taʿrīfuhā, wa Mashrūʿiyatuhā, wa Hukmuhā*, p. 16.

⁸² Ibid., p. 15. See also, "al-Ḥisbah," *Dāʾirat al-Maʿārif al-Islāmīyah*, transl. Muḥammad Thābit al-Fandī, et al. (Tihārān: Intasharāt Jihān, n.d.), vol. 7, p. 378.

⁸³ ʿAbd al-ʿAzīz ibn Fawzān al-Fawzān, *al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar wa Atharuhumā fī Taḥqīq al-Amn* (al-Rīyāḍ: Dār Ṭaybah, 1424), pp. 181-2.

of intimidation, and the direct use of violence (e.g. in restraining the perpetration of vice), although he is mute as to the broader scope of the duty relative to the regulation of *mu'āmalāt*.⁸⁴ Tact and forbearance are simultaneously urged by al-Fawzān, citing Muḥammad Sālim al-Shinqīṭī's (d. 1964) recommendation not to use the hand if it is possible to change by the tongue, nor to castigate if it is possible to admonish amicably: the forbiddance of vice should not be used as a weapon in the hands of the hasty, ignorant and reckless, as it is not possible to avert vice and effect reform by brutal means.⁸⁵ He has discoursed at length upon the requirement of pure intention in order to receive reward from *iḥtisāb*, employed according to ability and proximity with *ādāb* ("good manners").⁸⁶ He has also noted that a more nuanced approach to the duty is required than, for instance, *jihād*, which is clearly a collective obligation. Moreover, speaking to current affairs in Saudi Arabia, he stresses that careful attention should be paid to distinguishing when enjoining and forbidding is actually obligatory for transgressions concerning public manners.⁸⁷

Former CPVPV General Director, Shaykh 'Abd al-'Azīz ibn al-Mas'ūd, has similarly stressed interior characteristics of the promotion of virtue and prevention of vice. In a manual written specifically for *muḥtasibs*, al-Mas'ūd draws upon Ibn Taymīyah for a lengthy discussion of the purification of the soul (*nafs*) as being a key trait of *ḥisbah*: in order to perform the duty correctly and effectively, the practitioner's soul must first be reformed so as to be an example for society.⁸⁸ To achieve this end, he recommends prayer (obligatory and supererogatory, especially

⁸⁴ Ibid., pp. 183-92.

⁸⁵ Ibid., pp. 172, 183.

⁸⁶ 'Abd al-'Azīz ibn Fawzān al-Fawzān, "Ḥaqq al-Muslim 'alā al-Muslim," *Fiqh al-Akhlaq* (television broadcast, Qanāt al-Majd al-Faḍā'iyyah, 2009).

⁸⁷ Ibid.

⁸⁸ 'Abd al-'Azīz ibn Aḥmad al-Mas'ūd, *Ṣifāt al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar* (al-Rīyāḍ: Dār al-Waṭan, 1414), p. 18.

night prayer), voluntary fasting, charity, and reading the Qur'ān. Moreover, a large portion of the book is devoted to elucidating the virtues of patience (*ṣabr*) and good temperament, which are required for enforcing *ḥisbah*, and prescriptions for their cultivation.⁸⁹

Another former General Director of the CPVPV, 'Abd al-'Azīz ibn 'Abd al-Raḥmān al-Sa'īd, has very directly stated the CPVPV's approach to *ḥisbah* within the modern state.⁹⁰ According to al-Sa'īd, the CPVPV should not be considered as separate from the apparatus of the Saudi state, but it maintains legal independence, and its members do not profit by pilfering state funds. Forbiddance of vice "by the hand" is clearly for the state or its deputies; those for whom no Islamic state exists must affect *ḥisbah* through admonition and guidance "by the tongue." Those who are not able to do so, owing to some deficiency or impediment, must resort to forbiddance by the heart. Presidents of CPVPV Centers are deputies of the state in the performance of *ḥisbah*, and they must forbid vices which they observe in a manner appropriate to circumstances and conditions. Moreover, they must strive to produce a specialist administration concerned with research and social studies in order to gain greater knowledge of the causes of social deviance in modern society.

In an attempt to dispel general misconceptions concerning the nature of enjoining virtue and forbidding vice as a collective duty, and particularly in relation to the Saudi state, Sa'd ibn Maṭar al-'Utaybī, professor at the Higher Judicial Institute, al-Imām Muḥammad ibn Sa'ūd Islamic University, has publicly addressed

⁸⁹ Ibid., pp. 19-23, pp. 66-89.

⁹⁰ 'Abd al-'Azīz Al Dāwūd, "Fī Ḥiwār li-Majallat al-Ḥaras al-Waṭanī Ma'ālī al-Ra'īs al-'Āmm li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *al-Ḥaras al-Waṭanī* 126 (1413/1993): 22-27.

Michael Cook's work on the subject.⁹¹ According to al-ʿUṭaybī, Cook's thesis concerning the forbiddance of vice "by the hand," pertaining to the state, "by the tongue," pertaining to the scholars (as extension of the state), and "by the heart" being associated with the general population, is a misrepresentation. Following Ibn Taymīyah, al-ʿUṭaybī emphasizes that forbiddance "by the hand" is legally allocated according to ability and power, and state-sanctioned authorities should be understood as representatives of the Law, not as its source, which Cook seems to assert. In association with independent legal representation from the office of the *muḥtasib*, *iḥtisāb* should also be understood as foundational to the administrative system of Islamic governance. al-ʿUṭaybī emphasizes that the doctrine of *siyāsah sharʿīyah* must be considered in conjunction with *ḥisbah* in order to more clearly perceive this function of the Saudi state.⁹²

Another expansive conception of *ḥisbah* is forcefully advocated by Shawkat Muḥammad ʿIlyān, Professor of Sharīʿah at al-Nāʿif Academy for Security Sciences, who argues that it is the most important state regulation that must be cultivated in Saudi Arabia, and not limited in scope to the CPVPV.⁹³ ʿIlyān defines *ḥisbah* as a duty with both individual and collective aspects, and that, practically speaking, voluntary application alone is simply not enough in modernity.⁹⁴ Historically, a new role has emerged for the *muḥtasib* given its interaction with the modern Islamic state, just as, throughout time, conceptions of *ḥisbah* have evolved according to the

⁹¹ Saʿd ibn Maṭar al-ʿUṭaybī, "al-Iḥtisāb wa-al-Raqābah al-Idārīyah fī Taṭbīqātihā al-Taʾrīkhīyah," (paper presented at Majlis ʿAbd al-ʿAzīz al-ʿUmairī, al-Rīyāḍ, 17/12/2009).

⁹² Ibid. See also, Saʿd ibn Maṭar al-ʿUṭaybī, *Fiqh al-Mutaghayyirāt fī ʿAlāʾiq al-Dawlah al-Islāmīyah bi-Ghayr al-Muslimīn* (al-Rīyāḍ: Dār al-Faḍīlah, 1430).

⁹³ Shawkat Muḥammad ʿIlyān, *Dawr al-Ḥisbah fī Ḥimāyat al-Maṣāliḥ* (al-Rīyāḍ: Maṭbaʿat al-Narjis al-Tijārīyah, 1421/2000), p. 201.

⁹⁴ Ibid., pp. 201-3.

structure of other Islamic states.⁹⁵ In this respect, ‘Ilyān details the difficulties facing the *muḥtasib* given the vice-ridden practices of modern states, and the need for the standards of the Shari‘ah to be administered publicly. To this end, he argues that consideration should be paid to establishing a balance between punishments in the here and hereafter, not basing rulings excessively upon *maṣlaḥah* (as do the majority of Saudi scholars, according to ‘Ilyān), but upon a more substantial moral basis of determining permissibility and deterrence. Moreover, greater recognition must be paid to the role of adherence to the Shari‘ah as an important factor in the development of security, stability, organizational development, and the deterrence of crime in Saudi Arabia.⁹⁶

After basing his definition upon that of al-Māwardī, Dr. Ṣāliḥ ibn ‘Abd Allāh al-Darwīsh declares *ḥisbah*, as a collective duty, to be a branch of the promotion of virtue and prevention of vice, which is universal in its scope, and promotes an expansive role for the institution.⁹⁷ He follows Ibn Taymīyah in his explanation of the governing form of *ḥisbah* and its requirements, arguing that it is bound and authorized by the state, and stresses the need for submission to the "People of Knowledge" for its explanation.⁹⁸ Al-Darwīsh laments that classical books about *ḥisbah* and the works of the *muḥtasib*, important in revealing organizational progress in Muslim societies, are presently neglected by thinkers. He thereby attempts to discern governmental responsibilities for Muslim societies, positing an ambitious general theory of *ḥisbah* in relation to the modern state. As such, al-Darwīsh pays

⁹⁵ Ibid., pp. 203-6

⁹⁶ Ibid., pp. 205-10.

⁹⁷ Ṣāliḥ ibn ‘Abd Allāh al-Darwīsh, *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar wa Wāqi‘ al-Muslimīn al-Yawm* (al-Rīyāḍ: Dār al-Waṭan lil-Nashr, 1412), pp. 6-7.

⁹⁸ Ibid.

special attention to developing an integrated policy for the enforcement of public morality, which includes criminal policing, municipal regulations, and market supervision in this preliminary attempt to develop a more coordinated strategy for the application of *ḥisbah* beyond its present limits in Saudi Arabia.

A similar objective has been undertaken by Nājī ibn Ḥasan Ḥudayrī, professor at the College of *Da‘wah* and *Iḥtisāb*, Islamic University of Medina, who focuses on defining a contemporary methodology for *ḥisbah*, but one derived specifically from the works of Ibn Taymīyah in both theoretical and practical terms.⁹⁹ Writing for an audience of professionals, including Saudi students, scholars and members of the CPVPV, Ḥudayrī addresses a perceived lack of resources on this topic in the hope of more effectively combating contemporary vices. Ḥudayrī makes a notable effort to examine the historical context surrounding Ibn Taymīyah's scholarship on the topic in order to draw parallels with the present day, especially concerning violations of creed, worship and public morality, but also (to a lesser extent) civil transactions, family issues, and the entire range of prohibitions documented throughout his works. Through an extensive review of Arabic secondary sources (from over 350 authors) as well as primary sources, Ḥudayrī identifies fundamental principles and foundational rules prescribed by Ibn Taymīyah to combat vices that proliferated in his age. At the same time Ḥudayrī discusses various modern means that may be employed in conjunction with this methodology to achieve consonant results. This approach, in fact, has been incorporated into the master's program in *Iḥtisāb* at the Islamic University of Medina, thus proving influential amongst scholars and students of *ḥisbah* in Saudi Arabia.

⁹⁹ Nājī ibn Ḥasan ibn Ṣāliḥ Ḥudayrī, *al-Ḥisbah al-Nazarīyah wa-al-‘Amaliyah ‘inda Shaykh al-Islām Ibn Taymīyah* (al-Riyāḍ: Dār al-Faḍīlah, 2005/1425).

According to Ḥudayrī, *ḥisbah* is an important virtue and collective duty, vital to society's health. It bears much in common with *daʿwah*: both *iḥtisāb* and proselytizing straddle the categories of public and private, and all forms of *ḥisbah* are also forms of *daʿwah* (although all forms of *daʿwah* are not forms of *ḥisbah*). Ḥudayrī insists that Ibn Taymīyah's distinguished legacy is essentially based upon his approach to *ḥisbah*, by which he stood in opposition to vice despite prevailing opinions at all levels of society, and which exemplifies an attitude relevant to this day. Ḥudayrī thus attempts to compose an integrated historical model, which emphasizes the need for *ʿulamāʾ*, *muḥtasibs* and *dāʿīs* to maintain close contact with society and gain first-hand understanding of real problems in order that the *Ummah* may effectively lead by example through *ḥisbah*. Ḥudayrī also stresses the need to employ *fiqh* for *iḥtisāb* that recognizes appropriate degrees of application and always avoids greater harm or corruption when attempting to enact reform. Various fields of *iḥtisāb* are identified: creed, the general public, rulers, and legislation; however, in the latter field Ḥudayrī does not go beyond identifying the principle of public welfare (*maṣlahah*) as guiding jurisprudence in specialized sub-fields pertaining to *muʿāmalāt*. Moreover, Saudi Arabia is cited as exemplifying Ibn Taymīyah's approach to *ḥisbah*, distinguishing itself from all other contemporary Islamic states.

This current of discourse that understands *iḥtisāb* as an integral aspect of state policy is comparable to Maulana Jalaluddin Umari's work on enjoining virtue and forbidding vice, which has recently been widely circulated by Saudi distributors.¹⁰⁰ Umari is the secretary of the Islamic Research Institute in Aligarh, India, as well as the leader of Jamāʿat al-Islāmī Hind, and subscribes to a vision influenced by the

¹⁰⁰ Jalaluddin Umari, *Maʿroof and Munkar: Enjoining What is Right and Forbidding What is Wrong*, transl. Syed Amin Ashraf (Riyadh: International Islamic Publishing House, 2008).

thought of Abū al-A‘lá Mawdūdī (d. 1979) and his program of Islamic state-building. Umari laments modern restrictions to the meaning and scope of the promotion of virtue and prevention of vice, which he casts in relation to the ascendancy of evil forces, corruption and chaos in late Muslim history.¹⁰¹ The present period of decline is considered a testing ground for believers, who are faced with mischief on all sides, but must remain faithful to the Sunnah. Umari thus considers the early period of Islamic history as ideal, and uses it to depict the promotion of virtue and prevention of vice in three constituent aspects: *da‘wah* and guidance, *jihād*, and the establishment of an Islamic state.¹⁰² Umari relies especially on al-Ghazālī for his characterization of the promotion of virtue and prevention of vice, but emphasizes the opinions of Ibn Taymīyah and al-Māwardī regarding the authority of the Islamic state over forbidding vice by force.¹⁰³

Finally, Saudi historian Hudá ‘Abd al-Ghafūr Amīn has recently published a book on *ḥisbah* concerned particularly with its role in environmental protection from the 6th/12th to 10th/16th century.¹⁰⁴ Composed originally as a master's thesis for the al-Azhar University, its publication was launched at the 2011 Riyadh Book Fair, an event that coincidentally was fraught with controversy over *ḥisbah*, specifically over the involvement of female participants.¹⁰⁵ Amīn's book asserts the important role of *ḥisbah* in medieval Islamic societies, as well as the continuing validity of its function; however, she claims that the scope of its conception and application in the past is overlooked today, particularly with respect to the prohibition of pollution,

¹⁰¹ Ibid., p. 151.

¹⁰² Ibid., pp. 87, 106-8, 113.

¹⁰³ Ibid., pp. 121-2, 163, 220.

¹⁰⁴ Hudá ‘Abd al-Ghafūr Amīn, *al-Ḥisbah fī al-Islām wa Dawruhā fī al-Muḥāfaẓah ‘alá al-Bī‘ah* (al-Rīyāḍ: Markaz al-Malik Fayṣal lil-Buḥūth wa-al-Dirāsāt al-Islāmīyah, 1431).

¹⁰⁵ ‘Abd al-Māni ‘ ‘Abd Allāh, *Jarīdat al-Rīyāḍ* (9/3/2011).

maintenance of livestock and regulation of municipal services. As such, Amīn's work addresses this lacuna, outlining how *ḥisbah* promoted the stability of economic, social and cultural life through the protection of the material environment, including animal welfare. Focused on the *muḥtasib* and his function, Amīn illustrates the historical relation between this office and the environment, defined comprehensively to include the earth, animals, plants, and air. As such, Amīn explains how *ḥisbah* served the environment in the fields of economics, healthcare, social life, and other vital aspects of public welfare. The general supervision of environmental protection in the Middle Ages is thus summarized, especially concerning cleanliness and aesthetics. From there, Amīn addresses practical applications for *ḥisbah* in preserving the environment from pollution, as defined by its causes and types, and *ḥisbah's* role in combating air, water, food, and noise pollution, as well as drug adulteration. Litter, waste management and pollution leading to desertification are also covered by Amīn, which provides useful historical insight on matters of contemporary concern, which have been otherwise neglected in Saudi scholarship.

2.4.3. Islamists

In large part, the scholars addressed in the two preceding sub-sections consist of Wahhābī '*ulamā'*' and conservative intellectuals mostly associated with Saudi universities, representing a category sometimes referred to as "Scholastic Salafism" (*al-Salafīyah al-ʿIlmīyah*).¹⁰⁶ In general, they adopt a quietist posture and a more traditional outlook usually rooted in the Ḥanbalī *madhhāb*, and although they may assume a critical stance towards social issues and the official approach to *ḥisbah*,

¹⁰⁶ Bernard Haykel, "On the Nature of Salafī Thought and Action," p. 49.

they do not openly criticise the Saudi government and its policies. In terms of political engagement towards matters regarding *ḥisbah*, they generally argue that all forms of political organization and action, let alone violence, are forbidden because this can lead to civil strife (*fitnah*) between Muslims, and obedience to Muslim rulers, even unjust ones, is religiously mandated. Aside from reasserting *ḥisbah* as a socially conservative principle and the state's monopoly on forbidding vice by force, or advocating the expansion of *ḥisbah* in state-mandated form, little or no thought is given to immediate issues of political concern, with efforts principally directed towards "purification and education" through their teachings.

Along with the Scholastic *Salafīs*, other *Salafīs*, which I will refer to as Islamists, are also first and foremost religious and social reformers who define their project primarily through its creedal tenets, i.e. adherence to strictly traditional (*naqlī*) as opposed to reason-based (*‘aqlī*) arguments, in line with the "pious ancestors" or first three generations of Muslims.¹⁰⁷ Enjoining virtue and forbidding vice is a principal concern of both groups for the rectification of doctrine, as well as for calling Muslims to worship correctly and live their lives under the moral code of the Shari‘ah, thus embodying the ethic of *tawḥīd*. Islamists, however, display a range of approaches to *fiqh*, from affiliation with the Ḥanbalī *madhhab*, to complete rejection of *taqlīd* in favour of direct interface with the sources of revelation (*al-‘amal bi-al-dalīl*) to obtain any ruling or opinion. More decisively, Islamists are

¹⁰⁷ On the Wahhābī concept of *bid‘ah* see ‘Abd Allāh ibn Muḥammad ibn ‘Abd al-Wahhāb's formulation, which he generally defines as what happened after the 3rd century, a span of time including the age of the pious ancestors (*al-salaf al-ṣāliḥ*) as well as the four *imāms* and their immediate disciples; *al-Hadīyat al-Sanīyah wa-al-Tuḥfat al-Wahhābīyah al-Najdiyyah*, Sulaymān ibn Saḥmān, ed. (Makkah, 1973, n.p.), pp. 37, 48, 48ff. Other principal Salafī texts on this subject include Ibn Taymīyah, *al-‘Aqīdat al-Wāsiṭīyah* (Dimashq: Dār al-Thaqāfah, 1965); Muḥammad ibn Ṣāliḥ al-‘Uthaymīn, *Fath Rabb al-Barīyah bi-Talkhīṣ al-Ḥamawīyah li-Shaykh al-Islām Ibn Taymīyah* (al-Qāhirah: Dār al-Ṣafwah, 1986).

distinguished by their approach (*manhaj*) to *ḥisbah*, which they use as an instrument of social and political activism and even revolution: for them it is a tool that allows an active interference in the public sphere, which can be expanded. Amongst Saudi Islamists there are two main divisions: activists and radicals. The former group consists of Salafis who advocate non-violent political activism, ranging from 'ulamā' legitimately engaged in municipal politics, to members of the banned Islamic Awakening Movement (*al-Ṣaḥwah al-Islāmīyah*) as well as *Surūrīs* and members of organizations like *Hizb al-Tahrīr*. The latter group consist of *Salafī jihādīs* who call for violent action against the political order, based on antagonism towards the Saudi government and its policies; for example, "The *Salafī* Group that Enjoins Virtue and Forbids Vice" (*al-Jamā'ah al-Salafīyah al-Muḥtasibah*), and al-Qā'idah in the Arabian Peninsula.

2.4.3.1. Activists

An emerging intellectual elite (*al-Nukhbah al-Fikrīyah*) has been identified in Saudi Arabia, consisting of some 'ulamā', intellectuals, professionals, dissidents, and writers close to the center of power, and others who are outside of official patronage networks.¹⁰⁸ Public discourse from this group addresses the nature of the state and its relation to religion, through such means as publications, symposia and endowed research chairs.¹⁰⁹ The recent opening of public elections for municipal councillors, albeit without women's suffrage, has provided a venue for greater political

¹⁰⁸ Madawi al-Rasheed, *Contesting the Saudi State*, p. 16.

¹⁰⁹ Recent developments include the endowment of research chairs in *Ḥisbah* Studies at King 'Abd al-'Azīz University and King Sa'ūd University, and a strategic planning conference on *ḥisbah* and the CPVPV hosted by King Fahd University for Petroleum and Minerals. Jāmi'at al-Malik Sa'ūd, "Tawqī' Kursī al-Malik 'Abd Allāh ibn 'Abd al-'Azīz lil-Ḥisbah wa Taṭbīqātuhā al-Mu'āṣirah" (25/07/1430), available from www.ksu.edu.sa, accessed 18/7/2009; Wazīr al-Ta'lim al-'Ālī, "Wazīr al-Ta'lim al-'Ālī Yar'ā Itlāq Kursī al-Amīr Sulṭān li-Abḥāth al-Shabāb wa Qaḍāyā al-Ḥisbah fī Jāmi'at al-Malik 'Abd al-'Azīz" (13/01/1431), available from www.mohe.gov.sa, accessed 30/12/2009.

engagement from amongst them; a key issue shaping debate in this milieu has been *ḥisbah*, with Islamists advocating greater interaction between the CPVPV and other organs of the modern state, as well as more intense and systematic application of *iḥtisāb* throughout government policy in accordance with the doctrine of *siyāsah sharʿīyah*. As such, political activity by this constituency represents a blend of traditional Wahhābī outlook with liberal tendencies and a more contemporary Muslim Brotherhood approach. Activists have thus sought to reform the state's policies from within its existing legal and political paradigm without ever straightforwardly questioning the state's legitimacy. Dr. ʿAbd al-ʿAzīz al-ʿUmārī is an example of such an activist: a former professor of Sharīʿah at al-Imām Muḥammad ibn Saʿūd Islamic University, he was elected on this platform by a landslide to head the Riyadh Municipal Council. In the wake of recent scandals in Jeddah concerning insufficient public safety standards exposed by flooding, he has initiated a campaign lobbying for the installation of specialized market inspectors to root-out this corruption.¹¹⁰ Al-ʿUmārī thus points to the historical role of the *muḥtasib* in the field of municipal services to address a pressing contemporary issue. Likewise, he points to the traditional role of female market inspectors (*muḥtasibāt*), who were appointed to patrol female sections of the *sūq* in Medina under the Rāshidūn caliphate, to call for the inclusion of female CPVPV field officers in order that female-only social and commercial venues may be more effectively policed.¹¹¹

For other activist Salafis who work outside the law in Saudi Arabia, forbiddance of vice is an individual duty, which includes publicly denouncing their

¹¹⁰ ʿAbd al-ʿAzīz al-ʿUmārī, "al-Iḥtisāb wa-al-Ruqābat al-Idārīyah fī Taṭbīqātuhā al-Tarīkhīyah," (paper delivered at Majlis ʿAbd al-ʿAzīz al-ʿUmārī, al-Rīyāḍ, 17/12/2009).

¹¹¹ Ibid. See also Badrīyah al-Bishr, *Fiqh Inkār al-Munkar*.

ruler if he has perpetrated a vice or violated the Sharī'ah. Some of them take a decidedly anti-establishment stance, such as Muḥammad al-Masā'irī of *Hizb al-Tahrīr*, who has denounced both Wahhābīs and the CPVPV, claiming that the function of the Saudi *muḥtasib* is distorted and that the current state actually promotes vice.¹¹² Others accept the message of Ibn 'Abd al-Wahhāb's theology, but may have reservations about its fulfillment by the Saudi state and official 'ulamā', as well as exhibiting the influence of political concepts from thinkers like Sayyid Quṭb (d. 1966) and Abū al-A'lá Mawdūdī (d. 1979); for example, Muḥammad Surūr's activist stance is primarily concerned with *ḥisbah* expressed in terms of the concept of *ḥākimiyyah* ("God's sovereignty"), which he justifies in reference to Wahhābī tenets.¹¹³ The most prominent of these outlawed activists are members of the *al-Ṣaḥwah al-Islāmiyyah*, a movement that gained momentum in Saudi universities in the 1970s and 1980s, before leading the reformist Islamist opposition of the early 1990s, and lying dormant thereafter.¹¹⁴ Ideologically, the *Ṣaḥwah* also represent a blend of traditional Wahhābī outlook and the more contemporary Muslim Brotherhood approach. The CPVPV discounts such critics by claiming their juristic opinions are offered without sufficient knowledge of *fiqh*, or that the duty of

¹¹² Muḥammad al-Mas'arī, *al-Adillah al-Qaṭ'iyyah 'alá 'Adam Shar'iyyat al-Dawlah al-Sa'ūdīyah* (London: Dār al-Sharī'ah, 1995).

¹¹³ Muḥammad Surūr Zayn al-'Abdīn, *Azmat Akhlāq* (Birmingham: Dār al-Arqām, 1999); *al-'Ulamā' wa Amānat al-Kalimah* (Birmingham: Dār al-Arqām, 1998); for an interview with Surūr, see al-Rasheed, *Contesting the Saudi State*, pp. 74-77.

¹¹⁴ For a history of the Ṣaḥwīs in the 1990s, see Madawi al-Rasheed, "Saudi Arabia's Islamist Opposition," *Current History* 95/597 (1996): 16-22; *A History of Saudi Arabia*, Mamoun Fandy, *Saudi Arabia and the Politics of Dissent* (New York: St. Martin's Press, 1999); Hrair Dekmejian, "The Rise of Political Islam in Saudi Arabia," *Middle East Journal* 48/4 (1994): 627-43; Joshua Tietelbaum, *Holier than Thou: Saudi Arabia's Islamic Opposition* (Washington: Washington Institute for Near East Policy, 2000).

religious revival and deepening fidelity to God restly squarely with officially sanctioned educational institutions, who must establish capable programs.¹¹⁵

Despite the CPVPV's dismissal, the *Ṣaḥwah* have exercised an influence upon greater Islamist participation, generally through *al-Nukhbah al-Fikrīyah*, and specifically through the municipal elections previously mentioned. A major example of this legacy is Salmān al-ʿAwdah, now a prominent Saudi *shaykh* and key scholar in the international Salafi movement, who originally rose to fame through his leading role with the *Ṣaḥwah*. Al-ʿAwdah was imprisoned by Saudi authorities in 1994 after criticizing the government for corruption, human rights abuses and permitting American troops on Saudi soil, and was lauded by Osama bin Laden and his ilk.¹¹⁶ Following his reconciliation and release from prison, he has repudiated Bin Laden, but continues to support similar objectives through non-violent means and without openly criticizing the Saudi regime and its policies. According to recent public addresses from al-ʿAwdah, the context for the effective promotion of virtue and prevention of vice by individuals requires greater public participation in government, protected by respect for human rights and equal opportunities for all.¹¹⁷ If these conditions are met, he says, legitimate grievances against the United States can be effectively addressed, and terrorism eliminated.¹¹⁸ At the same time, he reasserts the necessity of *ḥisbah* officially governed by the CPVPV, emphasizing the importance of sincere admonition by its *muḥtasibs* upon youths. Al-ʿAwdah also emphasizes the

¹¹⁵ Abd al-ʿAzīz Āl Dāwūd, "Fī Ḥiwār li-Majallat al-Ḥaras al-Waṭanī Maʿālī al-Raʿīs al-ʿAmm li-Hayʿat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar," *al-Ḥaras al-Waṭanī* 126 (1413/1993): 26-27.

¹¹⁶ E.g. Osama Bin Laden, "The Betrayal of Palestine," transl. and ed. Bruce Lawrence, *Messages to the World: Statements of Osama Bin Laden* (London: Verso, 2005), Ch. 1.

¹¹⁷ Salmān al-ʿAwdah, "Standing United Against Terrorism and al-Qaeda" (9/21/2009); available from <http://en.islamtoday.net>, accessed 22 January 2011.

¹¹⁸ Salmān al-ʿAwdah, "The Bombings in Riyadh and What is Required of Us" (1/1/2003); available from <http://en.islamtoday.net>, accessed 22 January 2011.

need for individuals to support the CPVPV in developing a broader conception of *ḥisbah* in line with society's evolution, as well as the need for Muslim scholars to engage the categories of modern liberalism in dialogue, but without proposing any detailed program.¹¹⁹

2.4.3.2. Radicals

The group that stormed the Grand Mosque of Mecca in 1979 led by Juhaymān al-ʿUtaybī (d. 1980), was a radicalized faction of a much broader pietistic organization setup in Medina in the mid 1960s under the name of *al-Jamāʿat al-Salafīyat al-Muḥtasibah* (JSM), or the "Salafī Group that Enjoins Virtue and Forbids Vice." Recent scholarship has shown that JSM has played an important yet subtle role in shaping Saudi Arabia's political landscape until today, despite being disbanded after the Meccan revolt.¹²⁰ Based on the writings of Juhaymān and commentary from former members like Nāṣir al-Ḥuzaymī, it is possible to discern the characteristics of this so-called "Rejectionist Islamism" or "neo-Salafi Islamism".¹²¹ Unlike the more visible *Ṣaḥwah* movement, which is pragmatic, political and elitist, Rejectionist Islamism is an isolationist, pietistic and lower-class phenomenon; however, both share a primary concern with enjoining virtue and forbidding vice, and the need for more stringent application of *ḥisbah* by authorities (especially its religious aspects in the JSM's case).

¹¹⁹ Salmān al-ʿAwdah, "al-Ḥisbah," *al-Ḥayāh Kalimah* (5/28/2010) audio broadcast; available from www.islamtoday.net, accessed 6/10/2010.

¹²⁰ Thomas Hegghammer and Stéphane Lacroix, "Rejectionist Islamism in Saudi Arabia: The Story of Juhaymān al-ʿUtaybī Revisited," *IJMES* 39 (2007): 103-22. See also Joseph A. Kechichian, "Islamic Revivalism and Change in Saudi Arabia: Juhayman al-ʿUtaybi's 'Letters to the Saudi People,'" *MW* 70 (1990): 1-16; "The Role of the Ulama in the Politics of an Islamic State: The Case of Saudi Arabia," *IJMES* 18 (1986): 53-71.

¹²¹ Hegghammer and Lacroix; Nāṣir al-Ḥuzaymī, *Jarīdat al-Rīyāḍ* (10/6/2003); *Jarīdat al-Rīyāḍ* (18/6/2003); *Jarīdat al-Rīyāḍ* (9/5/2004); *Jarīdat al-Rīyāḍ* (6/9/2004). See also, Misharī al-Dhayīdī, *al-Sharq al-Awsaṭ* (24 and 25/2/2004); and ʿAdl al-Turayfī, *Jarīdat al-Rīyāḍ* (10 and 13/3/2004).

The founding members of JSM studied at Islamic University of Medina under the direction of *mufīṣ* Muḥammad ibn Ibrāhīm Āl al-Shaykh and ‘Abd al-‘Azīz ibn Bāz; in fact, JSM considered Ibn Bāz their official shaykh and took his advice to engage in proselytizing (*da‘wah*) and enjoining virtue and forbidding vice. The teachings of Nāṣir al-Dīn al-Albānī (d. 1999) also contributed to the ideological basis of JSM, especially many interpretations in his treatise "Characteristics of the Prophet's Prayer."¹²² According to the JSM, Islam had been corrupted by the introduction of reprehensible innovations (*bid‘ah*) in religious practice and by society's deviation from religious principles. They advocated a return to a strict and literal reading of the Qur‘ān and Sunnah as the sole source of religious truth, and rejected *taqlīd* of all subsequent scholars. This led to an extreme social conservatism and rejection of many aspects of modernity, as well as peculiar views on ritual and prayer; for example, they considered it permissible to pray with sandals on, and the obligation to breakfast in Ramaḍān based on the disappearance of sunlight as opposed to the sun. By 1965 JSM had come to see it as their duty to enforce religious obligations in certain parts of Medina, including destroying pictures and photographs in public spaces. As leader of the radicalized JSM splinter group, Juḥaymān expressed his commitment to *ḥisbah* by publicly criticizing the Saudi regime for "making religion a means to guarantee their worldly interests, putting an end to *jihād*, paying allegiance to Christians (USA), and bringing over Muslims evil and corruption..."¹²³

¹²² Muḥammad Nāṣir al-Dīn al-Albānī, *Ṣifāḥ Ṣalāt al-Nabī* (Maḍīnah: al-Jāmi‘ah al-Islāmīyah, 1405).

¹²³ Juḥaymān al-‘Utaybī, "al-Imārah wa-al-Bay‘ah wa-al-Ta‘ah"; c.f. Abū Dharr, *Thawrah fī Riḥāb Makkah* (Kuwayt: Dār Ṣawt al-Ṭalabah, 1980), pp. 113.

In the 1980s jihādism emerged as the other main strain of radical Saudi Islamism as a result of the participation of thousands of Saudi youths in the Afghan *jihād* against the Soviet Union. The *mujāhidīn* developed a highly militaristic culture that set them apart from other Islamist currents like the *Ṣaḥwah*, and were also explicitly interested in politics, which Rejectionists were not. Representing extreme opposition to the establishment, Osama bin Laden condemned *Hay'at Kibār 'Ulamā'* for its complicity in justifying the major disbelief (*al-shirk al-akbar*) of Saudi leaders stemming from the spread of vice, such as through usury (*ribā*), complicity in American and Israeli aggression against Muslims, and the imprisonment of devout scholars.¹²⁴ He portrayed *Hay'at Kibār 'Ulamā'* as obtaining heightened influence in return for endorsing illegitimate government policies, especially King Fahd's decision to call in American troops in 1990, and selling-out Palestinian rights to gratify Washington.¹²⁵ Bin Laden also argued that the prestige of the official '*ulamā'*' amongst Saudi society has led to their laws being obeyed rather than to true Islamic law, thus constituting *shirk*.¹²⁶

More recently, Ibrāhīm al-Rubaysh, a former detainee at the US detention center at Guantanamo Bay in Cuba, has emerged as a leading ideologue and spokesman for al-Qā'idah in the Arabian Peninsula (AQAP). In his public criticism of the Saudi regime, he directly addresses increasing limitations upon the scope of CPVPV powers, and the subsequent proliferation of vice:

Those who observe how they dealt with the Committee for the Promotion of Virtue and Prevention of Vice and how they stripped its members of their jurisdictions are well aware of

¹²⁴ Osama bin Laden, "The Saudi Regime: November 1996," Bruce Lawrence, transl. and ed., *Messages to the World: The Statements of Osama bin Laden*, Ch. 4.

¹²⁵ Ibid., "The Betrayal of Palestine: December 29, 1994."

¹²⁶ Ibid., Ch. 4, p. 34.

their keen interest in transforming society and alienating it. They will not rest until they force the chaste women to go out in the same way the women of *Banī al-Aṣfar* [Westerners] go out. We pray to God to prevent them from doing what they want to. The door was wide open for the newspaper writers to carry out a fierce attack against the Committee, but none of them dares to attack an official in the way he attacks the Committee. Then, after all that, and in the usual practice of Saudi hypocrisy, Nā'if ibn 'Abd al-'Azīz gave a statement in which he announced that the Committee was a government organ just like other organs. But what happens is that the Committee is stripped of more jurisdictions, and the attacks against it are getting more frequent without any punishment for any writer. Now, no element of the Committee can prevent a vice or even follow a suspect if he is in his private car. He also cannot carry out his duty outside his jurisdictional area. If it happens that he arrests a criminal, his role is confined to making the arrest and handing over the criminal to the police, who most often will not file a case.¹²⁷

Al-Rubaysh continues to condemn the Saudi regime and its liberal elites for encouraging gender-mixing (*ikhtilāf*) and inter-religious dialogue initiatives, and the corruption of 'ulamā' who condone this, while pious critics are persecuted. The regime's general forsaking *ḥisbah* and actual promotion of vice, especially through restrictions to the CPVPV's jurisdiction, thus forms a significant component of AQAP's justification for seeking its violent overthrow.

2.5. Conclusion

This chapter focused on examining how exactly *ḥisbah* has been theoretically reformulated through scholarly discourse in Saudi Arabia, in both its general sense as the moral duty to enjoin virtue and forbid vice, as well as its specific sense as the derivative function of the *muḥtasib*. An overview was thus provided of key points of its conceptualization from both official and unofficial sources, comprising a more

¹²⁷ Ibrāhīm al-Rubaysh, "The Mask Falls," English transcript of audio broadcast, available from www.neildoylc.com, accessed 14/2/2011.

detailed historical record of its theorization in terms of *akhlāq* and *fiqh*, as well as commentary thereupon. In so doing, elements of continuity and change between *ḥisbah* in Saudi Arabia and in pre-modern history were also further clarified.

As such, *ḥisbah* in Saudi Arabia is generally understood as a linchpin between morality and law. In other words, enjoining virtue and forbidding vice, as both an individual duty and function of the *muḥtasib*, is considered a main mode by which individual ethical subjects are called upon or incited to obey the Sharīʿah and cultivate an honourable disposition. Literature on *ḥisbah*, including both *akhlāq* and *fiqh*, thus serves as a guide to ethical work required for reform of the self and society as the counterpart of *jihād* during peacetime. *Ḥisbah* in Saudi Arabia is founded upon notions that are generally rooted in pre-modern Islamic tradition; however, its conception in terms of both virtue ethics and law also displays elements of variation, including a more prominent expression than in the past, which simultaneously struggles against being categorized in modern terms as well as grappling with demands for change.

Analysis of the four elements of ethical relations in Saudi discourse surrounding enjoining virtue and forbidding vice helps illustrate the specific kind of ethical subject intended through the cultivation of *akhlāq* and practice of *fiqh*. First of all, the ethical substance officially recognized in Saudi Arabia, or morally problematic aspects of the self as pertains to ethical judgment, falls in line with the pre-modern *akhlāq* tradition: the "heart" (*qalb*) and "soul" (*nafs*). Reflection on these and the desire for their transformation is of central concern in Saudi literature, which preserves a theory of human nature based on innate disposition and the cultivation of virtuous character through "care for the self," drawing especially from earlier

Ḥanbalī and Shāfiʿī scholarship; however, this approach to ethics is applied to problems faced by contemporary individuals and society, with *ḥisbah* as a central topic of concern, and reflecting a more modern administrative perspective. Evidence for this lies in Saudi *akhlāq* literature, including treatises issued by the CPVPV and endorsed by the High Council of Islamic Scholars (*Hay'at Kibār 'Ulamā'*).

Secondly, the mode of subjection, or how the individual is called upon to establish its relation to moral obligations, remains respect for God's will as revealed through the Sharī'ah, generally, and a sense of modesty or shame (*ḥayā'*) as part of faith (*īmān*), particularly. Emphasis, however, is placed upon a particular constellation of virtues and practices, especially the cultivation of *ḥayā'*; indeed, the sentiment of shame, assumes a heightened centrality in the Saudi context, and is mainly attenuated to its devotional, sexual and authoritarian aspects as a cardinal virtue that enables reform. Like the previous category, evidence for this also lies in *akhlāq* literature sanctioned by the Saudi religious establishment, which forms an archetype for the *fiqh* of *ḥisbah*.

Thirdly, the techniques of the self, or operations performed on the self in order to ensure one's subjection to a moral authority and transform oneself into an autonomous ethical agent, remain largely unchanged in Saudi Arabia. Like the pre-modern tradition, these practices center upon acts of worship, which form the moral and religious basis of the law (*dīn*), and are constituted primarily by the Five Pillars (although their scope technically embraces the entire Sharī'ah, including civil transactions). These practices are likewise regulated by the principle of mutual self-discipline expressed in the duty of all Muslims to enjoin virtue and forbid vice, or *ḥisbah* in its general sense, which itself constitutes a virtuous act. The performance

of this duty causes shame and cultivates modesty through embodying the role of "watcher" or "warner." The individual subject and its ethical formation is also conceived as operating in a context where autonomy is delimited by the Shari'ah and its pre-suppositions concerning human and divine agency. On the other hand, the prominent position of enjoining virtue and forbidding vice in Saudi Arabia stands out from previous history: the muscular Hanbali tradition has been adapted to an institutionalized role in a modern state under the prescriptive agency of an official 'ulamā' and the CPVPV, thus generating intensive discourse on the topic. Within this context a spectrum of opinions are expressed by Saudi scholars and public figures, ranging from support for the religious establishment's collective responsibility over *ḥisbah*, to concern over restrictions to individual ethical agency and the limited focus of CPVPV activities. Some critics stress the need to broaden the scope of *ḥisbah* to include more aspects of *mu'āmalāt*. Knowledgeable practice of the duty is also advocated, which includes good manners (*ādāb*) and ethical preparedness, while more radical voices advocate the intensification of forbidding vice by force at the individual level. Evidence for this lies in CPVPV literature on enjoining virtue and forbidding vice, in addition to discourse on the topic by Saudi 'ulamā', political activists and radicals.

Finally, the *telos* of ethics, or ideal mode or state of being toward which one strives or aspires to in their ethical work, is recognized as *īmān* by Saudi 'ulamā', that is, true belief, or a state of total surrender to God, as both an inner action and outer adherence to the message of the Prophet Muḥammad. In other words, their concept of *īmān* includes all the acts of the heart and beliefs of a person, as well as encompassing all the outward acts of submission to God that are considered

exclusively part of *islām*. This is consonant with pre-modern Ḥanbalī notions of *īmān*, which required the fulfillment of exterior acts of obedience as the prerequisite for true belief: *islām* in the sense of ritual observance is the guarantee of faith. More particular to Saudi Arabia, however, is the Wahhābī expression of the interrelated states of *īmān* and *islām* through the concept of *tawḥīd* ("monotheism") and its opposite (*kufī*), and the associated focus upon strict enforcement of *ʿibādāt* and *ʿaqīdah* ("creed") as objects of *ḥisbah*, which comprise the main focus of its reform program. Scholarly opinions on this issue range from conservative confirmation and desire for its intensification, to reaction against it and desire to expand the ethical and legal conception of *ḥisbah* to address broader issues of social, economic and political reform. Evidence for this lies in literature and public commentary related to *ḥisbah* and reform by Saudi *ʿulamāʾ*, intellectuals and activists.

In sum, this survey of discourse on *ḥisbah's* conception in Saudi Arabia raises several questions concerning its evolution there: Given the political significance of *ḥisbah* in Saudi Arabia, will calls for its intensified application in ethical and legal terms remain predominantly focused on devotional and creedal matters, or will this shift to a more coordinated and systematic institutionalization, which may lead to broader social, economic and political reform? Given calls for increased public dialogue on issues of religion and public life in Saudi Arabia, will calls for *ḥisbah's* engagement therein be seriously developed? More particularly, will conceptions of *ḥisbah* come to engage the categories of modernity at a more meaningful level in public discussions and education? Will issues like inter and intra-religious dialogue be addressed more substantively in such discourse, concerning other Islamic sects

and minority groups in Saudi Arabia, or issues related to pluralism and globalization?

3. The Saudi Law of *Ḥisbah* and Its Enforcement by the CPVPV

3.1. Introduction

As we have seen, the *muḥtasib* performed both the roles of moral censor and market inspector with varying degrees of focus throughout pre-modern Islamic history. This office was thus entrusted with collective legal responsibility for the chiefly moral duty to enjoin virtue and forbid vice, with scholars conceiving its function in terms of enforcing *fiqh* and helping to cultivate ethical disposition (*akhlāq*); for example, al-Mawārdī defined *ḥisbah* as an injunction, "to promote good if obviously forsaken, and prohibit evil if manifestly done," in order that the Qur'ānic criteria for leadership grounded in true faith may be achieved.¹ This basic definition is widely accepted by Saudi '*ulamā*' and forms the basis of the CPVPV's self-conception, bolstering their claim to uphold an obligation rooted in Islamic tradition that has been otherwise abandoned in modern history.² At the same time, critics refer approbriously to the CPVPV's conflict with modernity, as if it were a historical anachronism.³ Although examination of Saudi *fiqh* and *akhlāq* literature reveals ongoing concern for the authentic practice of *ḥisbah*, this differs from *siyāsah* legislation, which is a simultaneous mode of its enactment historically. Little, in fact, is known about the substantive law of *ḥisbah* in Saudi Arabia, nor the operations of CPVPV and influence of modern policing techniques. What exactly is the law of *ḥisbah* as the function of the CPVPV, and how is it applied? What are constant and variable

¹ Al-Mawārdī, *al-Aḥkām al-Sulṭānīyah*, p. 240. See also Abī Ya'lá al-Ḥanbalī, *al-Aḥkām al-Sulṭānīyah*, p. 284.

² Faḍl Ilāhī, *al-Ḥisbah: Ta'rīfuḥā, wa Mashrū'iyyatuhā, wa Ḥukmuhā*, pp. 13-14; *al-Ri'āsah al-'Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Ta'rīkhuhā — A'māluḥā*, Ch. 1.

³ E.g. Nadin al-Badr, "al-Ḥaqīqah," (television broadcast, Dream 2 TV, 1/10/2012).

features between it and the pre-modern *muhtasib*? What particular social issues is it responding to in modernity?

At an immediate level, this topic is significant because a greater understanding of the law of *ḥisbah* and its application by the CPVPV offers more predictability and security for those under its jurisdiction. At a political level, the CPVPV is of great importance in legitimating the Saudi regime, and further attention could help confirm or dispel the innuendos which surround it. It occupies an iconic status amongst Saudi conservatives, and serves as a rallying point and example for those supporting a more public role for religion in the international Salafī movement. It also has an infamous reputation amongst liberals in Saudi Arabia and abroad, who claim the CPVPV is a reactionary vehicle and primary mechanism for severe restrictions on individual freedom. At a more theoretical level, this exercise provides an opportunity to test the correspondence between the various components of Islamic law and ethics in contemporary practice. Studying the CPVPV also presents a unique opportunity to examine the modernization of *ḥisbah*, as well as an alternative configuration of law and religion at a time when questions are being raised about the inevitability of secularization.

Most coverage of the CPVPV in the West is known through the international press as well as reports from human rights organizations, which are critical toward violations of privacy and limitations of moral autonomy.⁴ Similarly, academic coverage of the CPVPV generally consists of dismissive references to "moral police"

⁴ E.g. Amnesty International, "Saudi Arabia: A Justice System without Justice" (10 May 2000); available from www.amnesty.org, accessed 22/1/2009; Human Rights Watch, *World Report 2008* (New York: Human Rights Watch, 2008), pp. 516-520.

in Saudi Arabia as religious zealots.⁵ Michael Cook's compendious study of enjoining virtue and forbidding vice provides some information on the CPVPV, including an overview of its formation and early activities; however, the focus of his study is not primarily on the *muhtasib* as an actor, nor does he attempt to provide a detailed record of CPVPV activity.⁶ In the absence of complete information, on one hand, scholars have speculated that *hisbah* has atrophied following restrictions to the scope of CPVPV activities, and the power of the '*ulamā*' generally, through the process of bureaucratization.⁷ On the other hand, it has been suggested that the CPVPV has provided Islamic fundamentalism with an institutional base and intrusive powers to entrench moral Puritanism; for example, in a paper Frank Vogel has claimed that the CPVPV is an invasive force with the persistent ability to violate privacy in excess of traditional legal prescriptions.⁸ Otherwise, additional coverage of the CPVPV is limited to indirect attention in historiography on Saudi Arabia, where it is portrayed as a reactionary vehicle to entrench and expand '*ulamā*' power, as well as an instrument to legitimize the ruling regime, albeit one that increasingly operates according to defined protocol.⁹

I aim to discover more precisely how *hisbah* has been legally defined and applied by the CPVPV in contemporary Saudi history. In so doing, I hope to understand more clearly how it functions in comparison and contrast with the

⁵ E.g. Kostiner, "al-Su'ūdiyya, al-Mamlaka al-'Arabiyya," *EF*² (Brill Online, 2005), www.paulyonline.brill.nl, accessed 7/14/2007.

⁶ Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 175-92, xii.

⁷ Layish, 53ff.; al-Yassini, p. 70.

⁸ Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, p. 182, 147ff.; Vogel, "The Public and Private in Saudi Arabia: Restrictions on the Powers of the Committees for Ordering the Good and Forbidding Evil."

⁹ Holden and Johns, p. 260; Commins, pp. 109-113, 129; Buchan, pp. 108, 111-12; Lacey, pp. 52, 85, 329.

muhtasib of pre-modern history. I also hope to identify some significant social issues which affect the practice of *hisbah* by the CPVPV.

In this chapter, I will argue that in the law and enforcement of *hisbah*, four main aspects of continuity and change exist between the CPVPV and pre-modern *muhtasib*, namely the form of law, range of duties, punishments, and relation to state and society. More specifically, first of all, an integrated approach to law and morality is maintained, whereby the *nizām* (*siyāṣah* legislation) of *hisbah* presupposes the categories and authority of *fiqh* as well as the archetype of *akhlaq*, partially reminiscent of the Ottoman *ihtisāb qānūnnamları*; however, there is a marked shift toward enforcing a more codified morality in the form of bylaws and regulations specialized in the rules of worship (*‘ibādāt*) and tenets of Wahhābī creed (*‘aqīdah*). Secondly, the decisive aspect of CPVPV jurisdiction continues to be the prosecution of *shar‘ī* violations apprehended in *flagrante delicto*, by which its officers perform the *muhtasib*'s traditional role as moral censor; however, the role of market inspector has disappeared from CPVPV jurisdiction, with enforcement activities now centered upon religious rules, especially pertaining to sexual morality and prayer, with other aspects of criminal law and public safety only marginally addressed. Thirdly, the CPVPV maintains executive authority to apply *ta‘zīr* penalties within the limits prescribed by Ḥanbalī *fiqh*; however, corporal punishments are surrounded by more protocol and increasing emphasis is placed on rehabilitation programs, not to mention its restricted ability to impose discretionary penalties on the strength of *siyāṣah*. Finally, like the pre-modern *muhtasib*, the CPVPV acts as a vehicle to enforce law and order in support of the ruling regime and prescriptive authority of the *‘ulamā’*; however, unlike previous Ḥanbalī history, it

does not operate in a minority community, but is institutionalized as an organ of the nation state with greater intrusive powers at its disposal, resembling a type of "religious police force." It also polices particular social problems in a society marked by conservative local custom (*'urf*), but which faces rapid changes related to modernization and globalization; for example, terrorism, veiling and gender segregation, and the spread of conflicting values and ideas are major issues engaged by the CPVPV.

Evidence to support these claims is drawn from the *Nizām* of the CPVPV (see Appendix 1), which has been in effect since 1980, the Executive Bylaws of the CPVPV (see Appendix 2), which have been in effect since 1987, and articles from the *Nizām* of Penal Procedures concerning CPVPV fieldwork (see Appendix 3), which have been in effect since 2001. Together these documents form the CPVPV's legal foundation, respectively defining its governing constitution, rules for its application of *ḥisbah*, and additional regulations concerning arrest, seizure and punishment. Proof is also drawn from CPVPV operating statistics, which provide an official record of its enforcement activities and material resources from 1997 to 2007 (see Tables 1-13). Additional references are made to literature and *fatāwā* by Saudi *'ulamā'*, Saudi press reports and other official publications from the CPVPV for further detail on specific issues of pertaining to CPVPV performance. Moreover, in order to facilitate comparison and contrast, my argument assumes previously established knowledge of *ḥisbah* and the *muḥtasib* in pre-modern history (see Chapter 1), as well as details concerning the conception of enjoining virtue and forbidding vice in Saudi Arabia (see Chapter 2). The broader historical development of *ḥisbah* in relation to the Saudi state will be explored subsequently (see Chapter 4).

Methodologically, I rely upon post-structuralist theory to better understand *hisbah* in terms of discursive practices and power relations, as well as their point of intersection with ethics. In other words, on one hand, I draw from Foucault and his interlocutors on government rationality and law to frame my understanding of *hisbah's* development, and help determine how the CPVPV has been transformed by modern police techniques of discipline, surveillance and constraint. On the other hand, I also understand the CPVPV as simultaneously facilitating ethical self-formation through its participation in the Islamic tradition of mutual self-discipline, or enjoining virtue and forbidding vice. The chronological scope of inquiry lies between 1980 and 2011, with particular attention to the period from 1997 to 2007.

The chapter will begin with an assessment of the laws of *hisbah* through examining the bylaws and governing regulations of the CPVPV, followed by a statistical analysis of CPVPV enforcement activity based on its official records. Further depth of analysis is then pursued through three case studies on key issues pertaining to CPVPV activity: terrorism, veiling and gender segregation, and religious freedom.

3.1. Modern Policing and the Laws of *Hisbah*

3.1.1. Modern Policing

Police are generally defined as the civil force of a state, responsible for the prevention and detection of crime and the maintenance of law and order.¹⁰ As such, they are considered a personification of the state, whose powers include the legitimate use of force within a defined legal or territorial area of responsibility.

¹⁰ "Police, n.," Oxford Dictionary of English (Oxford Reference Online, 2010), www.oxfordreferenceonline.com, accessed 5/27/2012.

Policing in this sense is conventionally understood as having emerged as a successful solution to the rising tide of crime and popular disorder; however, increasing attention has been paid to the wider historical context of its development, thus challenging old certainties. Robert D. Storch's seminal essays on policemen as both "domestic missionaries" and "a plague of blue locusts," for instance, showed how modern policing developed within the context of maintaining the class system and protecting private property in 18th and 19th century Britain.¹¹ The origins of policing institutions are now understood, at least in the academic world, as far more problematic, depending upon changing conceptions of public morality as much as on fears of crime and disorder. The pattern of police development is also recognized as being far more complex, and dependent upon broader processes like legislation and nation-state formation.

Some legal sociologists have followed Foucault's lead to demonstrate continuity and change between modern-day police and its earlier forms, unsettling the obviousness of the police's role in contemporary societies through a broad approach to their social binding work.¹² It compels details about all aspects of police operations (e.g., crime prevention, crime detection, traffic work, social order maintenance) in terms of the police's role in binding a local community around a code that determines which behaviours are right and which are wrong, as well as the destiny of one group as opposed to another.¹³

¹¹ Robert D. Storch, "The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England, 1840-1857," *International Review of Social History* 20 (1975): 61-90; see also, "The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England, 1850-1880," *Journal of Social History* 9 (1976): 481-509; Jean-Marc Berlière, "L'Institution policière sous la Troisième République, 1875-1914," (Thèse pour le doctorat, Université de Bourgogne, 1991).

¹² Alan Hunt and Gary Wickham, *Foucault and Law: Toward a Sociology of Law as Governance* (London: Pluto Press, 1994).

¹³ *Ibid.*, p. 128.

In this view, the origins of modern policing are traced to the 17th and 18th centuries, as developed by French legal scholars and practitioners, especially Nicolas de La Mare's *Traité de la Police*.¹⁴ The German *polizeiwissenschaft* ("science of police") is also identified as an important theoretical formulation of police.¹⁵ According to *polizeiwissenschaft*, the police had an economic and social duty to "procure abundance." It was in charge of demographic concerns and of empowering the population, which was to be the main strength of the state according to mercantilist theory; thus, in addition to simple law enforcement activities, its functions included public health concerns, urban planning and surveillance of prices. According to Foucault, this emergent "doctrine of the police" defined the nature of the state's rational activity, its aims (especially the utilitarian happiness of the population) and the general form of the instruments involved.¹⁶ The police were not understood as an instrument or mechanism functioning within the state, but a government technology peculiar to the state; in other words, domains, techniques and targets where the state intervenes.

A big shift toward the understanding of police we are familiar with today occurred in the 19th century, contemporary to the formation of nation-states in Western Europe. The "new police" as it is sometimes called, quickly came to focus on criminal activity and social order. Within these limits and as a part of them, new techniques of surveillance allowed policing to become more the work of special "forces". It also allowed special or secret police forces to develop in order to deal

¹⁴ Nicolas de La Mare, *Traité de la Police* (Amsterdam: Aux dépens de la Compagnie, 1729).

¹⁵ Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* (New York: Palgrave Macmillan, 2007).

¹⁶ Foucault, *Politics, Philosophy, Culture: Interviews and Other Writings*, L. D. Kritzman, transl. (New York: Routledge, 1988), pp. 73-4.

with threats to particular government regimes; the policing of the 1848 uprisings across Europe and the 1871 Paris Commune stand out as early examples of this type of policing.¹⁷ The most defining aspect of the new policing is the scale and continuity of the exercise of power, which involves much greater knowledge of detail. There was a gradual development of techniques of surveillance whose function was far more complex and subtle than massive and spectacular displays of force. There was also the emergence of systematic knowledge of individuals through connected practices of surveillance, confession and documentation; for example, policing techniques such as finger printing, the use of informants, report writing, and the interrogation of subjects. The knowledge involved in modern policing became increasingly reliant upon human sciences like psychology, sociology, biology, criminology, and their attendant commitment to statistics.¹⁸

The appearance of modern policing, in both its old and new forms, can be understood as part of a broad shift toward enforcing code-based morality and law that emerged as control mechanisms of the modern state. At the same time, the enforcement of this positive law signalled the further fading away of virtue ethics, or "practices of the self," and substantive application of any competing law, such as the divine law of the Church. The police powers of government included the protection of public morals through legislation restricting acts and things judged harmful to the good of society, such as prostitution, pornography and forms of sexual vice, which have come under severe attack in liberal political thought only recently, especially

¹⁷ Ibid.

¹⁸ Hunt and Wickham, p. 131.

concerning homosexuality.¹⁹ Such legislation is understood by Foucault as part of a process of essentialization that attempts to fix our identities by defining the mechanism of a supposedly natural sexuality.²⁰ The appearance of modern policing also signalled the abolition of corporal and shaming punishments in liberal western states. From ancient times through the 18th century, the infliction of physical harm upon a person's body, such as flogging, and explicit shaming, such as public denunciation, were commonly used as punishments for a crime or infraction in those instances that did not call for the death penalty or exile.²¹ The growth of humanitarian ideals in the Enlightenment and afterwards led to its gradual abandonment as an inhuman and barbaric relic of the criminal justice systems of bygone eras; however, Foucault believes this is an illusion because the state substituted psychological punishment by monitoring and controlling both prisoners and everyone in society through policing.²²

Following commercial intrusions and colonization by western powers since the 18th century, European penal codes were established in most Muslim countries in line with new economic realities and European political hegemony. This process occurred simultaneous to the emergence of the nation-state, the jural *modus vivendi* of which was codification.²³ Through codification, the state harnessed a political

¹⁹ Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (New York: Oxford University Press, 1993); D. A. J. Richards, *Sex, Drugs, Death and the Law* (Totowa, NJ: Rowman and Littlefield, 1982); Patrick Devlin, *The Enforcement of Morals* (London: Oxford University Press, 1968); H. L. A. Hart, *Law, Liberty and Morality* (Stanford: Stanford University Press, 1963).

²⁰ Michel Foucault, *The History of Sexuality*.

²¹ Nathan Harris, "Shaming and the Stigmatization of Offenders," *The New Oxford Companion to Law*, Peter Cane and Joanne Conaghan, eds. (Oxford Reference Online 2011), www.oxfordreferenceonline.com, accessed 16/6/2011.

²² Much of Foucault's work shows how the mechanisms of the moral order operate in the modern world, opening up the structure of cruelty in all its complexity, as demonstrated through investigating the origins and development of its actual effects. For an overview of this approach, see Thomas Dunn, *Foucault and the Politics of Freedom* (Lanham, MD: Rowman and Littlefield, 2002).

²³ Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 367.

tool of governance that afforded it greater policing powers. The most essential features of the modern code are the production of order, clarity, concision, and authority.²⁴ According to legal experts, modern codes were intended to replace "all previous inconsistent customs, mores and laws."²⁵ Codes are intended to comprehensively cover the area they claim to regulate, precluding both the substantive application and authority of any competing law. Codes must be systematic and clear, arranged logically, and rendered easily accessible to lawyers and judges.²⁶ Islamic law, however, runs against many of these attributes; for instance, it depends theoretically and practically on the cooperation of *fiqh*, customary law (*urf*) and royal law (*siyāsah sharʿīyah*). In comparison with modern codes, Islamic law is also relatively obscure and complex, perforce precluding the superiority of state law.

3.1.2. The Laws of *Ḥisbah*

Legislation concerning *ḥisbah* in Saudi Arabia centers chiefly on the *Nizām* of the CPVPV (see Appendix 1) and its elaboration in the Executive Bylaws of the CPVPV (see Appendix 2), as well as the articles of the *Nizām* of Penal Procedures concerning field work of the CPVPV (see Appendix 3). This class of legislation is a type of royal law (*nizām* or *qānūn*) promulgated by the king in line with the doctrine of *siyāsah sharʿīyah*. As such, it is considered Sharīʿah compliant, and assumes cooperation with and elaboration by *fiqh* and custom (*urf*), as well as archetypal reflection in *aklḥāq*. In contrast with modern legal codes and in common with pre-

²⁴ Ferdinand F. Stone, "A Primer on Codification," *Tulane Law Review* 29 (1954-55): 303-04.

²⁵ S. A. Bayitch, "Codification in Modern Times," A. N. Yiannopoulos, ed., *Civil Law in the Modern World* (Kingsport: Louisiana State University Press, 1965), p. 164.

²⁶ Stone.

modern *ḥisbah* treatises and *qānūn*, the Saudi laws accept an integrated approach to law and morality, especially in its religious form: they are at once a collective expression of the chiefly moral duty to enjoin virtue and forbid vice, as well as a definition of specific legal duties and procedural rules founded thereupon.²⁷ From this basis the CPVPV wields both moral and legal authority, in addition to a share of the ruler's executive power, much like the pre-modern *muḥtasib* as understood by thinkers like Ibn Taymīyah.²⁸ These laws clearly conceive the moral agency of individuals as bounded by the Sharī'ah, with its legal sovereignty superseding that of the state.²⁹ In this sense, the Saudi laws of *ḥisbah* remain bounded within a traditional Islamic legal system, and represent a key intersection of these overlapping bodies of law and ethics; however, within this context there is a marked shift towards a more codified text, in the form of more specialized bylaws and regulations.

In contrast to pre-modern *ḥisbah* treatises and *siyāsah* legislation, and in common with modern codes, the Saudi laws exhibit a more systematic form, arranged rationally and logically. Although these elements were also present to a large degree in earlier substantive law, such as Ottoman *iḥtisāb qānūnnāmleri*, the Saudi laws have assumed a more code-like appearance through their simplified statement of rules and regulations upon a more focused range of issues. The Saudi laws thus appear as relatively concise articles of statute law. According to the *Nizām* of the CPVPV, the general president is appointed by royal decree along with his deputies like earlier *muḥtasibs*, including the Ottoman case; however, this constitution defines CPVPV organization in far more corporate terms apart from its

²⁷ E.g. App. 1, art. 9.

²⁸ App. 1, art. 2; Ibn Taymīyah, *al-Ḥisbah fī al-Islām*.

²⁹ App. 1, art. 10.

leader, and with a wider variety of new functionaries for the office, such as regional presidents, managers, administrators, investigators, inspectors, and field officers.³⁰ Although additional volunteers may be deputized as field officers by regional presidents, there is no trace of earlier practices like tax farming, which were especially common in the late Middle Ages.³¹ In this sense its legal charter defines a modern state agency with the associated bureaucratic and administrative procedures.³² Cast in relation to pre-modern Islamic law, which was generally distinguished by its informality, the Saudi laws are indicative of juridification, a phenomenon associated with codification, in the general sense of a quantitative expansion and systematization of law, as well as in the more specific sense of regulatory mechanisms becoming transformed into distinctly legal form.³³ This is especially true relative to the broader scope of Saudi and Ḥanbalī history, in which a minimal approach to *siyāsah* legislation was typical for *ḥisbah* (which will become further apparent in Chapter 4).

Like the pre-modern *muḥtasib*, the CPVPV conceives its function as the supervision of public moral behaviour and the markets, with its jurisdiction primarily determined by *sharʿī* violations apprehended in *flagrante delicto*.³⁴ Otherwise, CPVPV field officers must not conduct inquiries, but only concern themselves with infractions evident from obvious and incontestable facts upon which they must

³⁰ E.g., App. 1, arts. 2, 3, 5.

³¹ Heyd, pp. 232, 236-8; Mantran.

³² E.g. App. 1, art. 10.

³³ For discussion of this phenomenon, see Jürgen Habermas, "Tendencies towards Juridification," *The Theory of Communicative Action* (Boston: Beacon Press, 1984), vol. 2, pp. 356-403; Gunther Teubner, "Juridification: Concepts, Aspects, Limits, Solutions," G. Teubner, ed., *Juridification of the Social Sphere* (New York: De Gruyter, 1987), pp. 3-48.

³⁴ App. 1, art. 4a.

adjudicate without waiting for a complaint.³⁵ In cases involving violations of the Shari'ah lying outside the immediate field of CPVPV competence, they must intervene in order to sue the case before a Shari'ah judge (*qāḍī*), or transfer its investigation to competent sides.³⁶ In terms of the immediate field of CPVPV competence, on one hand, the *Nizām* of the CPVPV defines its most important obligations in line with major *fiqh* treatises on *ḥisbah* by such scholars as Ibn Taymīyah and al-Māwardī: enjoining virtue, i.e. providing moral guidance, admonishing Muslims to follow religious obligations and instructing them on the rules of the Shari'ah, as well as the forbiddance of vice and violations of the Shari'ah, or reprehensible innovations (*bid'ah*).³⁷ The Executive Bylaws of the CPVPV, also in line with traditional notions of *ḥisbah*, define its duties more concisely in order of importance: admonishing people to perform the Five Pillars; enjoining prayer as the first and most important pillar; and the patrol of markets, streets and other public spaces for the prevention of vice.³⁸ Within these categories the Bylaws further specify the enforcement of types of rules consonant with the pre-modern *muḥtasib*'s jurisdiction: religious duties, i.e. *'ibādāt* and *'aqīdah* (orthodox creed), propriety of behaviour between the sexes, and the application of discriminatory measures against the *dhimmīs*. The detail of these articles, however, should not be overstated, especially the definition of vices, which is characterized by considerable vagueness and obvious reliance upon *fiqh* and *'urf* for the precise understanding of categories; for example, the prohibition of "wanton displays of

³⁵ App. 1, art. 4b.

³⁶ App. 2, art. 40.

³⁷ App. 1, art. 9.

³⁸ App. 2, art. 1.

sexuality" (*tabarru*), obviously presupposes such cooperation, which was typical of pre-modern Islamic law.³⁹

On the other hand, unlike the pre-modern *muhtasib*, the CPVPV's governing constitution and bylaws are not characterized by the integration of its role as moral censor with those of market inspector. The range of principal duties that comprise the CPVPV's direct jurisdiction has been significantly restricted, specifically according to the type of vices it forbids.⁴⁰ Its responsibilities thus do not include the quality control of wares and manufactures, the supervision of commercial dealings, or the enforcement of public safety standards. The regulation of trades and professions was generally the main topic of pre-modern *fiqh* treatises on *hisbah*, which often point to economic ethics as a major component of the *muhtasib*'s jurisdiction; for example, in his discussion of *hisbah*, Ibn Taymīyah's primary concern was with the establishment of a just economic order, describing the superiority of such a regime, even with moral failings, to a "pious tyranny," as well as expounding the need to police a broader concept of *ribā*.⁴¹ The main topic of practical administrative manuals for *muhtasibs* was likewise the tasks of market inspection, such as al-Shayzarī's *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*.⁴² In terms of substantive law, the Ottoman Criminal Code was also primarily concerned with aspects of *iḥtisāb* pertaining to the supervision of commercial dealings.⁴³ Although the modification of scales and measures technically lies within the CPVPV's list of prohibitions, only a passing reference exists in the Bylaws without detailed coverage

³⁹ App. 2, art. 1.1

⁴⁰ App. 1, art. 4b.

⁴¹ Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, Ch. 2.

⁴² Al-Shayzarī, *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*.

⁴³ Heyd, pp. 229-34.

beyond cases involving obvious infractions of the Shari‘ah not requiring specialist knowledge.⁴⁴

The enforcement of propriety between the sexes is of special concern to the CPVPV. Although the forbiddance of vices concerning sexual morality lies within the traditional restrictions enforced by the *muhtasib*, their significance is emphasized in the CPVPV Bylaws, comprising the top vices listed.⁴⁵ The brevity of their definitions requires elaboration based upon Ḥanbalī *fiqh* and local custom (*‘urf*), especially regarding the connected definition of *‘awrah* ("private parts"), the degree of prohibition for gender mixing, and norms concerning gender roles and their imitation, as well as the public restriction of images containing the human form.⁴⁶ The prohibition of un-Islamic beliefs and confessional rituals is likewise subject to the particular constraints of Ḥanbalī *fiqh* concerning the practice of *ihtisāb* on controversial matters (which is permitted, unlike other *madhhābs*), the specific tenants of Wahhābī *‘aqīdah* on consideration of religious innovation (*bid‘ah*), and other *siyāsah* legislation concerning such issues as citizenship in the further definition of the community of faith (*Ummah*).⁴⁷

Articles mandating CPVPV participation in cases of investigation conducted by other security forces and cooperation with other government agencies and specialists is in line with traditional collaboration between the *muhtasib* and other offices like the *qāḍī* and *shurṭah*, as well as expert consultants (*‘arīf*) in cases of overlapping jurisdictions.⁴⁸ In conjunction with expanded powers of investigation,

⁴⁴ E.g., App. 2, art. 8

⁴⁵ App. 2, arts. 1.1-3, 14.

⁴⁶ App. 2, art. 1.8.

⁴⁷ App. 2, art. 1.6.

⁴⁸ App. 2, sect. 5.

however, this cooperation marks an innovative police function; for example, in cases involving major violations of the *Sharī'ah* (*kabā'ir*) apprehended by the CPVPV, officers are required to conduct a full investigation in order to obtain an indictment and arrest warrant from a *qāḍī*.⁴⁹ Investigation procedures include the interrogation of subjects within twenty-four hours of their provisional detention, and search of persons, dwellings, offices, and vehicles, as well as the use of surveillance techniques to gather evidence upon authorization of the Bureau of Investigation and Prosecution (BIP).⁵⁰ The rules of investigation contain provisions for the protection of privacy, including the prohibition against searching a female suspect's dwelling unless CPVPV officers are accompanied by another female, as well as similar restrictions upon the detention, interrogation and arrest of women and children.⁵¹ The surveillance of mail, cables, telephone conversations, and other means of communication is also restricted; however, exceptions may be granted to CPVPV officers from the BIP Director, and searches may be conducted on the basis of circumstantial evidence.⁵² Detailed requirements for the documentation of investigative findings is another new mechanism of control, which, presumably, may be shared with other agencies under BIP jurisdiction, such as the police (*shurṭah*) and secret police (*mubāḥith*), as well as other closely associated bureaus like the Ministry of the Interior and military forces.⁵³

If a culprit is convicted a major *sharī'ī* violation by a *qāḍī* following his arrest by the CPVPV, he may be returned to the CPVPV for the application of

⁴⁹ App. 1, art. 4a; App. 2, arts. 21-22, 28, 48.

⁵⁰ App. 2, art. 39; App. 3, arts. 34-43, 56.

⁵¹ App. 2, sect. 4, pt. 4; App. 3, art. 42.

⁵² App. 3, arts. 41, 44.

⁵³ App. 2, arts. 24-27; App. 3, art. 47.

discretionary punishment. In cases involving minor violations of the Sharī‘ah (*ṣaghā‘ir*) falling under the immediate jurisdiction of the CPVPV, such as perpetration of vices related to matters of religion (*dīn*) stipulated in its bylaws, the CPVPV holds authority to adjudicate independently and apply discretionary punishments.⁵⁴ Like the pre-modern *muḥtasib*, the CPVPV penalties include public rebuke (*tawbīkh*), imprisonment (*ḥabs*) and flogging (*jald*).⁵⁵ The last category of punishment is limited within the lower range of Ḥanbalī *fiqh* concerning *ta‘zīr*, with the maximum number of lashes normally set at fifteen strokes (some Ḥanbalīs claim the maximum is ten, while others claim it is seventy-nine).⁵⁶ Unlike the pre-modern *muḥtasib*, lashing must be administered in regional CPVPV centers, and offenders incarcerated for a maximum of three days in correctional facilities with the consent of the regional prince (*amīr*).⁵⁷ If CPVPV officers judge that an offender should receive lashes or be incarcerated in excess of the normal limits, the consent of the regional *amīr* is required. If a regional *amīr* decides that further deliberation is required in any given case, it is to be submitted to a *qāḍī* for judgment; in the event of a guilty verdict, it will be returned to the CPVPV for discretionary punishment. The scope of *ta‘zīr* has also been limited, with exposure to public scorn (*tashhīr*, *tajrīs*), banishment (*nafy*, *taghrīb*) and capital punishment no longer indicated as legitimate penalties, not to mention the absence of *siyāsah*-based penalties, which were associated with public shaming, extreme corporal punishments and pecuniary fines in earlier history, especially during the Ottoman Empire. In both the intent and means of punishment, in fact, CPVPV rules appear more centered on reform and *fiqh*,

⁵⁴ App. 1, art. 11; App. 2, art. 2.

⁵⁵ App. 1, art. 4b.

⁵⁶ For details see Ch. 1, sect. 1.3.4.

⁵⁷ App. 1, art. 4c.

as well as restrained by protocol than was the case for pre-modern *muhtasibs*.⁵⁸ The influence of modern correctional theory and practice is also evident through the CPVPV's increased focus on rehabilitation and re-education programs, as will be discussed in the following sections.

3.2 Activities of the CPVPV: Statistical Analysis

The following analysis is based primarily upon statistics derived from the official records of the CPVPV concerning reported activities of the agency during the period 1418-1428/1997-2007, with detailed accounting only having begun after 1422/2001 in an effort to modernize administration in line with other Saudi state agencies.⁵⁹ These statistics account for activities of CPVPV branches throughout all regions of Saudi Arabia, and therefore represent the agency's performance as a whole. While the statistics reveal broad similarities between the CPVPV and *muhtasib*'s traditional activities, in terms of patrolling the market and functioning as a market censor, the approach to *ḥisbah* is clearly evolving; indeed, statistics itself is a hallmark of modern management generally, and the science of policing particularly. All figures are broadly classified into activities pertaining to: (a) the promotion of virtue, and (b) the prevention of vice, in line with the traditional arrangement of *fiqh* of *ḥisbah* treatises. Records of the former category indicate a significant increase in activities during the period in question despite no corresponding increase in field officers, which ranged from 3,330 to 3,583;⁶⁰ however, the total number of employees has increased from 4,710 to 5,167, including almost twice the amount of administrators

⁵⁸ E.g. contrast with the OCC, Ch. 3; c.f. Heyd, pp. 111-128. See also Heyd, 229-334.

⁵⁹ al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ʿan al-Munkar, *al-Taqrīr al-Sanawī li-Injāzāt*, 1427-28 (al-Riyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah Athnā' lil-Nashr, 1428).

⁶⁰ Tables 2, 6.

and half the amount of support staff like labourers. This is most likely attributable to the establishment of new CPVPV headquarters and centers supporting increased research capabilities and education programs in the form of lectures, symposia, speeches, and cultural competitions. CPVPV expansion falls in line with its consistently expanding budget, which has increased from SR50 million in 1396/1976 to SR450 million in 1428/2007; thus, despite rumors to the contrary, total funding has increased 900% or almost 30% annual, including the period of King Abdullah's reign.⁶¹ There has also been a significant increase (over 20%) in visits to other public institutions initiated by the CPVPV between 1418/1997 and 1428/2007, with total visits drastically increasing in parallel to infrastructural development since 1423-24/2002-03 (i.e. 1,845%), supporting the idea of increased collaboration to broaden the application of enjoining virtue.⁶² There has likewise been a large increase in the distribution of publications over the past ten years, with almost five times as many materials being circulated concerning enjoining virtue.⁶³ This is in spite of greater public access to mass media conveying opinions at odds with the CPVPV on social and religious affairs, or perhaps directly correlative to it.⁶⁴

CPVPV publications, such as books and pamphlets, and its community events, such as lectures, symposia, speeches, and expositions, are aimed at public education and address social problems common to other societies, such as the dangers of drug abuse and juvenile delinquency. But they also tackle issues more particular to Saudi society, such as the growing problem of women being blackmailed with revealing

⁶¹ Table 3.

⁶² Table 7.

⁶³ Table 8.

⁶⁴ E.g. Omaila al-Fardan, "Censor Plays Key Role in Preserving Culture," *Arab News* (30/1/2010).

photographs and correspondence (*al-ibtizāz*),⁶⁵ the logistics of sex-segregation and privacy standards in the design of public space, anti-terrorist education, the dangers of black magic and sorcery, encouraging regular mosque attendance, and the *fiqh* of *‘ibādāh*. Notable attempts at public dialogue between the CPVPV and Saudi youth have also occurred recently, in an effort to improve community relations and cooperation at the bequest of *‘ulamā’* and officials who cite the increasingly pervasive corruption of youths. Moreover, the CPVPV publishes a monthly journal addressing issues pertaining to *ḥisbah* of a more academic nature, entitled *al-Ḥisbah*, in addition to offering educational resources and guidance through its new website.⁶⁶

In terms of the prevention of vice, between 1417/1986 and 1428/2007 the range of total cases successfully prosecuted by the CPVPV, that is, resulting in arrest and either direct punishment from the CPVPV or referral to other forces, ranged from an annual total of 110,210 to 416,756, which peaked in the year 1426-27/2005-06, and expresses an average of 326,344 cases per year, or 894 cases per day.⁶⁷ The vast majority of these cases were consistently reported in the core urbanized areas and centers of pilgrimage: the regions of Mecca (28%), Riyadh (23%) and the Eastern Region (17%).⁶⁸ In Riyadh, the range of successfully prosecuted cases ranged from an annual total of 22,272 to 146,627, which peaked in the year 1425-26/2004-05, and expresses an average of 107,392 cases per year, or 294 cases per day. In the Eastern Region, the range of successfully prosecuted cases ranged from an

⁶⁵ The growing problem of blackmail against Saudi women prompted the CPVPV to sponsor a symposium on the causes, treatment and facts surrounding this phenomenon at King Saud University on March 8, 2011. For the results of the symposium, see “Inṭilāq Fa‘āliyyāt Nadwat Asbāb wa ‘Ilāj wa Wāqi‘ al-Ibtizāz,” *Risālat al-Jāmi‘at al-Malik Sa‘ūd* (12/3/2011).

⁶⁶ www.hesbah.gov.sa

⁶⁷ See Table 12.

⁶⁸ See Table 13.

annual total of 23,553 to 62,197, which peaked in the year 1426-27/2005-06, and expresses an average of 40,868 cases per year, or 112 cases per day. In Mecca, the range of successfully prosecuted cases ranged from an annual total of 45,445 to 114,844, which peaked in the year 1426-27/2005-06, and expresses an average of 76,737 cases per year, or 210 cases per day. All regions witnessed a general increase in the total number of cases prosecuted over the ten years in question, but with a slight decrease from about 1426-27/2005-06, coinciding with the reign of King Abdullah. A minority of reported cases were referred to other specialist agencies such as the police (15% or less), and arrests resulted in the majority of cases (92%), indicating that CPVPV officers end up adjudicating and punishing the majority of *sharʿī* violations they initially prosecute.⁶⁹

Between 1418/1997 and 1428/2007, the vast majority of catalogued offences, i.e. cases in which arrest and/or punishment was actually enacted by the CPVPV, concerned violations of worship (76.7%), followed distantly by infractions of morality (11.6%), which are primarily defined in sexual terms, and public manners (6.7%), which are also focused on sexual morality, especially on veiling and gender segregation.⁷⁰ More detailed accounting during 1427-28/2006-07 reveals that the majority of cases initially prosecuted by the CPVPV, but which did not necessarily result in arrest and/or punishment, were actually violations of morality (43%) as

⁶⁹ See Table 11.

⁷⁰ See Table 12. 'Violation of Morality,' is defined by the CPVPV as: "Transgressions of honour through speech or deed, such as: prostitution and pimping, fornication and illicit seclusion, extortion and theft, sodomy and perversion, and molestation and sexual assault." 'Violation of Worship,' is defined as: "Manifest abandonment of the rites of Islam, or contradiction thereof, such as: failure to pray in congregation, continuing to work after the *adhān*, and breaking fast during Ramaḍān." 'Violation of Public Manners,' is defined as: "All transgressions of public manners in society, such as: wanton displays (*tabarruj*) and unveiling of the face or hair, wearing indecent clothes, and the portrayal of women in public places." See Table 9 for a list of all pertinent definitions.

opposed to worship (34%);⁷¹ therefore, this category of offences seems to comprise the most of CPVPV policing activities on the streets in terms of the forbiddance of vice during the last reported year, and perhaps for the entire ten year period in question. More non-Saudis faced sanctions than Saudis in every category of offence, reflecting the vast population of foreign guest workers and pilgrims with different customs, beliefs and practices, as well as the policy of restricting fraternization between foreigners and Saudi citizens, especially between the sexes.⁷² During the ten years reported on, there was a general increase in all types of incidents, with a slight decrease over the past four years, partly coinciding with the reign of King Abdullah.

In addition to their core activities of prosecuting violations of morality, worship and public manners, between 1418/1997 and 1428/2007 the CPVPV also acted against six other categories of offence, though to a far lesser extent. First of all, the use, possession, manufacture, or distribution of intoxicants was prosecuted, which pertains specifically to alcoholic beverages. Secondly, likewise, the use, possession, manufacture, or distribution of narcotics was prosecuted, which pertains generally to all other illegal drugs. Thirdly, commercial businesses were charged for violations involving gender-mixing (*ikhṭilāf*), such as mixed-gender reception areas in restaurants, lack of privacy screens in stores for feminine supplies, and failure to cover display windows in stores for feminine supplies. Fourthly, publications were

⁷¹ See Table 10. 'Violation of Morality,' is defined by the CPVPV as: "Transgressions of honour through speech or deed, such as: prostitution and pimping, fornication and illicit seclusion, extortion and theft, sodomy and perversion, and molestation and sexual assault." 'Violation of Worship,' is defined as: "Manifest abandonment of the rites of Islam, or contradiction thereof, such as: failure to pray in congregation, continuing to work after the *adhān*, and breaking fast during Ramaḍān." (See Table 9 for a list of all pertinent definitions.)

⁷² 5,576,076 legal non-national residents are included within Saudi Arabia's total population of 29,207,277 (July 2010 est.); cf. "Saudi Arabia," *CIA World Factbook*, available from www.cia.gov, accessed 1/7/2010.

seized that were in disagreement with "sound creed" or that were "harmful to virtuous morals," such as licentious pictures and films, and pictures depicting human beings. Fifthly, violations related to the disparagement of sound creed, as determined by Saudi *'ulamā'*, were prosecuted; for example, publicly blaspheming God, the Prophet Muḥammad or the Companions, the practice of black magic and sorcery (*siḥr*), the possession of amulets and charms, and heretical burial practices. Last, but not least amongst these marginal categories, are all other cases, such as gambling.⁷³

A good example of the CPVPV's general efforts to both enjoin virtue and forbid vice through its role as moral censor, is the agency's high profile annual campaign at the Riyadh Book Fair. In the 2011 event at the Riyadh Convention Center, March 1-11, the CPVPV claims to have successfully distributed its own literature, as well as established congregational prayer, banned publishers of atheism and pornography, doubled the number of its field officers present from last year, prevented public protests, confiscated objectionable books, prevented Turkī al-Ḥamad from participating,⁷⁴ criticised the public absence of *iḥtisāb* to journalists, and prevented some saleswomen from vending.⁷⁵ The obvious presence of banned books and gender-mixing (*ikhtilāf*) at this huge event, however, signalled the CPVPV's uphill battle in this respect; in fact, CPVPV members publicly confronted the Minister of Culture at the inaugural address, condemning his support for immoral

⁷³ See Table 9.

⁷⁴ Turkī al-Ḥamad (b. 1953) is a Saudi political analyst, journalist, and novelist, best known for his trilogy—*Aṭyāf al-Aziqqat al-Mahjūrah* ("Phantoms of the Deserted Alley")—which is banned in Saudi Arabia. His novels explore the issues of sexuality, underground political movements, scientific truth, rationalism, and religious freedom against the backdrop of the late 1960s and early 1970s, a volatile period in Saudi Arabia, sandwiched between the 1967 Six Day War and the 1973 oil boom.

⁷⁵ J. Tawāṣī, "Thimār al-Iḥtisāb fī Ma'raḍ al-Kitāb," (5/3/2011); available from www.hesbah.gov.sa, accessed 5/3/2011.

activities in an attempt to reclaim control over a public sphere increasingly affected by greater access to information and the mass media, as well as more liberal attitudes.⁷⁶

Prior to the public release of the most recent annual statistical report from the CPVPV (1429-30/2008-09), a preliminary review has been issued, which highlights major developments, or at least those considered most important for inspection by the Shūrā Council's Appellate Committee.⁷⁷ Developments are presented within the framework of the CPVPV's current five-year plan, as well as the scope of a long-term plan extending to 1450/2028. Modernization and expansion continues to be the overall theme of strategic planning, especially as it pertains to the advance of human capital, technology, strategic partnerships, and performance improvements attributed to better quality and development. The preliminary review emphasizes increased officer training programs that are focused on *fiqh*, administrative studies and social work, as well as new instructional services to support improved information and communications technology. Internal and external network services were further developed, including a new web-site, and compliance was achieved with federal and provincial financial and administrative standards. Four major research projects were completed in association with Saudi universities, addressing the problems of fieldwork and strategies for its improvement, gender-mixing (*ikhtilāf*), and the "protection of women." Significantly, a new broadcasting center is planned, with advisory studies completed in preparation; this represents a major step for the

⁷⁶ Ghazanifar Ali Khan, "'Haia Members' Rough-up Book Fair Participants," *Arab News* (2/3/2011)

⁷⁷ 'Abd al-Majīd ibn Muḥammad al-Jallāl, *Qirā'ah fī al-Taqrīr al-Iḥṣā'ī li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar* (al-Rīyāḍ: al-Ri'āṣah al-'Ammah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar, 1431).

CPVPV, in terms of embracing the mass media, and attempting to adapt *hisbah* to a rapidly changing and more globalized social and cultural environment.⁷⁸

In sum, the preliminary review and prior statistics indicate three main trends in terms of CPVPV activities. First of all, CPVPV forbiddance of vice falls within scope of the *muhtasib's* historical criminal law jurisdiction, for which it independently prosecutes most of its cases; however, this is primarily restricted to the role of moral censor, as opposed to market inspector. Particular features of the CPVPV's role of moral censor include its prosecution of violations of worship, which comprises the majority cases resulting in arrest and/or discretionary punishment, and its central focus on the policing of violations related to sexual morality, especially veiling and gender segregation. Secondly, while CPVPV forbiddance of vice in the form of prosecutorial activities have generally increased over the ten years in question, there has been a noticeable shift of focus during the reign of King Abdullah to the promotion of virtue: there is a growing emphasis on programs for public education and training for field officers, which takes into consideration recommendations to improve the quality of human resources, and modernize its approach to guidance services and administration.⁷⁹ These programs also reflect the CPVPV's new role as an anti-terrorist agency, as well as answering to mounting criticism from the mass media and human rights advocacy groups regarding the

⁷⁸ Ibid. King Abdullah recently acknowledged these accomplishments and allocated an additional SR200 million to the CPVPV to finance related expansion projects, winning praise from conservative Saudis in the context of the so-called Arab Spring protests; see, Muhammad Ibrahim, "SR500bn Social Spending Package Outlined," *Arab News* (19/3/2011); Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar, "Bi-Sha'n Manh al-Malik 'alā al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," (18/3/2011); available from www.hcsba.gov.sa, accessed 18/3/2011.

⁷⁹ Al-Baqamī, p. 459.

excessive use of force and breach of penal procedures.⁸⁰ Finally, the CPVPV's persistent focus on enforcing sexual morality and devotional aspects of Wahhābī Islam as well as its new tact with programs concerning enjoining virtue, point to both increased conflict and engagement with the categories of modern liberalism, such as freedom of religion. These main trends will be explored further in the following three case studies on veiling and gender-segregation, terrorism, and religious freedom.

3.3. Case Studies

3.3.1. The Case of Veiling and Gender Segregation

The plight of the Muslim woman is a prominent theme in popular and academic discourse in the West, with Saudi Arabia often held up as a symbol of their oppressed status. The enforcement of veiling and gender segregation by the CPVPV is depicted as epitomizing this problem, although little is known about its basis in Saudi law or custom.⁸¹ Studies have shown, however, there is no universal meaning assigned to these practices, and their oppressive nature should not automatically be presumed: they are articulated morally and legally in specific historical contexts, and in various relations of power.⁸²

⁸⁰ E.g., "Amīr Nā'if ilā 'Ukāz," *al-'Ukāz al-Uṣbū'īyah* (4/11/2002); "Prince Naif Encourages the Haia to be Prudent and Gentle," *Arab News* (18/6/2010); al-Jam'īyah al-Waṭanīyah li-Ḥuqūq al-Insān, *al-Taqrīr al-Awwal 'an Aḥwāl Ḥuqūq al-Insān fī al-Mamlakah al-'Arabīyah al-Sa'ūdīyah* (al-Rīyāḍ, 1427/2006), pp. 10-13, 16-19; Raid Qusti, "NSHR Cites a Plethora of Rights Violations," *Arab News* (23/5/2007); "Enhancing a Culture of Human Rights," *Arab News* (27/7/2007); Muhammad Humaidan, "NSHR Calls for a National Human Rights Strategy," *Arab News* (8/4/2009); Fawwāz 'Azīz, "Ḥāsabū Hay'at al-Amr bi-al-Ma'rūf," *Jarīdat al-Waṭan al-Sa'ūdīyah* (16/4/2009); Ḥāmid al-Shahrī, "Waḥdah li-Ḥuqūq al-Insān fī Hay'at al-Amr bi-al-Ma'rūf," *Jarīdat al-Waṭan al-Sa'ūdīyah* (4/10/2009).

⁸¹ E.g., Asad Abu Khalil, "Saudi Arabia," *The Greenwood Encyclopedia of Women's Issues Worldwide* (Westport: Greenwood Press, 2003), vol. 4, pp. 337-54.

⁸² Leila Ahmed, "Western Ethnocentrism and Perceptions of the Harem," *FS* 8 (1982): 521-42; Charles Hirschkind and Saba Mahmood, "Feminism, the Taliban, and Politics of Counter-Insurgency,"

The question of the status of women is an integral part of public debate in Saudi Arabia, often in reaction to Western opinions. In Saudi society, women have always been viewed as symbols of the nation's piety—a barometer of its commitment to Islam and Arab tradition.⁸³ The state enforces this view as it polices public space under the auspices of the CPVPV, especially through the prohibition of unveiling and gender-mixing, which comprise a major aspect of its activities. Enforcing these restrictions help the state assert its Islamic legitimacy, and guards against rapid social change and alien intruders. Saudi society has responded to the arrival of millions of guest workers since the 1970s by limiting interaction between Saudis and foreigners to the workplace, and resisting penetration of the outside world into the female sphere.⁸⁴

Questions have been raised about the seemingly ambiguous definition of gender-mixing and veiling within the Bylaws of the CPVPV,⁸⁵ and whether the stringent standards enforced actually have a justifiable relation to *fiqh*,⁸⁶ for example, the prohibition of "wanton public displays" (*tabarruj*) appears to grant the CPVPV great discretionary powers over certain controversial issues of *fiqh*. But, in fact, a clear relationship exists between the CPVPV's legal stance, the consensus of opinion by Saudi 'ulamā', and local custom ('*urf*'). Debate and controversy on the

AQ 75/2 (2002): 339-354; Deniz Kandiyoti, "End of Empire: Islam, Nationalism, and Women in Turkey," Deniz Kandiyoti, ed., *Women, Islam and the State* (Philadelphia: Temple University Press, 1991), pp. 22-47; Deniz Kandiyoti, ed., *Gendering the Middle East: Emerging Perspectives* (New York: Syracuse University Press, 1996); Lila Abu-Lughod, ed., *Remaking Women: Feminism and Modernity in the Middle East* (Princeton: Princeton University Press, 1998).

⁸³ Eleanor Doumato, "Gender, Monarchy and National Identity in Saudi Arabia," *British Journal of Middle Eastern Studies* 19/1 (1992): 31-47.

⁸⁴ Madawi al-Rasheed, *Contesting the Saudi State*, p. 163.

⁸⁵ App. 2, art. 1.

⁸⁶ Vogel, "The Public and the Private in Saudi Arabia."

extent of the CPVPV's role is framed by these parameters within scholarly and political discourse in Saudi Arabia.

In terms of *fiqh*, *ʿawrah* is a term used by *fuqahā'* to denote intimate parts of the body, for both men and women, which must be covered with clothing. Exposing the *ʿawrah* is forbidden, although its exact definition varies between *madhāhib*. In this sense, *ʿawrah* is synonymous with the term *farj* (pl. *furūj*), as it appears in the Qur'ān:

And tell the believing women to lower their gaze, and protect their *furūj* [i.e. private parts] and not to show off their adornment except only that which is apparent, and to draw their veils over their *juyūb* [i.e. body, bosom, neck; sometimes also applied to the face and hands] and not to reveal their adornment except to their husbands, or their fathers, or their husbands' fathers, or their sons, or their brothers, or their brothers' sons, or their sisters' sons, or their (Muslim) women, or the (female) slaves their right hands possess, or old male servants that lack vigour, or small children who have no sense of female sex. And let them not stamp their feet so as to reveal what they hide of their adornment. And all of you beg God to forgive you all, O believers, that you may be successful.⁸⁷

Defining a woman's *ʿawrah* is a complicated legal issue, which must consider different situations. In particular, there is a difference of opinion about which body parts a woman should cover in front of a non-*mahram* men. Most scholars hold that the entire body of a woman, except her face and hands, is part of her *ʿawrah*, and must be covered during prayer and in public settings; however, the majority of contemporary Ḥanbalī *fuqahā'* believe that a woman's *ʿawrah* includes her face and hands.

⁸⁷ Muḥammad Taqī al-Dīn al-Hilālī and Muḥammad Muhsin Khan, transl., *Translation of the Meanings of the Noble Qur'ān in the English Language* (Madinah: King Fahd Complex for the Printing of the Holy Qur'ān, 1424), 24:31. The official Saudi translation of *juyūbuhunna* is, "their bodies, faces, necks, and bosoms." Ibid., p. 471, 1ff.

Consensus exists amongst Saudi *fuqahā'* upon the obligation of Muslim women to practice veiling (*ḥijāb*), which is famously argued by Shaykh Bakr ibn 'Abd Allāh Abū Zayd (d. 1428/2008) in his book *Ḥirāsāt al-Faḍīlah*.⁸⁸ The conception of *ḥijāb* is based primarily upon the Qur'ānic injunction (24:31), for which a broad conception of "beauty and adornments" is accepted, encompassing the entire body except that for which needs to be visible, such as eyes for sight. The compulsory veiling of a woman's body includes the face and hands, along with the aversion of her gaze and exercise of modesty (*ḥayā'*) in public. Abū Zayd employs an extremely conservative definition of *ḥijāb* as comprised of two principal means: first and foremost as concealment within homes, and secondly as concealment by clothing, such as a gown (*jilbāb*), face veil (*khimār*), or cloak ('*abāyah*).⁸⁹ The virtue of *ḥayā'* is defended in social intercourse between men and women unrelated by immediate kinship or marriage by delimiting exchanges to strict necessity. This concept is not conceived as operating within a singular society of individuals, but rather within one society with two interrelated yet separate groups existing for men and women (*ijtimā' atayn*).⁹⁰ For Abū Zayd, the requirement of sex segregation is a vital element of Islamic society as a whole:

All of this is for the preservation of honour and lineage, the defence of virtue, and in service against uncertainties, vices, and women being prevented from work in their homes; thus, gender-mixing (*ikhtilāf*) is forbidden, which includes the instruction of the mother in work, meetings, seminars, public

⁸⁸ Bakr ibn 'Abd Allāh Abū Zayd, *Ḥirāsāt al-Faḍīlah*, 5th ed. (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah Athnā' al-Nashr, 1431). Despite this author's membership in the Council of Senior Scholars and the Permanent Committee for Scholarly Research and *Iftā'*, this book was banned by the Saudi government until commentary supporting the ban on female driving was removed. Radical Islamists have pointed to this as evidence of the Saudi state's agenda for liberal reform. For a similar treatment see Ṣāliḥ ibn Fawzān al-Fawzān, *Taḥrīm al-Ikhtilāf wa-al-Radd 'alā man Abāḥuhu* (al-Rīyāḍ, 2011, n.p.).

⁸⁹ Abū Zayd, pp. 26-7.

⁹⁰ Ibid., p. 70.

and private gatherings, and so forth. Why conform to that which brings dishonour, diseases hearts, endangers souls, emasculates men, de-feminizes women, extinguishes shame, diminishes chastity and decency, and removes jealousy?⁹¹

Abū Zayd continues to detail how prohibitions should be extended to co-educational institutions and mixed places of business, thus providing a blueprint for the CPVPV's segregation of public schools, commercial facilities and other public spaces.

Consensus on this matter is zealously guarded, as demonstrated through the banning of the book *Jilbāb al-Mar'ah al-Muslimah* by Shaykh Muḥammad Nāṣir al-Dīn al-Albānī, the renowned *Salafī* scholar, who argues that the covering of a women's face is not a requirement of veiling.⁹² Based upon a linguistic analysis of the terms *jilbāb* and *khimār*, and their usage in the Sunnah, as well as earlier opinions on the matter within the *Ḥanbalī madhhab*, al-Albānī asserts that contemporary Saudi scholars are mistaken to claim that face-veiling is compulsory. In particular, claims of scholarly consensus (*ijmā'*) upon the woman's face being considered a "private part" (*'awrah*) are dismissed as baseless, extreme, and an example of blind following;⁹³ however, al-Albānī does accept the requirement of women veiling in such cases where its removal is likely to cause social discord or dissent (*fitnah*).⁹⁴

Some intellectuals publicly defend the practice of veiling based upon its customary status in Saudi society, claiming that its enforcement helps to promote

⁹¹ Ibid., p. 65.

⁹² Al-Albānī, *Jilbāb al-Mar'ah al-Muslimah* (al-Qāhirah: al-Maktabah al-Islāmīyah, 1996). A censored version of this text, however, has been widely distributed in Saudi Arabia within a teaching manual also containing *fatāwā* from the Council of Senior Scholars, appearing in both Arabic and English; see, Maḥmūd ibn Riḍā Murād, ed., *Masā'il al-Mar'ah* (al-Riyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah, 1423); *The Manual of Women's Issues* (Riyadh: King Fahd National Library, 2002).

⁹³ Ibid., pp. 5-20.

⁹⁴ Ibid.

social cohesion and shared values.⁹⁵ In legal terms, custom (‘*urf*’) is considered to be a recurrent practice which may serve as a valid basis for legal decisions, if deemed sound and reasonable by jurists, especially according to the doctrine of *siyāṣah shar‘īyah* operable in Saudi Arabia. Linguistically, *ma‘rūf* is derived from ‘*urf*’ and can be considered good, but is ultimately defined according to Revelation. Custom which does not contravene the principles of the Sharī‘ah is generally accepted by the *fuqahā’* as a valid criterion for interpreting the Qur‘ān.⁹⁶ In this sense, contemporary *fiqh* and the Bedouin tradition of social control mutually reinforce the strict practices of veiling and gender segregation. First of all, this is based on the imperative preservation of female chastity in Bedouin culture.⁹⁷ A man's share of honour (*sharaf*) is largely determined by his own behaviour and that of his near agnatic kin; as a distinct kin-group, women possess a specific kind of honour (‘*ird*’), which is only applied to female chastity, and can only be lost by misconduct.⁹⁸ Secondly, the preservation of ‘*ird*’ coincides with the clear prohibition of sexuality outside marriage (*zinā*) in Islamic law, which is to be avoided at virtually any cost, and more severely

⁹⁵ Lubnā al-Ṭaḥlāwī, "Qīmat al-Hijāb lil-Mar'at al-Muslimah," Muḥammad al-Bishr, ed., *al-Iṣlāḥ al-Mujtama‘ī: al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar fī al-Sa‘ūdīyah* (al-Riyāḍ: Dār Ghīnā’ lil-Nashr, 1428), pp. 182-6; Nūrah al-Sa‘d wa Faṭḥīyah al-Qurashī, "al-Athar al-Ijtima‘ī," *ibid.*, pp. 103-112.

⁹⁶ Muhammad H. Kamali, *Principles of Islamic Jurisprudence* (Kuala Lumpur: Pelanduk Publications, 1989), pp. 248-58; Farhat J. Ziadeh, "'Urf and Law in Islam," James Kritzeck and R. Bayly Winder, eds., *The World of Islam: Studies in Honour of Philip K. Hitti* (London: Macmillan, 1959), pp. 60-7; Muḥammad Sulaymān ‘Abd Allāh al-Ashqar, *al-Wāḍiḥ fī Uṣūl al-Fiqh* (al-Qāhirah: Dār al-Salām, 2004), pp. 153-8.

⁹⁷ Lila Abu-Lughod, *Veiled Sentiments: Honor and Poetry in a Bedouin Society* (Berkeley: University of California Press, 1986); Talal Asad, *The Kababish Arabs: Power, Authority, and Consent in a Nomadic Tribe* (London: C. Hurst & Co., 1970); Dawn Chatty, *From Camel to Truck: The Bedouin in the Modern World* (New York: Vantage Press, 1986); Donald Cole, *Nomads of the Nomads: The Al Murrah of the Empty Quarter* (Chicago: Aldine Publishing Co., 1975); "Badw," *EF* (Leiden: Brill, 1978), vol. 1, pp. 872-882; B. Fares, "'Ird," *EF* (Leiden: Brill, 1978), vol. 4, p. 77.

⁹⁸ Bichr; Dawn Chatty and William Young, "Bedouin," *Encyclopedia of World Cultures* (New York: MacMillan, 1995), vol. 9, pp. 42-6.

punished than other infractions in the *ḥudūd* class.⁹⁹ Sex-segregation, or the "harem system," has historically been most strictly applied in the Arabian Peninsula, influenced by both Islamic law and local custom.¹⁰⁰ Moreover, the process of economic development under Najd suzerainty has intentionally avoided association with Western-inspired programs of social modernization, and has actually resulted in the intensification of tribal custom and conservative social mores, such as concerning the status of women.¹⁰¹

The CPVPV's increasingly active role enforcing prohibitions related to sexual morality also reflects societal change in conflict with Islamic law and traditional custom. Despite the avoidance of state sponsored social change, massive transformations have been witnessed through modernization. Historically, the extended family was the single most important social unit in the Arabian Peninsula, and was decidedly patriarchal, patrilineal, patrilocal, endogamous, and occasionally polygamous.¹⁰² Although the extended family has proven remarkably resilient, only its patrilineal organization remains unchanged; traditional gender roles have been affected, and the balance of female modesty with Islamic notions of equality has been challenged.¹⁰³ Strain has been placed upon the institution of marriage, which constitutes the diametric moral and logical opposite of *zinā*, and stands as mutually exclusive to it. The increasing cost of *mahr* ("marriage dowry"), for example, has

⁹⁹ E.g., Shams al-Dīn Muḥammad ibn Mufliḥ, *Kitāb al-Furū* (Bayrūt: ʿĀlam al-Kutub, 1985), vol. 6, p. 56; ʿAbd al-Raḥmān ʿAlī Jawzī, *Aḥkām al-Nisāʾ*, ʿAbd al-Qādir ibn ʿAbd al-Qādir, ed. (Dimashq: Dār al-Wathāʾiq, 1427), pp. 77-82.

¹⁰⁰ Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization* (Chicago: University of Chicago Press, 1977), vol. 2, pp. 140-46.

¹⁰¹ Kostiner, "Transforming Dualities: Tribe and State Formation in Saudi Arabia," p. 241.

¹⁰² Raphael Patai, *Golden River to Golden Road: Society, Culture, and Change in the Middle East* (Philadelphia: University of Pennsylvania Press, 1969), p. 84; David E. Long, *Culture and Customs of Saudi Arabia* (Westport, CT: Greenwood Press, 2005), Ch. 3.

¹⁰³ Ibid.

coincided with increasing unemployment amongst young men, rising levels of education and employment amongst women, as well as an increasing amount of unmarried women.¹⁰⁴ Difficulties associated with fulfilling the full financial terms of a marriage contract have, in fact, contributed to the emergence of limited-term contracts (*nikāḥ misyār*).¹⁰⁵ Other factors commonly associated with these offences include the large population of foreign nationals perpetrating sexual extortion (*al-ibtizāz*) and prostitution rackets, distributing pornography, as well as falling victim to sexual abuse themselves.¹⁰⁶ The growing influence of Western popular culture is also widely condemned as a negative influence upon sexual mores among youths.¹⁰⁷

Based on my first-hand observations, in practice CPVPV field officers generally enforce face-veiling upon women who appear to be Saudi nationals, with the *‘abāyah* usually being the only public attire required for foreign women; however, sometimes obviously foreign women are publicly rebuked for lack of *khimār* and/or *niqāb*. Gender segregation is regularly enforced in market places and shopping malls, often through enforcing designated time and space for women and families (i.e. women accompanied by *maḥram* men) only, as well as men only. Strict standards of veiling are normally suspended for female pilgrims, as a woman during a state of ritual purity (*iḥrām*) is not permitted to wear gloves or a face mask (*niqāb*), and the performance of various rites often requires a degree of social interaction

¹⁰⁴ Walaa Hawari, "No to Temporary Marriages," *Arab News* (23 June 2009).

¹⁰⁵ On April 10, 2006, in a meeting of the Makkah-based Muslim World League, a *fatwā* was delivered by 60 legal scholars sanctioning *misyār* marriage, i.e. a form of marriage contract that fulfills all legal requisites of a normal union, but spouses are not committed to living together in the same house and the woman can waive some of her rights, such as monetary support. See Rābiṭat al-‘Ālam al-Islāmī, "Taṣdar Rābiṭat al-‘Ālam al-Islāmī Fatwā ‘an al-Nikāḥ al-Misyār" (10/4/2006); available from www.themwl.org, accessed 22/1/2011.

¹⁰⁶ UN Office on Drugs and Crime, *UNODC Crime and Criminal Justice Statistics 2005*; cf. John Wilson, "Saudi Arabia," *International Security and the United States: An Encyclopedia* (Westport, CT: Praeger Security International, 2008), vol. 2, pp. 674-75.

¹⁰⁷ E.g., al-Baqamī, p. 10.

between men and women.¹⁰⁸ Saudi women from regions where traditions or convictions do not embrace official standards, such as Hijāz, have expressed outrage at being subjected to their enforcement by the CPVPV.¹⁰⁹

According to numerous Saudi nationals and expatriate residents of the kingdom I questioned, CPVPV measures to enforce veiling and gender-segregation became far stricter in the 1980s following the Meccan Rebellion, as well as in the wake of the two Gulf wars in the 1990s. This reactionary approach toward policing sexual morality appears as a countermeasure to radical Islamists, who point to gender-mixing and unveiling to justify their rebellion and defiant assertion of Islamic identity, pride, and autonomy. *Jihād* is not only considered an Islamic duty to defend the land of Islam, but also a gendered obligation to protect women from the onslaught of alien cultures, corrupting media, and Western penetration. Saudi state violation of women is represented through the state as an agent of moral degradation and secularization via its support and sponsorship of a media empire that corrupts the nation's youth. *Jihādī* discourse is simultaneously rooted in Islamic duty, as well as conceptions of women, honour, and shame, associating subservience to infidels with the violation of Muslim women.¹¹⁰

In addition to a radical Islamist discourse, a liberal Islamist strain has also emerged since 2001 surrounding the issue of women's rights, following the lead of

¹⁰⁸ 'Abd al-'Azīz ibn Bāz, "Ihrām al-Mur'ah fī al-Sharāb wa-al-Qaffāzayn," *al-Fatāwā lil-Imām al-'Allāmah al-Muḥaddith al-Fiqhīyah* (al-Rīyāḍ: Dār al-Dā'ir lil-Nashr wa-al-Tawzī', 1428), p. 458.

¹⁰⁹ E.g. Lubna Hussain, "Thank You, Ma'am. Have a Nice Day," *Arab News* (1/5/2005); Maha Akeel, "Women's Issues: Baby Steps and Individual Successes," *Arab News* (4/1/2007); Moodhy al-Kalaf, "Third National Dialogue Forum: Diary of a Woman," *Arab News* (25/6/2004).

¹¹⁰ Madawi al-Rasheed, *Contesting the Saudi State*, pp. 163-8.

such scholars as Shaykh Salmān al-‘Awdah.¹¹¹ Recently, controversy erupted when Shaykh Aḥmad ibn Qāsim al-Ghāmḍī, Regional Director of the CPVPV in Mecca, endorsed the permissibility of women interacting socially with men for the purpose of work or education, as long as they were clothed in a veil.¹¹² His comments came in the wake of the highly publicized firing of Shaykh Sa‘d al-Shithrī from the Council of Senior Scholars, after he expressed opposition to the co-educational policy of the newly opened King ‘Abd al-‘Azīz University of Science and Technology (KAUST).¹¹³ Al-Ghāmḍī's support for this social policy met with widespread public condemnation, and was rebuked by Grand Muftī Shaykh ‘Abd al-‘Azīz Āl al-Shaykh, revealing division amongst the religious establishment towards the issue of gender segregation.¹¹⁴

While there is scholarly consensus amongst Saudi ‘*ulamā*’ as to the duty of the promotion of virtue and prevention of vice applying to both men and women, disagreement exists between liberals and conservatives concerning the degree of women's public performance. There are presently no female officers in the CPVPV; however, *muḥtasibāt* work in association with the CPVPV to police female sections within the Holy Mosques of Mecca and Medina. This precedent is commonly justified according to the Prophet's example, as he is reported to have employed Samrā' bint Nuḥayk al-Asadīyah as *muḥtasibah* in Maḍīnah, as well as ‘Umār's

¹¹¹ Stephane Lacroix, "Between Islamists and Liberals: Saudi Arabia's New 'Islam-Liberal' Reformers," *Middle East Journal* 58/3 (2004), p. 346; International Crisis Group, "Can Saudi Arabia Reform Itself?" *International Crisis Group Middle East Report* 28 (14 July 2004), pp. 13-15.

¹¹² "Ra'īs Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ‘an al-Munkar bi-Makkah: al-Ikhtilāf Mashrū‘ wa Adillatuhu Ṣarīḥah," *al-‘Arabīyah* (9/12/2009); available from www.alarabiya.net, accessed 25/3/2010.

¹¹³ Jamāl Aḥmad Khāshuqjī, "al-Shaykh al-Shithrī wa Qanāt al-Majd: Limā al-Tashwīsh wa Naḥnu fī Khayr min Dīninā wa Dunyānā?" *Jarīdat al-Waṭan* (Sept. 29, 2009).

¹¹⁴ M. D. al-Sulami, "Scholar Denies Support to al-Ghamdi's Views," *Arab News* (10/5/2010).

employment of al-Shifā' bint 'Abd Allāh as *muḥtasibah*.¹¹⁵ These examples are cited by liberal Islamists like the publicly elected director of the Riyadh Municipal Council, 'Abd al-'Azīz al-'Umārī, who has advocated a greater public role for *muḥtasibāt* in order to combat corruption more effectively.¹¹⁶

Conservative scholarly attitudes concerning women and *ḥisbah* are reflected by such Saudi *fuqahā'* as Shaykh Khālīd ibn 'Uthmān al-Sabt. Following older scholars like al-Ghazālī, al-Sabt accepts the position that being male is not a condition of obligation for enjoining to virtue and forbidding wrong; however, he also makes it very clear that this refers strictly to a woman in her own home. This is no licence for women to leave their homes to practice the duty, involving themselves in religious and other affairs, "as unfortunately happens so much these days."¹¹⁷ Likewise, former CPVPV General Director, 'Abd al-'Azīz al-Mas'ūd, states that for women the normal mode of performing the duty with respect to men is "in the heart." He does, however, take the view that they should do it to other women, and verbally to related males, including their husbands and children.¹¹⁸

Exemplifying the massive expansion of Saudi women's higher education in such in institutions as al-Imām Muḥammad ibn Sa'ūd Islamic University and Amīrah Nūrah University, several female *shaykhaḥs* have argued in favour of opening the CPVPV to female recruits. With cognizance of women's primary duty to practice *ḥisbah* within the household, Nabīlah al-Ḥafībah builds primarily upon al-'Uthaymīn's work concerning the legitimacy of women enjoining virtue and

¹¹⁵ Al-Qurṭubī, *al-Isti'āb fī Ma'rifat al-Aṣḥāb* (al-Qāhirah: Maktabat Nahḍat Miṣr, n.d.), vol. 4, p. 183; Ibn Ḥazm, *Jamharat Ansāb al-'Arab* (al-Qāhirah: Dār al-Ma'ārif, 1962), pp. 150, 156.

¹¹⁶ 'Abd al-'Azīz al-'Umārī, "al-Iḥtisāb wa al-Raqābah al-Idāriyah fī Taṭbīqātihā al-Ta'rīkhīyah".

¹¹⁷ Khālīd ibn 'Uthmān al-Sabt, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*, pp. 171-2.

¹¹⁸ 'Abd al-'Azīz al-Mas'ūd, *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*, pp. 528-9, 562, 564.

forbidding vice upon other women publicly. She argues that *muḥtasibāt* (i.e. female *muḥtasibs*) may legitimately be employed within sex-segregated markets and other public institutions for females.¹¹⁹ More forcefully and extensively, Badrīyah al-Bishr surveys vice within Saudi female society, highlights the absence of adequate resources for women's religious education, and argues for the necessity of including *muḥtasibāt* within CPVPV ranks. Her study reveals a high degree of support for the CPVPV amongst the female population, as well as their desire for *muḥtasibāt* to be involved within the bounds of female society, especially in schools, women's societies, public forums, and wedding parties.¹²⁰

3.3.2. The Case of Terrorism

Among the most significant changes to the CPVPV is its new role as an anti-terrorist agency, functioning in association with the Minister of the Interior's program of "intellectual security."¹²¹ The role of the CPVPV is considered to be a major part of the Kingdom's "soft" counter-terrorism policies, as opposed to the "hard" policies implemented by the Ministry of the Interior and the Financial Intelligence Unit. CPVPV policies include everything from direct outreach to Saudi society at large through guidance programs, media announcements, expositions, and literature, to the surveillance of mosques for radicalism and terrorist re-education efforts. According to Saudi officials, this approach is said to constitute a "war of ideas," which aims to instil the concepts of moderation and tolerance, and undermine any justification for extremism on an intellectual level. In so doing, CPVPV policies are supposed to

¹¹⁹ Nabīlah Zayd Saʿd al-Ḥalībāh, *al-Taʿāmul al-Mashrūʿ lil-Marʾah maʿa al-Rajul al-Ajñabī fī Dawʾ al-Sunnah* (al-Riyāḍ: Maktabat al-Rushd, 1428).

¹²⁰ Badrīyah bint Saʿūd ibn Muḥammad al-Bishr, *Fiqh Inkār al-Munkar* (al-Rīyāḍ: Dār al-Faḍīlah, 1421).

¹²¹ *Jarīdat al-Rīyāḍ* 14229 (23/5/1428): 25.

mobilize religion in the fight against terrorism, by revealing the contradiction of terrorism with Islamic law.¹²²

In Saudi Arabia, a strong, official institution of *ḥisbah* is considered by 'ulamā' and government officials to be a bulwark against sedition and disorder (*fitnah*), especially illegitimate charges of apostasy (*takfīr*) made against ruling authorities. This situation is unlike Egypt, where, in the absence of an official *muḥtasib*, *ḥisbah* has been an openly contested field, and charges of apostasy represent a power struggle between established religious authorities and Islamists within a secular legal system.¹²³ Ultimately, the CPVPV seeks to reinforce the authority of the Saudi 'ulamā' through its anti-terrorist program, which is deemed vital to national security. The Ministry of the Interior and other relevant government agencies have restructured operations in coordination with the CPVPV to better address national security threats and prevent terrorist attacks based on this central premise of scholarly authority.

The CPVPV has issued research detailing its anti-terrorism initiatives, produced in collaboration with Shaykh Ṣaliḥ al-Fawzān, member of the Board of Senior Scholars and Permanent Committee for Scholarly Research and *Iftā'*, Shaykh Ṣāliḥ ibn 'Abd Allāh ibn Ḥumayd, president of the High Council of Justice and Imām of the Great Mosque of Makkah, and Shaykh Muḥammad ibn Yaḥyā al-Najmī, president of Urban Studies at King Fahd College of Security.¹²⁴ Terrorists are depicted as feeding off dissent from the Sharī'ah in society, especially the neglect of

¹²² "Initiatives and Actions to Combat Terrorism," *The Diplomat* 22 (March 2010): 30-33.

¹²³ Susanne Olsson, "Apostasy in Egypt: Contemporary Cases of Ḥisbah."

¹²⁴ 'Abd Allāh ibn Dajīn al-Sahī, *Juhūd al-Ri'āsah al-'Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar fī al-Mamlakah al-'Arabīyah al-Sa'ūdiyyah fī Muḥārabat al-Irhāb* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah Athnā' al-Nashr, 1429); see also, 'Abd al-'Azīz ibn Fawzān al-Fawzān, *Athar al-'Ilm wa-al-Īmān fī Mukāfāhat al-Irhāb wa-al-'Udwān* (al-Rīyāḍ: Dār Ṭaybah lil-Nashr wa-al-Tawzī', 1428).

ḥisbah, which is used as a pretext to exploit zealous youths, who are acknowledged to possess an instinctive ability to sense hypocrisy. Efforts to combat terrorism are equated conceptually with the struggle against deviant Islamic sects, particularly the *Khawārij*:

The Prophet enjoined the killing of *al-Khawārij* and prostitutes (*al-bughāh*)—he did not command the killing of any others from amongst the deviant sects except them—who pose danger to Muslim lives and divide them from prayer and peace; there is a great reward from killing them. Members of the CPVPV conveyed texts of the *Salaf* in exhortation of their *jihād*, so that its realization will be achieved, God willing. Ibn Hubayrah said: "Verily, killing of *al-Khawārij* is worthier than killing polytheists, and the wisdom in it is such: Verily, in killing them is the preservation of true Islam, and in killing polytheists is the seeking of profit, and the preservation of truth is worthier."¹²⁵

Heresiography is thus employed to classify groups in violent opposition to religious and political authority in Saudi Arabia. *Khawārij* are from amongst the first sects that appeared in Islamic history, having split with mainstream Sunnism (*Ahl al-Sunnah wa-al-Jamā'ah*) over disagreement about the meaning of "Muslim" and "believer" (*mu'min*). The *Khawārij* claimed that committing a capital sin (*kabīrah*), such as fornication, lying, intoxication, etc., constitutes apostasy (*kufī*). A group of radical *khawārij* felt justified in killing grave sinners and thus legitimized the killing of caliph 'Uthmān (r. 23-25/644-56).¹²⁶ The claim of *takfīr* on these grounds, particularly upon Muslim leaders, is considered by Saudi '*ulamā'*' to be a key characteristic of *Khawārij*, and the main cause of their deviance.¹²⁷

Ḥanbalī jurists have actually adopted a more stringent position than other Sunnī '*ulamā'*', arguing that the duty of prayer and some points of religious doctrine

¹²⁵ Cf. *ibid*, p. 19.

¹²⁶ F. Griffel, "Apostasy," *EF* (Brill Online 2009), accessed 7 Nov. 2009: <http://brillonline.nl>.

¹²⁷ Al-Juhanī, "al-Khawārij," *al-Mawsū'ah al-Muyassarah*, vol. 2, pp. 1653-4.

are so central to Muslim creed that a violation should be regarded as apostasy and punished by death without asking the perpetrator to repent (*istitābah*);¹²⁸ in fact, Ibn Taymīyah adopted the position that *istitābah* is not obligatory in cases of doctrinal deviation from Islam and that a Muslim can be excluded from the community against his or her will. In Ibn ‘Abd al-Wahhāb's extensive discussion of what constitutes *kufṛ* and *shirk* (polytheism), he lists numerous convictions and acts, all related to neglecting the rules of *‘ibādah*.¹²⁹ Attainment of knowledge about *tawḥīd* and refraining from *shirk* had to be accompanied by combat of those who did not act according to the rules of *tawḥīd*, who were thus regarded as not being Muslims and subject to *takfīr* (excommunication).¹³⁰ Some modern writers have been influenced by such opinions, which they have expressed more radically; for example, militant splinter groups of the Muslim Brotherhood during the 1970s argued that a Muslim ruler who neglects to enforce the Sharī‘ah thereby apostatises and should be put to death. This position is known as *takfīr al-ḥākim* ("accusing the ruler of unbelief"), and is inspired by a *fatwā* from Ibn Taymīyah that was directed against the Ilkhānid ruler of his time.¹³¹ As previously discussed, however, Ibn Taymīyah expressed a systematic disposition towards cooperation with the ruling authority within his program of conservative reformism, especially with regards to *ḥisbah*. Ibn ‘Abd al-

¹²⁸ Griffel, *Apostasy and Tolcranz im Islam* (Leiden: Brill, 2000).

¹²⁹ Muḥammad ibn ‘Abd al-Wahhāb, "Kitāb al-Tawḥīd," *Sīrat al-Imām al-Shaykh Muḥammad ibn ‘Abd al-Wahhāb*, Amīn Sa‘īd, ed. (Bayrūt: Sharikat al-Tawzī‘ al-‘Arabīyah, 1384), pp. 232-33, 237-38, 239, 257-58; "Rasā’il al-Da‘wah," *ibid.*, pp. 46-47, 64-65, 82, 83, 93, 105, 108, 136, 145, 155; "Kitāb Kashf al-Shubuhāt," *ibid.*, pp. 300, 312; *Majmū‘at al-Fatāwā wa-al-Rasā’il wa-al-Ajwibah* (al-Qāhirah: Dār al-Wahī, 1400), pp. 34, 37, 40-44; *al-Kalimāt al-Nāfi‘ah fī al-Mukaffirāt al-Wāqī‘ah* (al-Qāhirah: al-Maṭba‘ah al-Salafīyah, 1393), pp. 4, 6, 45.

¹³⁰ Muḥammad ibn ‘Abd al-Wahhāb, "al-Risālat al-‘Ashirah," *Ta’rīkh Najd*, Nāṣir al-Dīn al-Asad, ed. (Bayrūt, 1985, n.p.), pp. 309-12, esp. 311; "al-Mas‘alat al-Thālithah," *Ta’rīkh Najd*, pp. 405-7; "al-Risālat al-Sādisah wa-al-‘Ishrūn," *Ta’rīkh Najd*, pp. 360-93, esp. 372; "Risālat Ukhrā fī Kalimāt al-Tawḥīd," *Majmū‘at al-Rasā’il wa-al-Masā’il al-Najdiyyah* (al-Qāhirah, 1346-49, n.p.), vol. 4, pp. 36-40, esp. 37.

¹³¹ J. J. G. Jansen, *The Neglected Duty* (New York: Macmillan, 1986), pp. 167-76.

Wahhāb also distinguished between what may be termed injustice because of social and economic inequities, and creedal injustice (*ẓulm al-anwāl wa ẓulm al-shirk*); Wahhābī thought is focused on the latter kind, whereas the first is tolerable as long as it is accompanied by *tawḥīd*.¹³² Moreover, throughout Islamic history mainstream Sunnism, including Ḥanbalīs, have generally expressed reluctance towards sedition against tyrannical leaders in favour of avoiding *fitnah* ("disorder amongst Muslims").

In addition to the basic classification of terrorists as *Khawārij*, the CPVPV's educational program (*manhaj*) is predicated more specifically upon the definition of terrorism established by the Makkan Declaration of the Convention of Islamic Jurisprudence (*Majma' al-Fiqh al-Islāmī*), which aspires to provide a comprehensive definition for the entire *Ummah*:

Wrongdoing, which individuals or groups practice, or states inflict upon people's religion, blood, intellect, money, or honour, with a prevailing sense of fear, mischief, threat, and unlawful murder; that which is related to fighting, intimidation, highway banditry, and all violent actions or threats; perpetration may arise from individual criminals or organizations, which intend to cast fear into people or intimidate them through injury, or by exposing their movements, freedom, security, or sustenance to danger. Its categories include: inflicting harm on the environment or to a companion, public or private property, or exposing a national resource to danger. All of this comprises corruption upon the earth (*al-fasād fī al-arḍ*), which God forbids Muslims. God says: "Seek not mischief in the land. Verily, God likes not the *Mufsidūn*" (28:77).¹³³

The definition of terrorism is thus equated with the Qur'ānic prohibition against "corruption upon the earth" (*al-fasād fī al-arḍ*), and extended to both states and non-state actors, reflecting the legal sovereignty of the Sharī'ah. Terrorism according to

¹³² Muḥammad ibn 'Abd al-Wahhāb, "Rasā'il al-Da'wah," *Sirāt al-Imām al-Shaykh Muḥammad ibn 'Abd al-Wahhāb*, p. 116.

¹³³ Cf. 'Abd Allāh ibn Dajīn al-Sahfī, p. 26.

the United States Code, which often serves as a standard reference in the absence of any commonly shared international definition, offers a far more restrictive meaning: "the term 'terrorism' means premeditated, politically motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents."¹³⁴ In the American definition, the legal sovereignty of states is bolstered, since terrorism can never be inflicted by a state, although hostile states are said to "sponsor" terrorism while not actually committing it themselves. In the case of Saudi Arabia, however, the CPVPV applies the definition of the Meccan Declaration in conjunction with, "the clarification of the doctrine of *Ahl al-Sunnah wa-al-Jamā'ah*, including rulings upon people who commit major transgressions of the Sharī'ah (*kabā'ir*) and commentary upon matters of pure creed."¹³⁵ As such, the CPVPV seeks to bolster the authority of state-sanctioned legal interpretation through the Saudi 'ulamā', conceived as the authentic representatives of *Ahl al-Sunnah wa-al-Jamā'ah*.

This concept of legal authority was forcefully expressed through a royal decree issued on August 12th, 2010, which stated the CPVPV must now enforce a prohibition against all *fatwās* except those from the Council of Senior Scholars (*Hay'at Kibār 'Ulamā'*) and the Permanent Committee for Scholarly Research and *Iftā'* (*al-Lajnat al-Dā'imah lil-Buḥūth al-'Ilmīyah wa-al-Iftā'*).¹³⁶ This effort further centralizes legal authority and restricts the legal opinions of non state-sanctioned 'ulamā', in an attempt to stem the growing tide of unofficial rulings that has resulted from new information and communication technologies. The royal decree was

¹³⁴ *United States Code* (Washington, DC: US GPO, 2006), title 22, sect. 2656f(d).

¹³⁵ *Ibid*, pp. 26-7.

¹³⁶ Royal decree no. 13876/b, issued 2/9/1431; cf. 'Abd al-Muḥsin al-Ḥārithī, "Qaṣr al-Fatāwā 'alā Ā'ḍā' Hay'at Kibār 'Ulamā'," *Ukāz* 3344 (13 August 2010). *Fatwās* on matters pertaining to *ibādah* are exempt from the ruling, but they must be between the questioner and the scholar. There is a total ban on any topics involving strange or obsolete views.

praised by influential Shaykh ‘Abd al-Raḥmān al-Sudays, Imām of the Grand Mosque in Mecca, in the first Friday sermon of the month of Ramaḍān, 1431: *fatwās* from unqualified people were blamed for undermining national security and perverting the Shari‘ah.¹³⁷ In conjunction with the CPVPV, the Communications and Information Technology Commission (CITC) subsequently moved to block access to all web-sites disseminating unofficial *fatwās*.¹³⁸ This move stands as an effort to stem the proliferation of "religious knowledge" that often lacks any axis of authority in Islamic law, and which stands in violent opposition to the Saudi state.¹³⁹ But it has also resulted in blocking other voices of reform from liberal ‘ulamā’, such as Shaykh Salmān al-‘Awdah, whose unofficial online repository of *fatāwā* was promptly disabled inside Saudi Arabia, in addition to the termination of his radio program.

On a general level, the anti-terrorist activities of the CPVPV are comprised of a public awareness campaign and a program of public and religious education. The former campaign includes advertisements on television, radio and billboards, as well as programs on television, in schools and mosques, and at sporting events, to reinforce virtues and educate Saudi citizens about the dangers of extremism and terrorism. Within the latter program, field officers are trained to better educate the public on this subject, *imāms* prohibited from incitement and intolerant speech, and religious education is monitored to purge radicalism. The anti-terrorist campaign and educational program were conducted by the CPVPV under the supervision of the

¹³⁷ ‘Abd al-Raḥmān al-Sudays, "Fatāwā al-Faḍā‘īyāt—al-Ḍawābiṭ wa-al-Ṭumūḥāt" (sermon delivered at the Grand Mosque, Mecca, 3/9/1431); available from www.alsudays.com, accessed 22/1/2011.

¹³⁸ ‘Alī Bilāl, "Ḥay‘at al-Ittiṣālāt al-Sa‘ūdīyah Tahjub Mawāqī‘ al-Fatāwā," *Jarīdat Shams al-Sa‘ūdīyah* (4/9/2010).

¹³⁹ For a discussion of the Islamist hermeneutic, see Hallaq, *Shari‘a: Theory, Practice, Transformations*, pp. 475-6.

Ministry of Islamic Affairs, and included supervision of messages incorporated into Friday sermons at mosques, the distribution of literature and audio tapes, and postings on the Internet. According to the CPVPV, it forbids sayings, writings and *fatwās* from terrorists, as well as giving sincere *da‘wah* to enjoin virtue and prevent vice according to sound teachings.¹⁴⁰ In 2007, state authorities issued identification cards to *imāms* and religious leaders to curb instances of unauthorized persons delivering Friday sermons; since then, CPVPV field officers monitored these licensed *imāms* and identified instances of "illegal sermons".¹⁴¹ On March 25th, 2009, the Ministry of Islamic Affairs announced that in the past five years they have dismissed 3,200 clerics for radical preaching.¹⁴²

On a more focused level, the CPVPV also participates in two different, yet complementary programs: "counter-radicalization" and "rehabilitation." Whereas the broader public programs are preventative in nature, these programs attempt to directly neutralize the source of terrorism.¹⁴³ The purpose of counter-radicalization is to combat the spread and appearance of extremist ideologies among the general populace. Central to this effort is education about the dangers of radical Islam, targeting at-risk groups, such as disenfranchised youth. The rehabilitation program is intended to reintegrate "deviants" or extremists back into society, change their behaviour (disengage them) and alter their beliefs (de-radicalize them). It targets in particular deviants who have completed a prison sentence. The program re-educates violent extremists and sympathizers through intensive legal debates and

¹⁴⁰ Ibid., pp. 19-20.

¹⁴¹ Office of the Coordinator for Counterterrorism, "Saudi Arabia," *Country Reports on Terrorism 2009* (Washington, DC: U. S. Department of State, 2010), pp. 140-43.

¹⁴² Ibid.

¹⁴³ E.g., Ghazanfar Ali Khan, "Terrorist Outfits Reigned In, Says Prince Naif," *Arab News* (18/6/2009).

psychological counselling. The goal is for them to renounce ideologies that espouse terrorism; however, any individual who has committed or participated in a violent crime constituting murder will still not be released following the course.¹⁴⁴ Since its inception, the rehabilitation program has worked to re-integrate between 200 and 300 extremists, including former Guantanamo detainees, into Saudi society.¹⁴⁵ Additionally, the Ministry of Islamic Affairs runs a program of counter-radicalization within the prison system, aimed at exposing violence in extremist ideology. The Ministry worked with CPVPV field officers and other scholars to stop the ability of extremist groups to find recruits in the prison system. Since its establishment, 3,200 prison inmates have participated in 5,000 counter-radicalization sessions.¹⁴⁶

While admitting some shortcoming with regard to the timely application of its campaign, the CPVPV stresses that its anti-terrorist programs were initiated in 1999, pre-dating the 2003 terrorist attacks within Saudi Arabia.¹⁴⁷ Emphasis upon the CPVPV's proactive stance is aimed against critics, who have alleged the agency's lack of foresight concerning the terrorist threat. This also seems to defend against suggestions that the CPVPV should have absorbed Saudi *mujāhidīn* returning from Afghanistan into its ranks after war with the Soviets concluded in 1989, and in so doing averted the growth of such radical groups as al-Qā'idah.¹⁴⁸

In addition to causes related to internal security, the new role of the CPVPV as an anti-terrorist agency also answers to external pressure on the kingdom since

¹⁴⁴ "Initiatives and Actions to Combat Terrorism," *The Diplomat*.

¹⁴⁵ Office of the Coordinator for Counterterrorism, "Saudi Arabia," *Country Reports on Terrorism 2009*, p. 142

¹⁴⁶ Ibid.

¹⁴⁷ Al-Sahfī, p. 18.

¹⁴⁸ Ibid.

September 11th, 2001, i.e., the claim that religion, especially Wahhābī Islam, breeds terrorism. The Saudi government has sought to bolster its own claim that it has effectively dismantled al-Qā'idah's organization in the country, and that it is in the vanguard of the Muslim world in its opposition to terrorism and Global Interfaith Dialogue Initiative. In addition to protecting the national security of the kingdom, given the Saudi government's goal of forging partnerships with multilateral organizations and foreign governments to advance counter-terrorism initiatives, the CPVPV seems to offer a credible and pragmatic vehicle by which to advance both these foreign and domestic policy objectives.¹⁴⁹ The United States claims that Saudi Arabia's friendship is important to it, and likewise considers the kingdom a key partner in its campaign against terrorism, providing military, diplomatic and financial cooperation.¹⁵⁰ Counterterrorism operations between the two countries increased significantly after the May 12th, 2003 bombings in Riyadh, and continue today. The US Department of State has lauded the Saudi government for hosting the first ever Counterterrorism International Conference in Riyadh, and for continuing to build its counterterrorism capacity and strengthening its efforts to counter extremist ideology;¹⁵¹ however, the CPVPV's efforts have not yet been recognized in this field, and it continues to draw the ire of the US State Department because of alleged violations related to the freedom of religion and women's rights.¹⁵²

¹⁴⁹ "Initiatives and Actions to Combat Terrorism," *The Diplomat*.

¹⁵⁰ ¹⁵⁰ Office of the Coordinator for Counterterrorism, "Saudi Arabia," *Country Reports on Terrorism 2009*, p. 140.

¹⁵¹ Ibid.

¹⁵² U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Saudi Arabia," *International Religious Freedom Report 2009*, available from www.state.gov, accessed 26/10/2009.

3.3.3. The Case of Religious Freedom

Critical attention has been paid by Western scholars to the lack of individual and religious freedom guaranteed under Islamic law generally, and in Saudi Arabia particularly.¹⁵³ The US Department of State correspondingly advocates the need to liberalize policies in order to ensure that the freedom to profess, practice and propagate one's belief is fully respected in Saudi society and government.¹⁵⁴ Here, "freedom of religion" is defined according to the presumptions of liberal polity as it has developed historically, with its specific conception of church-state relations and concern for preserving individual moral autonomy in the face of state intrusion into the private sphere.¹⁵⁵ The "Religious Police" in Saudi Arabia are typically held up as the apotheosis of such interference, and their violation of religious freedom is the focus of critical reporting. In response, Saudi *'ulamā'* and intellectuals claim that a lack of attention has been paid to the context in which "freedom" is articulated, and that focus has been unduly placed upon isolated incidents when characterizing the general practice of the CPVPV.¹⁵⁶ Little has been offered, however, from Saudi scholars by way of comparative analysis or dialogue on this issue. Closer examination of the idea of human rights in Saudi Arabia, and CPVPV enforcement of *'ibādāt* ("rules of worship") and Wahhābī *'aqīdah* ("creed"), helps us to further understand the conception of "religious freedom" governed by the CPVPV.

¹⁵³ E.g., F. Rosenthal, "Ḥurriyya," *EF* (Leiden: Brill, 1971), vol. 3, p. 589; Vogel, "The Public and the Private in Saudi Arabia."

¹⁵⁴ U.S. Department of State, Bureau of Democracy, Human Rights and Labor, "Saudi Arabia," *International Religious Freedom Report 2009*.

¹⁵⁵ For an overview of this phenomena, see: Martin E. Marty, "Religion and the State: United States," Maryanne C. Horowitz, ed., *New Dictionary of the History of Ideas* (Detroit: Charles Scribner's Sons, 2005), vol. 5, pp. 2084-2087.

¹⁵⁶ Muḥammad al-Bishr, "al-Muqaddimah," *al-Iṣlāḥ al-Mujtamaʿī*, pp. 8-13.

Historians and political theorists generally consider that Thomas Hobbes (d. 1679) most fully expressed the modern concept of state sovereignty in his work *Leviathan*.¹⁵⁷ The Hobbesian thesis that natural rights could be given up to a political sovereign (the state) depended upon the idea of sovereign individuals in the state of nature. Individual sovereignty thus came to be recognized and protected in a sovereign state through the related concept of secularism: separating the individual's right to (religious) belief from the authority of the state.¹⁵⁸ Today, despite the erosion of state sovereignty and a greater plurality of jurisdictions, human rights still depend on national rights. This is presumed by the Declaration of Human Rights, the Universal Declaration of Human Rights, and the Religious Freedom Act of the United States. The clear Christian bias of these laws has been the subject of criticism, as well as the role they posit for the secular state as the arbiter of what is "truly human."¹⁵⁹

By contrast, the Sharī'ah rejects the idea that the moral subject is completely sovereign. This idea has been raised by Saudi 'ulamā' and intellectuals in a recent collection of essays seeking to rectify the misapprehension of *ḥisbah* generally, and the CPVPV particularly.¹⁶⁰ Two main aspects mark this work's approach, which are common to other Saudi efforts in inter-religious dialogue, constituting its so-called "hidden agenda."¹⁶¹ On one hand, it tries to address a foreign, non-Muslim audience

¹⁵⁷ Thomas Hobbes, *Leviathan* (Oxford: Oxford University Press, 1998); "State," *Blackwell Encyclopaedia of Political Thought* (Oxford: Blackwell Reference, 2004), pp. 505-6; D. M. Walker, "State," *The Oxford Companion to Law* (Oxford: Clarendon Press, 1980), p. 1176; "Sovereign State," *Black's Law Dictionary*, 7th ed. (St. Paul: West Group, 1999), p. 1401.

¹⁵⁸ Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979), p. 113.

¹⁵⁹ Talal Asad, *Formations of the Secular*, p. 147.

¹⁶⁰ Muḥammad al-Bishr, "al-Muqaddimah," *al-Iṣlāḥ al-Mujtamaʿī*, pp. 8-13.

¹⁶¹ Donald H. Argue and Leonard A. Leo, "The Saudi's Dubious Interfaith Agenda at the UN," *Christian Science Monitor* (13/11/2008).

in familiar political terms, equating Western criticism with an attack on national sovereignty and cultural identity as an extension of the Shari'ah.¹⁶² On the other hand, this is done in conjunction with a defence of the authoritative theological and legal basis of *hisbah*, "as an essential institution of the true and final religion of mankind."¹⁶³ Individual freedom is defined in relation to *hisbah* as being constrained only so much as is necessary to preserve the five higher principles of the Shari'ah (i.e., the preservation of religion, life, intellect, wealth, and lineage).¹⁶⁴ The practical enforcement of these principles is portrayed as being preventive and reformatory, and a way of promoting shared values and social cohesion.¹⁶⁵

In more focused critiques, other scholars in Saudi Arabia have argued that, unlike Islamic law, the modern conception of human rights ultimately lacks authority, and that the emergence of secular human rights is fully keeping with the modern legal reforms that have drastically affected Muslim countries, largely destroying the Shari'ah.¹⁶⁶ They also argue, however, that many "human values" are shared by Islamic law and universal human rights, although with reference to divine authority in the Shari'ah. This, they say, may be proven through the faculties of reason and language, such as in the recognition of "justice," or in more comprehensive values such as "mercy," "kindness" and "tolerance." Ibn Rajab's idea

¹⁶² Ibrāhīm al-Juwayr, "Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar: Mu'assasat Iṣlāḥ Ijtīmā'ī fī al-Sa'ūdīyah," *al-Iṣlāḥ al-Mujtama'ī*, pp. 52-57; 'Abd al-Raḥmān al-Luwayḥīq and 'Uthmān al-Āmir, "al-Athar al-Fikrī," *ibid.*, pp. 79-104; Umaymah al-Jalāhimah, "al-Mawqif min Sulūk ghayr Muslimīn fī al-Sa'ūdīyah," *ibid.*, pp. 143-47; Samar Faṭānī, "al-'Unf fī Mumārasāt al-Shurṭat al-Dīniyah kamā Taṣawwarat al-Maṣādir al-Gharbīyah," *ibid.*, pp. 156-165.

¹⁶³ See esp., 'Abd al-Raḥmān al-Luwayḥīq and 'Uthmān al-Āmir, "al-Athar al-Fikrī," *ibid.*, pp. 79-104.

¹⁶⁴ Ibrāhīm al-Ḥumaydān, "Qīmat al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar fī Jānībīyat al-Tashrī'ī wa-al-Taṭbīqī," *ibid.*, pp. 52-55; see also, Faḍl Ilāhī, *Shubuhāt Hawl al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*, pp. 6-12.

¹⁶⁵ Nūrah al-Sa'd and Faṭḥīyah al-Qurayshī, "al-Athar al-Ijtīmā'ī," *al-Iṣlāḥ al-Mujtama'ī*, pp. 103-112; Lubnā al-Tahlāwī, "Qīmat al-Ḥijāb lil-Mur'ah al-Muslimah," *ibid.*, pp. 182-186.

¹⁶⁶ E.g. 'Abd Allāh ibn Shaykh al-Maḥfūz ibn Bayyah, *Ḥiwār 'an Bu'd Hawl Ḥuqūq al-Insān fī al-Islām* (al-Riyād: al-'Ubaykān, 2009).

of the "brotherhood of humanity" is appealed to in support of this understanding,¹⁶⁷ while the Egyptian Declaration is dismissed as having unsuccessfully mimicked the Universal Declaration of Human Rights.¹⁶⁸

The wide definition of human rights adopted by *al-Jam'īyah al-Waṭaniyah li-Ḥuqūq al-Insān* (National Society for Human Rights or NSHR) corresponds with this idea of "human values," being comprised primarily of all rights guaranteed by the Sharī'ah, in association with local regulations and international agreements ratified by Saudi Arabia.¹⁶⁹ Established as an independent non-governmental organization within Saudi Arabia in 2004, its activities include public education and monitoring for human rights violations, as justified in light of the vast expansion of the modern state and related problems of modernization.¹⁷⁰ The NSHR acknowledges the legitimacy of the CPVPV and its governing bylaws and regulations, while focusing its criticism upon violations such as excessive use of force and lack of accountability on the part of CPVPV officers.¹⁷¹ Saudi journalistic reports focus extensively upon similar issues, in addition to raising questions about the excessive restriction of personal freedom; in conjunction with the NSHR's activities, this has proven an effective stimulus to reform in some cases.¹⁷²

¹⁶⁷ The Prophet Muḥammad is reported to have said: "No one truly believes until he wants for his brother what he wants for himself." In his commentary on this *ḥadīth*, Ibn Rajab said: "The brotherhood referred to in this *ḥadīth* is the brotherhood of humanity." *Sharḥ al-'Arba'īn al-Nawawīyah*; cf. *ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *al-Jam'īyah al-Waṭaniyah li-Ḥuqūq al-Insān, al-Taqrīr al-Awwal 'an Aḥwāl Ḥuqūq al-Insān fī al-Mamlakah al-'Arabīyah al-Sa'ūdīyah* (al-Riyād, 1427/2006), pp. 10-13, 16-19.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*, pp. 25-29, 105-108.

¹⁷² E.g., Raid Qusti, "NSHR Cites a Plethora of Rights Violations," *Arab News* (23/5/2007); al-Majallah, "Enhancing a Culture of Human Rights," *Arab News* (27/7/2007); Muhammad Humaidan, "NSHR Calls for a National Human Rights Strategy," *Arab News* (8/4/2009); Fawwāz 'Azīz, "Ḥāsabū Hay'at al-Amr bi-al-Ma'rūf," *Jarīdat al-Waṭan al-Sa'ūdīyah* (16/4/2009); Ḥāmid al-Shahrī, "Waḥdah li-Ḥuqūq al-Insān fī Hay'at al-Amr bi-al-Ma'rūf," *Jarīdat al-Waṭan al-Sa'ūdīyah* (4/10/2009).

The bylaws of the CPVPV pertaining to the exhortation of Muslims to abide by religious duties determined in the Sharī‘ah, and the prohibition of "un-Islamic beliefs" in public places,¹⁷³ must be understood in relation to a broader meaning of "religious freedom." In line with social reformers such as Ibn Taymīyah and Ibn ‘Abd al-Wahhāb, Saudi ‘*ulamā*’ conceive human liberation according to the principle of *tawhīd*: that the affirmation of divine unity abolishes all worship that is not directed to God, and all pretension to infallibility; the only infallible source is the Revelation and the Prophet, who is divinely inspired.¹⁷⁴ There are also legal restrictions upon religious freedom particular to the Arabian Peninsula: public expression of un-Islamic belief is more strictly prohibited there than in Muslim societies located elsewhere because of specific restrictions in the Qur‘ān and Sunnah. The Permanent Committee for Scholarly Research and *Iftā*’ has reasserted its consensus upon the prohibition against constructing non-Muslim places of worship, in light of new churches being built in other Gulf states, as well as upon defending the continuity of an entirely Muslim citizenry in Saudi Arabia.¹⁷⁵ Other more liberal Saudi ‘*ulama*’, however, such as Shaykh Salmān al-‘Awdah and Shaykh ‘Abd al-‘Azīz al-Fawzān, have recently advocated greater critical engagement in dialogue on the issue of religious freedom, in order to offer a more viable alternative to the Western model.¹⁷⁶ Stress is placed upon more clearly defining the limitations of

¹⁷³ App. 2, art. 1.

¹⁷⁴ E.g., Faḍl Ilāhī, *Shubuhāt Ḥawl al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar*, pp. 6-8.

¹⁷⁵ al-Lajnah al-Dā‘imah lil-Buḥūth al-‘Ilmīyah wa-al-Iftā’, *Fatāwā al-Lajnah al-Dā‘imah lil-Buḥūth al-‘Ilmīyah wa-al-Iftā’* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 2005), vol. 1, pp. 468-71.

¹⁷⁶ Salmān al-‘Awdah, "Islam and Freedom"; available from <http://en.islamtoday.net>, accessed 1/1/2002; ‘Abd al-‘Azīz al-Fawzān, "al-Islām wa-al-Ḥurrīyah" (paper presented at Mercure Hotel, Riyadh, 26/4/2010); Khālīd ibn ‘Abd Allāh al-Qāsim, *al-Ḥurrīyah al-Dīnīyah bayna al-Muslimīn wa Ahl al-Kitāb Ta’šīl al-Mafhūm wa Radd al-Shubuhāt* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā’ al-Nashr, 1430); Khālīd ibn Muḥammad al-Shunībī, *Ḥuqūq al-Insān fī al-Yahūdīyah wa-al-Masīhīyah wa-al-Islām Muqāranah bi-al-Qānūn al-Dawli* (al-Rīyāḍ: Maktabat al-Malik Fahd al-

executive power in the Islamic state and the guarantees of personal freedom by the Shari'ah, as well as articulating how custom may negatively restrict rights, while principles such as justice (*'adl*) and modesty (*hayā'*) may positively do so.¹⁷⁷

The foregoing considerations also frame the promotion of virtue and prevention of vice among non-Muslims in Saudi Arabia by the CPVPV, along with due consideration of the protected status of Christians and Jews under the Shari'ah, as urged by senior '*ulamā'*.¹⁷⁸ As such, traditional repressive measures against the propagation religion by *dhimmīs* continue to be enforced, as well as the protected right to privately practice their religion. Modern advances in the status of *dhimmīs* in the *fiqh* of *ḥisbah* include equating the weight of their testimony with that of a Muslim, as well as eliminating identifying restrictions upon their attire.¹⁷⁹ Violations of privacy by the CPVPV concerning the practice of other religions have been publicly acknowledged, with *mufṭīs* and *amīrs* counselling the vigilant but gentle enforcement of *ḥisbah*, without spying.¹⁸⁰

The CPVPV categorizes the public expression of un-Islamic beliefs under violations of '*aqīdah* ("creed"), reporting the prosecution of 752 cases per year on average, involving about 1,000 people from 1417-1428/1997-2007, although no statistics are available on the rate of conviction (see Tables 9, 10 and 12). This only represents about 3% of the total cases handled by the CPVPV, with incidents related

Waṭanīyah Athnā' al-Nashr, 1430); Ṣāliḥ ibn 'Abd al-Raḥman al-Ḥuṣayn, *al-Tasāmuḥ wa-al-'Udwānīyah bayn al-Islām wa-al-Gharb* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1429).

¹⁷⁷ Salmān al-'Awdah, "Islam and Freedom."

¹⁷⁸ Ibn Bāz, "Mu'āmalāt al-Muslim li-Ghayr al-Muslim," *Majmū' Fatāwā Ibn Bāz* (al-Rīyāḍ: Dār al-Furqān lil-Nashr wa-al-Tawzī', 1995), vol. 6, p. 284.

¹⁷⁹ Contrast with: Ibn Qayyim al-Jawzīyah, *Sharḥ al-Shurūṭ al-'Umarīyah* (Dimashq: Maṭba'at Jāmi'at Dimashq, 1961).

¹⁸⁰ Ibn Bāz, "Waṣīyah lil-Hay'at bi-al-Rafaq wa-al-Uslūb al-Ḥusn," *Majmū' Fatāwā Ibn Bāz*, vol. 7, p. 317; "Amīr Nā'if ilā 'Ukāz," *al-'Ukāz al-Uṣbū'īyah* (4/11/2002); "Prince Naif Encourages the Haia to be Prudent and Gentle," Arab News (18/6/2010).

to worship, morality, intoxicants, censored publications, and others (e.g. gambling), accounting for far more. This seems to reflect the tradition in Saudi policy of avoiding strict policing of religious minorities in conflict with orthodox creed, such as Shi'ites in the Eastern Region and Sufis in Ḥijāz. In fact, besides a few isolated cases of blasphemy, and the annual campaign against the celebration of Valentine's Day, Saudi media coverage of creedal violations is overwhelmingly focused upon cases of sorcery or black magic (*siḥr*), which is also evinced in regular public exhibits by the CPVPV for education on this issue.¹⁸¹

The prevailing opinion on magic is that of al-Ghazālī (d. 505/1111), who considered it to be based upon the combined knowledge of the properties of certain terrestrial elements and propitious astral dispositions. *Siḥr* is a term applied to any action effected through recourse to demonic forces and the solicitation of their aid in the performance of a magical act; it is the equivalent to disbelief (*kufī*) in the Qur'ān, and it is defined as one of the greatest sins by the Prophet, punishable by death.¹⁸² This verdict is reflected in the opinions of Saudi 'ulamā', who also distinguish *siḥr* from legitimate "white magic" (*ruqyā*) and Prophetic medicine (*al-ṭibb al-nabawī*).¹⁸³ The practice of *ruqyā* is comprised of charms and incantations rooted in the Qur'ān and Sunnah for the treatment of various physical, psychological and spiritual

¹⁸¹ E.g., Ghazanfar Ali Khan, "Barber Facing Death for Slandering the Prophet Freed," *Arab News* (5/6/2008); Laura Bashraheel, "Haia 'Sees Red' Again," *Arab News* (14/2/2010); "Under the Spell," *Arab News* (10/9/2009).

¹⁸² Muṣṭafā ibn 'Abd Allāh Ḥājjī Khalīfah, *Kitāb Kashf al-Zunūn* (Bayrūt: Dār al-Ṣādir, 2000), vol. 1, p. 35; Abū Ḥāmid Muḥammad al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 1, pp. 49-50; Toufic Fahd, "Siḥr," *EF* (Leiden: Brill, 1997), vol. 9, p. 567.

¹⁸³ E.g., al-Lajnah al-Dā'imah lil-Buḥūth al-'Ilmīyah wa-al-Iftā', *Fatāwā al-Lajnah al-Dā'imah lil-Buḥūth al-'Ilmīyah wa-al-Iftā'*, vol. 1, p. 207; al-'Uthaymīn, *al-Majmū' al-Thamīn min Fatāwā Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-'Uthaymīn* (al-Rīyāḍ: Dār al-Waṭan, 1410), vol. 2, pp. 133-4; 'Abd Allāh al-Jibrīn, *al-Kanz al-Thamīn lil-Shaykh 'Abd Allāh al-Jibrīn* (al-Rīyāḍ: 1413, n.p.), vol. 1, pp. 224-227; Ibn Bāz, *Majmū' Fatāwā Ibn Bāz*, vol. 2, p. 925.

ailments, and is tolerated insofar as it causes no harm to others.¹⁸⁴ Moreover, *al-ṭibb al-nabawī* emerged in the eighth century AH as an alternative to the Greek-based body of medical science. The authors were religious scholars rather than physicians, who revived the traditional medical knowledge practiced by the Arabs during the Prophet's time, and advocated the medical teachings of the Qur'an and Sunnah over Greek medical practices. Most famous among them were Ibn Qayyim al-Jawzīyah and Imām Dhahabī, whose writings form the basis of *al-ṭibb al-nabawī* in Saudi Arabia today.¹⁸⁵

A chaotic situation is described by scholars in which a proliferation of *siḥr* has resulted from an increase in psychological and spiritual ailments, which modern medicine has failed to treat, and from the migration of sorcerers and belief in sorcery from Africa and Southeast Asia.¹⁸⁶ Scholars have thus proposed the establishment of a specialist center for legal *ruqyās* and treatment with Prophetic medicine under the joint supervision of the General Presidency of the CPVPV, the Ministry of Health, and the Ministry of the Interior.¹⁸⁷ The center is to be responsible for licensing *rāqīs* and traditional doctors, in order to distinguish genuine practitioners, protect innocent victims, and guard against unwarranted accusations by a growing number of zealots; it will operate in conjunction with new anti-sorcery departments in regional

¹⁸⁴ Khālīd ibn 'Abd al-Raḥmān al-Juraysī, *al-Fatāwā al-Dhahabīyah fī al-Ruqyā al-Shar'īyah* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 2001).

¹⁸⁵ Ibn Qayyim al-Jawzīyah, *al-Ṭibb al-Nabawī* (al-Rīyāḍ: Dār al-'Aqīdah lil-Turāth, 2001); Abī 'Abd Allāh Shams al-Dīn ibn 'Uthmān al-Dhahabī, *al-Ṭibb al-Nabawī* (al-Rīyāḍ: Dār al-Nafā'is, 2004). See also, Amira Ayad, *Healing Body and Soul: Your Guide to Holistic Wellbeing Following Islamic Teachings* (Riyadh: International Islamic Publishing House, 2008); Yusuf Al-Hajj Ahmad, *Islamic Medicine: The Key to a Better Life* (Riyadh: Darussalam, 2010).

¹⁸⁶ Sa'd ibn 'Abd Allāh al-Burayk, "al-Muqaddimah," al-Juraysī, *al-Fatāwā al-Dhahabīyah fī al-Ruqyā al-Shar'īyah*, pp. 8-9.

¹⁸⁷ Ibid.

CPVPV branches.¹⁸⁸ This also represents an attempt to dispel criticism by secularists who accuse Muslims of being backward and regard treatment with *ruqyās* as a superstition to be eradicated.¹⁸⁹ This struggle against *siḥr* may furthermore be understood as resulting from the processes of modernization, globalization and industrialization, and the accompanying increases in ambiguity, contradictions of morality, and disparities of power.¹⁹⁰

3.4. Conclusion

This chapter focused on identifying what exactly the law of *ḥisbah* is as the function of the CPVPV and how it is enforced. The constant and variable features between it and the pre-modern *muḥtasib* were also investigated, along with the particular social issues the CPVPV is responding to in modernity. In other words, this chapter aimed to discover more precisely how *ḥisbah* has been legally defined and applied by the CPVPV in contemporary Saudi history in order to understand more clearly how it functions in comparison and contrast with the *muḥtasib* of pre-modern history, as well as to identify significant social issues that affect the CPVPV's practice of *ḥisbah*.

Evidence was drawn from the *Nizām* of the CPVPV (see Appendix 1), which has been in effect since 1980, the Executive Bylaws of the CPVPV (see Appendix 2), which has been in effect since 1987, and articles from the *Nizām* of Penal Procedures concerning CPVPV fieldwork (see Appendix 3), which have been in effect since 2001. Together these documents form the CPVPV's legal foundation, respectively defining its governing constitution, rules for its application of *ḥisbah*, and additional

¹⁸⁸ "Virtue Commission's Special Wing Fights Charlatans," *Arab News* (27/10/2007).

¹⁸⁹ Al-Juraysī, *al-Fatāwā al-Dhahabīyah fī al-Ruqyā al-Sharʿīyah*, p. 11-12.

¹⁹⁰ John Middleton, "Magic: Theories of Magic," *ER* (Detroit: MacMillan, 2005), vol. 8, p. 5569.

regulations concerning arrest, seizure and punishment. Proof is also drawn from CPVPV operating statistics, which provide an official record of its enforcement activities and material resources from 1997-2007 (see Tables 1-13). Additional references are made to literature and *fatāwá* by Saudi '*ulamā*', Saudi press reports and other publications from the CPVPV and Muslim scholars for further detail on specific issues of importance pertaining to CPVPV performance.

As such, in the law and enforcement of *ḥisbah* four main aspects of continuity and change were identified to exist between the CPVPV and its pre-modern counterpart; namely, the form of law, range of duties, punishments, and relation to state and society. More specifically, first of all, the Saudi laws of *ḥisbah* remain bounded within a traditional Islamic legal system, representing a key intersection therein: an integrated approach to law and morality is formally maintained, whereby the *nizām* (*siyāsah* legislation) of *ḥisbah* presupposes the categories and authority of *fiqh* and custom ('*urf*') as well as the archetype of *akhlāq*, partially reminiscent of Ottoman *iḥtisāb qānūnnāmleri*; however, there is a marked shift towards enforcing a more codified morality in the form of bylaws and regulations specialized in the rules of worship and tenets of Wahhābī creed. Moreover, the CPVPV's legal charter defines a modern state agency with the associated bureaucratic and administrative procedures, and is indicative of increased juridification.

Secondly, in terms of the range of duties the decisive aspect of CPVPV jurisdiction continues to be the prosecution of *shar'ī* violations apprehended in *flagrante delicto*, by which officers perform the *muḥtasib's* traditional role as moral censor. CPVPV participation in cases of investigation conducted by other security forces and cooperation with other government agencies is also in line with

traditional collaboration between the *muḥtasib* and other offices like the *qāḍī* and *shurṭah* as well as expert consultants (*‘arīf*) in cases of overlapping jurisdictions. The role of market inspector, however, has virtually disappeared from CPVPV jurisdiction, with regulations and enforcement activities now centered upon religious rules, especially pertaining to prayer and sexual morality, and other aspects of criminal law and public safety only marginally addressed. CPVPV collaboration with other agencies is also marked by expanded powers of surveillance, whereby major violations of the Shari‘ah apprehended by its officers require a full investigation in order to obtain an indictment and arrest warrant from a *qāḍī*. Moreover, while CPVPV forbiddance of vice in the form of prosecutorial activities have generally increased over the ten years in question, there has been a noticeable shift during the reign of King Abdullah to the promotion of virtue.

Thirdly, in terms of punishments, the CPVPV maintains authority to adjudicate and execute *ta‘zīr* penalties within the limits prescribed by Ḥanbalī *fiqh*, including the traditional categories of physical harm (e.g. flogging) and explicit shaming (e.g. public rebuke). CPVPV forbiddance of vice thus falls within the scope of the *muḥtasib*'s historical criminal law jurisdiction; however, corporal punishments are now surrounded by more protocol and increasing emphasis is placed on rehabilitation programs, not to mention its restricted ability to impose discretionary penalties on the strength of *siyāsah*, which were considerably more severe in earlier history. Arrests resulted in the vast majority of cases documented by the CPVPV, indicating that its officers end up adjudicating and punishing the majority of violations they initially prosecute. Violations of worship comprise the majority of cases resulting in arrest and/or discretionary punishment; although policing

violations related to sexual morality comprise the central focus of policing activities generally. Furthermore, more non-Saudis than Saudis faced were administered penalties by the CPVPV in every category of offence.

Finally, in terms of the relation to state and society, like the pre-modern *muhtasib* the CPVPV acts as a vehicle to enforce law and order in support of the ruling regime and prescriptive authority of the '*ulamā*'; however, unlike previous Ḥanbalī history, it does not operate in a minority community, but is institutionalized as an organ of the nation-state with greater intrusive powers at its disposal, resembling a type of "religious police force." In line with other Saudi state agencies, modernization and expansion continues to be the theme of CPVPV planning, especially as it pertains to the advance of funding, human capital, technology, strategic partnerships, and performance improvements attributed to better quality and development. There is a growing emphasis on CPVPV programs for public education and training for field officers, which takes into consideration recommendations to improve its guidance services and administration. These programs address social problems specific to Saudi Arabia, including women being blackmailed with revealing photographs and correspondence (*al-ibtizāz*), the logistics of sex-segregation and privacy standards in the design of public space, and the dangers of black magic and sorcery, in addition to more general concerns like the *fiqh* of worship and juvenile delinquency. These programs also reflect the CPVPV's new role as anti-terrorist agency, as well as answering to mounting criticism from the mass media and human rights advocacy groups regarding the excessive use of force and breach of penal procedures.

In sum, this overview of the law of *ḥisbah* and its enforcement by the CPVPV raises several questions concerning its continued application in Saudi Arabia: Given the overwhelming emphasis upon policing acts of worship and sexual morality, will a more coordinated strategy avail itself to tackle corruption in other fields of public life? With expanding focus upon CPVPV activities pertaining to the enjoinder of virtue, how will CPVPV programs evolve to engage modern technologies as well as the conceptual categories of modern liberalism to a greater degree? Will increasing modernization of the legal form and function of *ḥisbah* lead to greater instrumentalization of religion and government surveillance through the auspices of the CPVPV, particularly through its new role as anti-terrorist agency? Will this, in turn, foster the increased need for human rights watchdogs because of the potential for abuses by the CPVPV and its collaborators? What will become of the phenomenon of CPVPV prosecution of black magic as an unexpected popular reaction to modernization in Saudi Arabia?

4. *Hisbah* and the Saudi Nation-State

4.1. Introduction

Saudi Arabia is widely considered to have the most traditionalist Islamic legal system in the world, with a unique degree of continuity with the Shari'ah systems of late medieval times—a bastion of the bi-polar *fiqh* and *siyāsah* model. It never experienced the colonization that drastically transformed the legal system in virtually every other Muslim country, so Western conceptions of law have never invaded the essential core of the Saudi legal system. Chief among the justifications of the present regime and the cause to which it commonly ascribes its historical successes, is its zeal in upholding the Shari'ah, with the CPVPV often used as primary example as custodian of *hisbah*. It is undeniable that Saudi Arabia does apply at least a traditionalist Islamic law in many spheres, with certain notable successes relative to Islamic antecedents; however, increasing material internalization of the concept of nationalism, mainly by nation-state formation, has also affected profound changes, especially on *hisbah*.

From the 1970s onward Saudi Arabia has had an extensive and invasive exchange with the West. In the last decades, it has undergone an immense material transformation, followed closely by a far reaching cultural impact affecting law. Legal institutions have been created that appear modern and western, including numerous "decree laws" (*nizām*) on matters such as commercial, municipal, traffic, and safety regulations, as well as judicial and executive bodies to enforce rules and decide disputes that arise from them. Only now, after the rush of development has subsided are Saudis facing the difficult task of reconciling these additions with their traditional system, jurisdiction over which previously resided with the *muhtasib*.

Saudi *‘ulamā’* admit that although the nation-state has changed *hisbah* entirely from past centuries, it remains of crucial significance;¹ in fact, the influential *muftī* ‘Abd al-‘Azīz ibn Bāz (d. 1419/1999) claimed that *hisbah* is the only lawful basis for nationalism and the sole criterion for Saudi Arabia's ultimate success in history.² How exactly are we to interpret the survival of *hisbah* in Saudi Arabia? More specifically, what is the nature and significance of *hisbah* in relation to nationalism and the processes of modern state formation, like bureaucratization and centralization?

Reasons for studying this topic include its importance to understanding the transformation of the state's role, which is perhaps the most crucial fact about modern legal reforms in Muslim countries. The case of the Saudi state and CPVPV offers a unique perspective on the modernization of *hisbah*, which has almost entirely disappeared elsewhere, eclipsed by the nation-state with its intrusive powers and legal sovereignty. In terms of the history of Saudi Arabia, it represents an important and previously overlooked aspect of its national history, especially in terms of the institutional development of *hisbah* and its relation to the processes of modernization. More immediately, identifying the changing institutional context of *hisbah* demonstrates how the nation-state and its organs, like the CPVPV, have become agents that shape law and morality in Saudi Arabia.

Without addressing the topic directly, scholarly literature contextualizes it through prominent claims about the general role of Islam in the Saudi state. There is

¹ E.g., ‘Abd Allāh ibn Ibrāhīm al-Tarīqī, "al-Ḥisbah fī Anẓimat al-Sa‘ūdīyah wa fī Turāth al-Fuqahā’ (al-Māwardī Anmūdḥajan)," (paper presented at Nadwat al-Ḥisbah wa ‘Ināyat al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah, 11-12/4/1431). For a detailed summary of this paper and its author's biography, see *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa ‘Ināyat al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah, al-Rīyāḍ, 11-12/4/1431*, pp. 75-77.

² Ibn Bāz, *Wujūb al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar*.

wide agreement that Saudi Arabia stands out as a redoubt of the old divided system of Islamic law statecraft, based on the doctrine of *siyāsah shar‘īyah* ("governance in accordance with the Sharī‘ah"), as opposed to a new fundamentalist-utopian state, or a new reformist-positive one.³ There is disagreement, however, as to the extent that the practical demands of governance (*siyāsah*) are applied in conformity with the law and procedures of Islamic jurisprudence (*fiqh*), and the nature of relations between religious and political authorities, especially concerning the process of state formation. Three main positions are discernable in this respect. First of all, the imposition of the Sharī‘ah is considered to have been a central facet of state formation, moulding institutions, affecting policy formation, providing a framework for facilitating change, and as a source of legitimation.⁴ Secondly, the ‘*ulamā*’ are thought to have lost their freedom as a result of their incorporation into the modern state, and the transformation of Wahhābism into an official ideology.⁵ Finally, relations between the ‘*ulamā*’ and executive authorities are typified by elements of contest and cooperation, resulting in a dual system of law and regulations, encapsulated within a larger Islamic system.⁶ Furthermore, the CPVPV's role in nation-state formation is alluded to through indirect attention that it receives in historiography addressing its origins amongst the *muṭawwa*‘, a distinct class of

³ Schacht, "Islamic Law in Contemporary States"; Coulson, *A History of Islamic Law*, p. 154; Vogel, *Islamic Law and Legal System*, p. 220; Aziz al-Azmeh, "Utopia and Islamic Political Thought," *Islams and Modernities* (New York: Verso, 1993), p. 101.

⁴ Kostiner, "al-Su‘ūdiyya, al-Mamlaka al-‘Arabiyya," p. 905; James Piscatori, "The Roles of Islam in Saudi Arabia's Political Development," John L. Esposito, ed., *Islam and Development: Religion and Socio-political Change* (Syracuse: Syracuse University Press, 1980), pp. 123-138.

⁵ Cook, *Commanding Right and Forbidding Wrong in Islamic Thought*, pp. 191-2; al-Azmeh, "Wahhabite Polity," pp. 104-121; al-Rasheed, *Contesting the Saudi State*; Alexander Bligh, "Saudi Religious Elite (Ulama) as Participants in the Political System of the Kingdom," *IJMES* 17/1 (1985): 37-50.

⁶ Vogel, "Islamic Governance in the Gulf: A Framework for Analysis, Comparison, and Prediction," *The Persian Gulf at the Millennium: Essays in Politics, Economy, Security, and Religion*, Gary Sick, et al., eds. (New York: Macmillan, 1997), pp. 249, 275-76.

preachers that first emerged from the Wahhābī revival in the mid-1880s. They trained the Ikhwān warriors and acted as pilot missionaries amongst the Bedouin, as well as voluntary *muḥtasibs* throughout Najd.⁷ The *muṭawwaʿ* have thus been described as active agents of state formation from 1902 onwards, and the nucleus of the CPVPV along with members of the Ikhwān.⁸ Before 1926 the *muṭawwaʿ* and Ikhwān posed a threat to both scholars and rulers, and the creation of the CPVPV has been interpreted as a move to temper their zeal and harness it in service of nation-building. As an organ of state, the CPVPV is cursorily referred to as a reactionary vehicle to entrench and expand the *ʿulamāʿ*’s power, as well as an instrument to legitimize the ruling regime Islamically, albeit one that increasingly operates according to defined protocols.⁹

In this chapter I hope to discover more precisely how the image of the *muṭawwaʿ*, wearing a long beard and headdress (*shimāgh*) without a fastening cord (*ʿiqāl*), and wielding a rattan cane (*qaṣbah*), has become an iconic national symbol in Saudi Arabia. In other words, I hope to trace the continued evolution of the *muṭawwaʿ* into the CPVPV, and show how it has contributed to Saudi nationalism, as well as how its jurisdiction has developed in relation to modern state formation.

I will argue that it is necessary to understand *ḥisbah* as a function of the CPVPV as well as the Saudi nation-state generally. While in many respects the CPVPV continues to function as a *muḥtasib* in the traditional sense, *ḥisbah* must also be conceived as operating more broadly within the apparatus of government.

⁷ Moss Helms, pp. 129-34, 140; Kostiner, *The Making of Saudi Arabia 1916-1936*, pp. 43-44, 54, 70, 75, 77, 78, 186.

⁸ Al-Rasheed, *A History of Saudi Arabia*, Ch. 2.

⁹ Holden and Johns, p. 260; Commins, pp. 109-113, 129; Buchan, pp. 108, 111-12; Lacey, pp. 52, 85, 329.

The CPVPV's role has been increasingly restricted to that of moral censor that enjoins virtue and forbids vice over a jurisdiction limited to *'ibādāt* ("acts of worship"). There has been a simultaneous growth in the Saudi state's jurisdiction over the regulation of *mu'āmalāt* ("civil transactions"), or the duties traditionally assigned to the *muhtasib* as market inspector. Modern state formation has thus resulted in the broadening and bifurcation of *ḥisbah* between the CPVPV and various other state agencies. On one hand, the upshot of this process is increased levels of administrative efficiencies through specialization, centralization and the use of technology. This has been generally contained within an overarching Islamic system, and the CPVPV serves as a symbol for national legitimacy and unity therein, fulfilling the original reform program of its prototype, the *muṭawwa'*, who tied *ḥisbah* principally to devotional issues. On the other hand, it has also resulted in a more fragmented approach to *ḥisbah* by the CPVPV, as well as ad hoc and often uncoordinated policy from other agencies regarding *ḥisbah* with apparently uneven results.

Evidence for these claims lies in official historiography, which details how the national ethic is expressed historically as *ḥisbah*, and demonstrates how *ḥisbah* serves as the foundation for Saudi nationalism and justification for the state, as symbolized by the CPVPV. All CPVPV governing constitutions as well as historical records pertaining to CPVPV institutional development help explain the agency's evolution from its founding in 1926 to the present, demonstrating changes to its governing form in relation to state expansion. Saudi research on *siyāsah shar'īyah*, including research from the Higher Judicial Institute at al-Imām Muḥammad ibn

Sa'ūd Islamic University, illustrates the conception and application of *ḥisbah* by state agencies other than the CPVPV.

Objection may be taken to my focus here on the Saudi nation-state, given the relatively high degree of influence possessed by the king and the '*ulamā*' on the formal legal system of Saudi Arabia. Saudi Arabia has constitutionally defined legislative and executive branches, but at the present stage of Saudi constitutional development they are still understood as extensions of the king's power, however much they may have become indispensable and institutionalized. Traditionally, the ruler also enjoined virtue and forbade vice, and analysis should perhaps remain focused on him personally, in relation to the CPVPV. To a large extent this characterization is true, especially in comparison with older and more developed nation-states; however, when considered from the larger scope of Saudi history, the level of institutional development since 1932, and especially since the 1970s, is considerable. There has also been a much greater decentralization of power since the reign of King Khālid.¹⁰ The examination of legal and political institutions in Saudi Arabia has also been largely ignored by previous studies, but they warrant attention in this case, given their role in the application of *ḥisbah*, its importance to their legitimacy, as well as the question of their development trajectory. *Ḥisbah* factors significantly in theories of the "Islamic state," and its study in Saudi Arabia affords the possibility of gaining practical knowledge about its application. Moreover, policy is also examined in relation to the rule of individual kings in this chapter, in

¹⁰ Al-Rasheed, "Introduction: An Assessment of Saudi Political, Religious and Media Expansion," M. Al-Rasheed, ed., *Kingdom without Borders: Saudi Political, Religious and Media Frontiers* (London: Hurst and Company, 2008), pp. 1-38.

addition to the examination of '*ulamā*' commentary on enjoining virtue and forbidding vice, undertaken in Chapter 2.

Methodologically, I rely upon post-structuralist theory to help understand *ḥisbah* as a discursive tradition, as well as power relations surrounding it in the context of the third Saudi state.¹¹ In other words, I am primarily concerned with the coherence and continuity of discourses surrounding *ḥisbah* in Saudi Arabia from 1926 to the present, mapping the transformation they undergo through modernization, especially nation-state formation. I generally understand modernization as a dynamic process of transition between a "traditional" agrarian society and the kind of "modern" society based on trade and industry. While a traditional society is more "vertically" organized according to hierarchical division by class, or specialization of prestige, a modern society is more "horizontally" organized by function, which are performed by modular social systems, with increasing specialization of function and efficiency; for example, the political system, the public administration, the legal system, the economy, religion, etc. These systems form the constituent institutions of the nation-state, which is the most dominant expression of modernity. I generally understand nation-state formation as the growth of a sovereign political state formed from a common national identity in terms of its institutional power and production of knowledge, which is closely linked to subsidiary processes like government centralization, bureaucratization, legal codification, and nationalism. Unlike earlier modernization theory, however, I do not assume that societies necessarily evolve from a simple to a complex structure and towards a goal of industrialization, or necessarily depart from

¹¹ E.g. *The History of Sexuality*, vol. 1; *Discipline and Punish*, "Governmentality."

traditional ideas, doctrines and cultural values in favour of scientific rationalism and liberalism.¹² But at the same time I recognize that modernization in Muslim societies involves the ongoing attempt to adapt the conceptual resources of Islam to accommodate, understand and achieve practical mastery over a reality increasingly organized by discourses whose historical loci and bases of power lie in the West.¹³

This chapter will proceed by way of four sections, the first of which examines the historical justification of Saudi nationalism in terms of *ḥisbah*, with particular attention to the narrative of official historiography as represented by the CPVPV. Secondly, the legal foundations of the Saudi state in terms of *ḥisbah* are discussed, as discerned from the official doctrine of *siyāsah sharʿīyah*, the Basic Law of Governance, as well as pertinent extra-legal factors that provide historical context. Thirdly, the legal foundations of the CPVPV in relation to the Saudi state are examined through account of its evolving constitution from 1926 to the present, considering decree laws (*nizāms*) in addition to extra-legal factors regarding their historical application. Finally, the legal and administrative basis of *ḥisbah* jurisdiction amongst other Saudi state agencies is explored, as well as their practical

¹² Examples of earlier modernization theory exhibiting such a teleology include, Talcott Parsons, *Talcott Parsons on Institutions and Social Evolution: Selected Writings*, L. H. Mayhew, ed. (Chicago: University of Chicago Press, 1982); W. W. Rostow, *The Stages of Economic Growth* (Cambridge: Cambridge University Press, 1960); David Apter, *The Politics of Modernization* (Cambridge, MA: Harvard University Press, 1965); Seymour Lipset, "Some Social Requisites of Democracy," *The American Political Science Review* 53 (1959): 69-105. Based on similar premises in the field of Islamic legal studies, Sharīʿah is commonly described as having failed to distinguish between the moral and legal through indistinct methodological approaches, thereby resulting in deficient statecraft and jurisprudence. In this regard, Hallaq has demonstrated how mainstream scholarship has largely been complicit in the acceptance of the state uncritically as a matter of course; see, "Groundwork of the Moral Law"; *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. Such criticism is also common throughout post-colonial studies, having influenced debate about comparative social analysis and contributed to the concept of "alternate modernities"; e.g. Shmuel Eisenstadt, *Comparative Civilizations and Multiple Modernities* (Boston: Brill, 2003).

¹³ Talal Asad, *Formations of the Secular*.

record and degree of coordination with the CPVPV, as determined from research conducted at al-Imām Muḥammad ibn Saʿūd Islamic University.

4.2. *Ḥisbah* and the Foundations of Saudi Nationalism

Within Arabic historiography, the modern meaning of "history" has generally come to be expressed through the contemporary understanding of *taʾrīkh*. Since the end of the nineteenth century, modern European models of historiography were adopted, along with the professionalization of the discipline and concomitant influence of ideologies such as nationalism and Marxism;¹⁴ however, the historiography sanctioned by Saudi state agencies and Islamic universities has preserved a far more conservative approach, resulting in a distinct, neo-traditional style, reminiscent of critiques of progress and historicism in Western intellectual history advanced by such thinkers as Leo Strauss, Eric Voegelin and Alasdair MacIntyre.¹⁵

This trend is represented by *al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar ʿAbra al-Taʾrīkh*, an institutionally authored treatise on the history of *ḥisbah* from the CPVPV, which synthesizes discourse on national history as well as augmenting the historical record of CPVPV development.¹⁶ It retains significant classical and

¹⁴ R. S. Humphreys, "Taʾrīkh: Historical Writing in the Arab World," *EF*² (Brill Online, 2009); available from www.paulyonline.brill.nl, accessed Oct. 25, 2009.

¹⁵ E.g., Leo Strauss, "Natural Right and the Historical Approach," *Natural Right and History* (Chicago: University of Chicago Press, 1963), Ch. 1; *On Tyranny* (New York: Free Press of Glencoe, 1963); Eric Voegelin, *The New Science of Politics: An Introduction* (Chicago: University of Chicago Press, 1987); Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1989).

¹⁶ "Al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar ʿAbra al-Taʾrīkh," *al-Riʾāṣah al-ʿĀmmah li-Hayʾat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar – Taʾrīkhuhā, Aʿmālūhā*, pp. 51-99, 101-150. See also, ʿAbd al-ʿAzīz ibn Muḥammad ibn Ibrāhīm Āl al-Shaykh, *al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar bayna al-Māḍī wa-al-Ḥāḍir* (al-Rīyāḍ: Jāmiʿat al-Imām Muḥammad ibn Saʿūd al-Islāmiyah, n.d.); Saʿīd Muḥammad Ibrāhīm, *Taʾrīkh al-Mamlakah al-ʿArabīyah al-Saʿūdīyah* (al-Rīyāḍ: Maktabat al-Rīyāḍ al-Ḥadīthah, 1393/1973); Muḥammad ibn ʿAbd Allāh al-Mānī, *Tawḥīd al-Mamlakah al-ʿArabīyah al-Saʿūdīyah* (al-Dammām: Sharikat Maṭābiʿ al-Muṭawwaʿ, 1402/1982); ʿAlī ibn Ḥasan al-Qarnī, *al-Ḥisbah fī al-Māḍī wa-al-Ḥāḍir bayna Thabāt al-Ahdāf wa-al-Uslūb* (al-Rīyāḍ: Maktabat al-Rushd, 1415/1994).

medieval conventions, while tracing the origins of the modern Saudi nation. A dynastic and regnal scheme is employed, in association with an annalistic structure, and a covenant-betrayal-redemption paradigm. With *ḥisbah* as its main theme, it remains focused upon legal and administrative issues, anchored in Islamic concepts of authoritative knowledge, in accord with the Saudi *‘ulamā’s* criteria for valid nationhood.¹⁷ Pious exempla are offered as heroes, demonstrating stern morality and ardent faith. In a style evocative of Ibn Kathīr's universal chronicle, the origins of *ḥisbah* are traced from prophetic revelation through successive dynasties and their *muḥtasibs*, to its eventual culmination in the Kingdom of Saudi Arabia and its CPVPV. As such, an Islamic ethic, conceived in terms of *tawḥīd*, is presented as the model of individual and collective reform (*iṣlāḥ*), achieved respectively through *ḥisbah* in its general sense as enjoining virtue and forbidding vice and as the function of the *muḥtasib*; in fact, *tawḥīd* is presented as the *telos*, or final cause of history, to which its narrative has a functional imperative towards, and by which power is legitimated. Within this framework, the nation-state is not cast anachronistically upon the past; however, the examples chosen are highly selective, used to emphasize the crucial supporting role of leadership and the state (*dawlah*) for *ḥisbah*, with a conception of nation (*ummah*) that is progressively narrowed in relation to its government.

In his introduction to *al-Amr bi-al-Ma’rūf wa-al-Nahy ‘an al-Munkar ‘Abra al-Ta’rīkh*, former CPVPV General President, ‘Abd al-‘Azīz al-Sa’īd, claims that God distinguishes historical phases through prophetic revelations: from the time of the prophet Nūh to the present age, the movement of time is characterized by the

¹⁷ E.g. Ibn Bāz, *Wujūb al-Amr bi-al-Ma’rūf wa-al-Nahy ‘an al-Munkar*.

continuous process of renewal and destruction of guidance from God. According to this narrative, which is reflected throughout Saudi historiography, the establishment of the third Saudi state by King ‘Abd al-‘Azīz under the standard of *tawḥīd* was accomplished providentially, thus enabling a historic phase of reform; the main institutions of state were established then, including the CPVPV, which was instrumental in providing a stabilizing and civilizing base for society.¹⁸ This theology of history sets the treatise's methodology, which will be examined further in the following sub-sections.

4.2.1. *Ḥisbah* throughout History

According to *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar ‘Abra al-Ta’rīkh*, the history of *ḥisbah* is bisected by the pivotal mission of Muḥammad, with the preceding events organized around other key prophets, and proceeding ones around key dynasties that have reformed according to prophetic example. Although humanity began rightly guided and united, it went astray due to entangling factors, and messengers came with true guidance from God, the entire focus of which was

¹⁸ ‘Abd al-‘Azīz ibn ‘Abd al-Raḥmān al-Sa‘īd, "al-Muqaddimah," *al-Ri‘āsah al-‘Ammah li-Hay’at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, pp. 5-10; see also, Sa‘ūd ibn Sa‘d al-Darīb, *al-Malik ‘Abd al-‘Azīz wa Waḍ‘ Qawā’id al-Tanzīm al-Qaḍā’ fī al-Mamlakah* (Jiddah: Dār al-Maṭbū‘āt al-Ḥadīthah, 1408); Muḥammad ibn Nāṣir al-Shatrī, *al-Da‘wah fī ‘Ahd al-Malik ‘Abd al-‘Azīz* (al-Riyāḍ: n.p., 1417); ‘Abd Allāh ibn Muḥammad Ḥusayn Abū Dāhish, "Malāmiḥ al-Qaḍā’ wa-al-Ḥisbah bi-Tihāmah wa ‘Aṣīr fī ‘Ahd al-Malik ‘Abd al-‘Azīz 1338-1373: Dirāsah Wathā‘iqiyah," *Buḥūth al-Mu’tamar al-‘Ālamī ‘an Ta’rīkh al-Malik ‘Abd al-‘Azīz* (al-Riyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1419), pp. 1075-99; Mājid ibn ‘Abd al-‘Azīz al-Turkī, "al-Shu‘ūn al-Islāmīyah fī al-Mamlakah: Risālah Ḥaḍārīyah," *Ḥaras al-Waṭanī* 204 (1420/1999): 78-80; ‘Abd al-Raḥmān ibn Sulaymān al-Khaḍfī, "Juhūd al-Imām ‘Abd al-‘Azīz ibn Muḥammad ibn Sa‘ūd fī al-Da‘wah wa al-Iḥtisāb," M.A. thesis, Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1419; ‘Abd al-‘Azīz ibn ‘Abd al-Raḥmān al-Fayṣal Āl al-Sa‘ūd, "al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar," *Mukhtārāt min al-Khuṭab al-Malikīyah* (al-Riyāḍ: Dārat al-Malik ‘Abd al-‘Azīz, 1419/1999), vol. 1, pp. 28-31; ‘Abd al-Quddūs al-Anṣārī, "Kalimāt Ḥaqq bi-Munāsabah Dhikrā al-Yawm al-Waṭanī lil-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah," *al-Manhal* 6 (1399/1979): 546-552; ‘Abd al-‘Azīz ibn Muḥammad al-Murshid, *Niẓām al-Ḥisbah fī al-Islām* (al-Riyāḍ: Maṭba‘at al-Maḍīnah, n.d.).

tawhīd.¹⁹ Though Luqmān was not a prophet, as a righteous believer reference to his fatherly advice is used to cast light upon the prophetic imperative to enjoin virtue and forbid evil, and the need to persuade believers as such.²⁰ The messages of prophets Ibrāhīm, Hūd, Lūṭ, and Shu‘ayb, are then successively examined on the basis of accounts in the Qur’ān, Sunnah and their respective commentaries, in order to distil a common picture of *ḥisbah*.²¹ In line with commentaries of Ibn Taymīyah and al-Qurṭubī, enjoining virtue and forbidding vice is portrayed as the mission of all prophets and the duty of their followers.²²

Accordingly, "virtue" is all that is determined to be submission to God, as opposed to "vice," which is all that is damned by the Law. *Ḥisbah* is characterized as enjoining the duties of the Sharī‘ah, or endearing people to its works, and forbidding all that disagrees with the Sharī‘ah. God enjoins the Muslim community to goodness through its works, thus obliging *da‘wah*, and all messengers of God are considered equal in their performance of *ḥisbah* and in their submission to God, demonstrating it as a necessity for a lawful life.²³ God has entrusted Muslims with the duty of guiding and reforming people, and pursuant to this aim, they have been asked to enjoin virtue and forbid vice. *Ḥisbah* is thus considered a test of faith, and a responsibility that is prophetic in spirit: “The one who enjoins good and forbids wrong is the vicegerent of God on earth, and the vicegerent of the Prophet and the

¹⁹ *Al-Ri‘āṣah al-‘Āmmah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, p. 54.

²⁰ Abū Bakr Aḥmad ‘Alī al-Rāḍī al-Jaṣṣāṣ, *Aḥkām al-Qur’ān* (al-Qāhirah, 1347, n.p.), p. 592; cf. *ibid*.

²¹ *Al-Ri‘āṣah al-‘Āmmah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, pp. 55-61.

²² Ibn Taymīyah, *al-Ḥisbah fī al-Islām*, Ch. 1; Abū ‘Abd Allāh Muḥammad Aḥmad al-Qurṭubī, *Jāmi‘ Aḥkām al-Qur’ān*, vol. 4, p. 47; cf. *al-Ri‘āṣah al-‘Āmmah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, pp. 55-61.

²³ *Ibid.*, pp. 62-64; see also, Ibn Taymīyah, *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar* (Bayrūt: Dār al-Kitāb al-Jadīd, 1396), pp. 65-66.

Qur'ān.”²⁴ Muslims are the successors of the prophets, and if they shun this obligation, they are bound to go astray.

4.2.2. *Ḥisbah* in the Age of Muḥammad and the Rāshidūn Caliphate

Despite this equality between messengers of God, it is not possible to completely conceptualize the promotion of virtue and prevention of vice without the final messenger, Muḥammad, for he definitively “commands them to do what is good and right and forbids them to do what is evil” (Q. 7:157).²⁵ His community is considered the best in this sense, and the continuing presence of *ḥisbah* is his legacy, with the Sharī‘ah emerging from it. Further examples drawn from the Sunnah are thus provided, demonstrating his performance of this duty, and the lessons derived thereof, such as permission to employ competent individuals by the Imāmate or Amīrate to this end, the delegation of powers, and incurring God’s displeasure from its neglect.²⁶ Subsequently, the lives of the Rāshidūn Caliphs and Companions are examined using biographical literature to surmise their various approaches to *ḥisbah*.²⁷

4.2.3. *Ḥisbah* before the Age of ‘Abd al-‘Azīz

In the analysis of successive Muslim dynasties following the Prophet, the constant underlying theme of argumentation is that *ḥisbah* was strengthened and weakened relative to the state.²⁸ In the ‘Umayyad period, *ḥisbah* was not yet established as an independent system; officers of the market were appointed by the Caliph or Egyptian

²⁴ Ḥadīth related by al-Ḥasan al-Baṣrī; cf. *al-Ri‘āṣah al-‘Āmmah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, pp. 62-24.

²⁵ Ibid., p. 66.

²⁶ Ibid., pp. 67-73.

²⁷ Ibid., pp. 74-84.

²⁸ Ibid., p. 86.

Amīr, with some leaders even performing it themselves, such as al-Walīd ibn ‘Abd al-Malik (r. 85-96/705-715).²⁹ Conceptually and administratively, the institution is considered to have emerged under the ‘Abbāsīd caliphs al-Manṣūr (r. 136-158/754-775) and al-Mahdī (r. 158-169/775-785), with a generally strong performance attributed to this regime.³⁰ Ṣalāḥ al-Dīn Yūsuf ibn Ayyūb is lauded for having fought to restore *ḥisbah* during the Ayyūbid period (557-648/1161-1250) to the same level of importance it had previously enjoyed, and in the Age of the Mamlūks (647-923/1250-1517), Baybars' influence is hailed as resulting in greater security and social tranquility from the prohibition of vices, such as wine consumption and sexual depravity.³¹

The Ottomans (698-1341/1299-1923) earn praise in the official history for having demonstrated a high degree of *ḥisbah*, except for the last of the regime's historical phases, when *ḥisbah* was weak and only applicable to certain cities; internal reform proceeded with strength and weakness relative to foreign *jihād*.³² Muḥammad ibn Sa‘ūd (d. 1177/1764) is credited with supporting Ibn ‘Abd al-Wahhāb's (d. 1206/1792) reform of *‘ibādah*, ruling justly upon *shirk* and religious innovation, and having revived enjoining to virtue and forbidding from vice in the Arabian Peninsula.³³ And yet, while ideological consolidation did take place during the first and second Saudi states, *ḥisbah* was only practiced on a voluntary basis under the guidance of scholars.

²⁹ Ibid., pp. 87-89; see also, al-Qarnī, vol. 2, p. 526.

³⁰ Ibid., pp. 89-91.

³¹ Ibid., pp. 91-95; see also, al-Qarnī, vol. 2, pp. 554, 561.

³² Ibid., pp. 95-97; see also, al-Murshid, p. 48; al-Qarnī, vol. 2, p. 561.

³³ Ibid., pp. 97-99; see also, al-Murshid, p. 192; Ibn Bishr, vol. 1, p. 6.

4.2.4. *Ḥisbah* in the Age of ‘Abd al-‘Azīz

The historical narrative then focuses on the birth of the CPVPV along with the third Saudi state leading up to and during the reign of King ‘Abd al-‘Azīz (r. 1350-1372/1932-1953), linking the nation's ultimate success and renown to the establishment of *ḥisbah*.³⁴ A detailed account of its ardent performance in Riyadh at the time of its capture in 1319/1902 is offered, describing its execution under the leadership of Shaykh ‘Abd al-‘Azīz ibn ‘Abd al-Laṭīf Āl al-Shaykh, who is said to have functioned like a traditional *muḥtasib*. Under his direct supervision and through deputy *muḥtasibs*, he is described as forbidding vice, especially concerning violations of *‘ibādāt* ("acts of worship"). This included the strict dispensation of discretionary punishments like public rebuke (*tawbīkh*), exposure to public scorn (*tashhīr*, *tajrīs*) and flogging (*jald*), as well as monetary fines. Following his conquest of Najd, ‘Abd al-‘Azīz commissioned Shaykh ‘Abd al-‘Azīz Āl al-Shaykh to establish the official parameters for *ḥisbah*, and he is portrayed as enforcing it tirelessly. In 1345/1926 his descendant, Shaykh ‘Umār ibn Ḥasan Āl al-Shaykh, became the President of the CPVPV in Najd and its dependencies, which the official narrative presents as signalling a new phase of *ḥisbah*, defined by expansion, increasing central organization, and a formal mandate.³⁵ The emergence of a more robust and comprehensive application of *ḥisbah* is thus depicted, especially in the Ḥijāz: the CPVPV assumed responsibility for both moral censorship and market inspection. Its officers forbid missing prayer, gender-mixing, un-Islamic attire, smoking tobacco, and the depiction of human form, in addition to the fraudulent use

³⁴ Ibid., p. 104.

³⁵ Ibid., p. 110; see also, ‘Abd al-Raḥmān ibn ‘Abd al-Laṭīf Āl al-Shaykh, *Mashāḥīr ‘Ulamā’ Najd* (al-Rīyāḍ: Dār al-Yamāmah, 1394), p. 18.

of weights and measures and the unlawful slaughter of animals. Discretionary punishments included flogging (*jald*), banishment (*nafy*, *taghrīb*) and imprisonment (*ḥabs*) until repentance in a special CPVPV jail.³⁶ Formation of the CPVPV, in fact, is presented as the most crucial aspect justifying the conquest of the Ḥijāz, as well as a pivotal event in the broader scope of Islamic history.

‘Abd al-‘Azīz is portrayed as a pious exemplar, both in terms of his personal observance of the Shari‘ah, as well as his practice of enjoining virtue and forbidding vice as ruler; his judicious establishment of the CPVPV, especially in the Ḥijāz, is offered as proof of this. ‘Abd al-‘Azīz is lauded for his conciliatory attitude towards the Ikhwān, and their incorporation along with the *muṭawwa‘* into CPVPV ranks is alluded to; he is also commended for having restricted them from the Ḥijāz, carefully selecting CPVPV officers from notable Meccan families.³⁷ Through ‘Abd al-‘Azīz’s founding of the CPVPV Presidency in Riyadh and dispatch of inspectors to supervise CPVPV branches throughout the country, he is considered to have consolidated his rule, harnessing their fervour in the service of nation-building. His public announcement of this policy he stressed the duty of *iḥtisāb*, upon which God’s affection and mercy are contingent, and the responsibility of ‘*ulamā‘* and rulers to institute this, including himself. He also stressed the need for both moral censorship and market inspection in this regard, including the observance of ‘*ibādāt* as well as monitoring *mu‘āmalāt*, and the prohibition of usury, fraud and oppression.³⁸ Building upon previous efforts to convert and settle the Bedouin, the official

³⁶ Al-Murshid, p 196; cf. *al-Ri‘āṣah al-‘Āmmah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluhā*, p. 112.

³⁷ ‘Abd Allāh al-Zāmil, *Aṣḍa‘ al-Banūd fī Ta’rīkh ‘Abd al-‘Azīz Āl al-Sa‘ūd*, pp. 173-184; cf. *ibid*.

³⁸ Record no. 887, *Wathā‘iq al-‘Arabīyah bi-Muqtanayāt Markaz al-Wathā‘iq wa-al-Mahfūzāt* (al-Rīyāḍ: Dārat al-Malik ‘Abd al-‘Azīz, n.d.); cf. *ibid*.

narrative understands the CPVPV as having promoted national unity through spreading the ethic of *tawhīd*: by enjoining virtue and forbidding vice, they promoted Salafī creed and ensured the providential emergence of the Saudi nation-state.

4.2.5. *Hisbah* in the Age of Saʿūd, Fayṣal, Khālīd, and Fahd

The phase of *hisbah* initiated by ʿAbd al-ʿAzīz is portrayed as continuing to develop in the reign of King Saʿūd (r. 1372-1383/1953-1964), as expressed through the emergence and expansion of the CPVPV.³⁹ During this period the CPVPV moved from voluntary to commission-based membership and witnessed organizational consolidation, the revival of its principles, and the creation of standardized rules and administrative regulations within its branches. Development is associated with the state beginning to assume the vestiges of modern administration and with Saʿūd directing and refining *hisbah* accordingly.⁴⁰ He is said to have urged greater professionalization for the CPVPV, since "the behaviour of some officers extends to employing inclemency and force in matters which do not require it. Effective promotion of virtue and prevention of vice should provide a good example for people in *daʿwah*."⁴¹ Saʿūd's panegyric is notably more subdued than the other rulers; however, the narrative is silent concerning his reputation for corruption, conspiracy and vice, and his struggle with the *ʿulamāʾ*.⁴²

King Fayṣal (r. 1383-1394/1964-1975), who is commonly associated with piety, wisdom and modernity, is portrayed as great by virtue of reinforcing the reforms of his father and brother, as well as demonstrating support for *hisbah* and

³⁹ Ibid., pp. 124-5.

⁴⁰ Ibid., pp. 125-6.

⁴¹ Record no. 9/2/5/1666, *Majmūʿah 1379* (al-Rīyāḍ: Dārat al-Malik ʿAbd al-ʿAzīz, n.d.); cf. ibid., p. 128

⁴² Al-Rasheed, *A History of Saudi Arabia*, p. 107.

da'wah. A conservative tone is employed, emphasizing the spirit of continuity, rather than the sweeping changes that resulted from his government modernization program, conducted in consultation with the Ford Foundation.⁴³ Commenting upon the effects of Fayṣal's policy of state centralization and bureaucratic development, the CPVPV claims that it further specialized the work of the CPVPV, "differently than before, but this did not diminish the importance of the office or of *ḥisbah* generally."⁴⁴ Given the need to develop and apply modern techniques to the measurement and control of merchandise and public services, the state bureaucracy is described as having arrogated to itself many duties from the CPVPV, including those associated with market inspection, like the supervision of commercial dealings and municipal regulation, which became administered by various government departments. According to the official account, the *muḥtasib's* historically important duties were left untouched, such as *iḥtisāb* in religious affairs, especially safeguarding official doctrine, enforcing acts of worship and maintaining public morality. Centralization of the CPVPV is said to have proceeded, and its administration further modernized: officer training and education were updated, along with its communications infrastructure, "thus helping it to progress in its work of enjoining virtue."⁴⁵

The reign of King Khālīd (r. 1394-1402/1975-1982) is described as marked by phenomenal economic growth, along with corresponding development of specialized state administration, including the CPVPV. Institutional centralization of *ḥisbah*

⁴³ *Al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ʿan al-Munkar – Ta'rīkhuhā, A'māluha*, pp. 129-133; Abdulrahman M. al-Sadhan, "The Modernisation of the Saudi Bureaucracy," William A. Beling, ed., *King Faisal and the Modernisation of Saudi Arabia* (London: Croom Helm, 1980), pp. 75-89.

⁴⁴ *Al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ʿan al-Munkar – Ta'rīkhuhā, A'māluha*, p. 132.

⁴⁵ Ibid.

was achieved on a par with the general state bureaucracy, and resulted in the consolidation of all CPVPV branches in Najd and the Ḥijāz.⁴⁶ By royal decree in 1397/1976, Shaykh ‘Abd al-‘Azīz ibn Muḥammad Āl al-Shaykh was appointed General President of the unified CPVPV with the rank of minister.⁴⁷ In 1400/1984, the CPVPV is described as having entered a new phase of its evolution with King Khālīd's decree that formally organized operations of its General Presidency. The ordinance consists of 21 introductory articles and four chapters addressing the CPVPV's administrative structure; reforms of the General Presidency; the appointment, promotion and discipline of officers and members; and the duties of the CPVPV in cities and villages.⁴⁸

Given its authorial proximity to King Fahd (r. 1402-1425/1982-2005), a far more expansive panegyric is offered by the official history on his reign, extolling his modesty, good manners, generosity as patron, and suitability as a role model. Saudi Arabia is portrayed as being distinguished from all other contemporary Muslim countries by its practice of *ḥisbah* and continuous adherence to Sharī‘ah. Fahd is portrayed as realizing his duty to enforce *ḥisbah*, exercising it through all state institutions, and deriving all his prestige from it.⁴⁹ Under Fahd's rule, the Executive Bylaws of the CPVPV⁵⁰ were issued by order of its General President in 1407/1986, further focusing its range of work in the fields of creed, acts of worship, and public morals and manners.⁵¹

⁴⁶ Ibid., p. 137.

⁴⁷ Ibid.

⁴⁸ See App. 1.

⁴⁹ *Al-Ri‘āṣah al-‘Āmmat li-Hay’at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluha*, pp. 139-144.

⁵⁰ See App. 2.

⁵¹ *Al-Ri‘āṣah al-‘Āmmat li-Hay’at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar – Ta’rīkhuhā, A‘māluha*, pp. 146-150.

4.3. *Hisbah* and the Legal Foundations of the Saudi State

Ibn Taymīyah's (d. 728/1328) treatise on *siyāsah shar'īyah*, which was largely responsible for crystallizing the doctrine, asserts that if the Sharī'ah is duly observed, the *siyāsah* ("practical demands of governance") of the ruler (i.e. *imām*, *sulṭān*, *amīr*, or *wālī*) will not conflict with *fiqh*;⁵² however, earlier authorities, such as al-Māwardī (d. 450/1058), had conceded that rulers had the need and right to deviate from *fiqh* in order to attain effective *siyāsah*.⁵³ Very importantly, in modern times Ibn Taymīyah's views on *siyāsah shar'īyah* have been adopted by the Wahhābī movement as the constitution for all Saudi states since 1745. Beginning with the compact between Muḥammad ibn Sa'ūd (d. 1765) and Muḥammad ibn 'Abd al-Wahhāb (d. 1792), this doctrine has provided the blueprint by which rulers could acquire *Sharī'ah* legitimacy in return for a greater share of power for the 'ulamā'; it offered the 'ulamā' greater *Sharī'ah* efficacy at the cost of their being implicated further in affairs of the state.

Saudi 'ulamā' draw from the writings of Ibn Taymīyah and his student Ibn Qayyim al-Jawzīyah (d. 751/1350) to declare that the ruler may take any acts, including legislating to supplement the Sharī'ah and creating new courts, committees and regulatory agencies that are needed for the public good (*maṣlahah 'āmmah*)—provided that the Sharī'ah is not infringed thereby, or as long as it has

⁵² Ibn Taymīyah, *al-Siyāsah al-Shar'īyah*, Muḥammad Mubārak, ed. (Bayrūt: Dār al-Kutub al-'Arabīyah, 1966). See also Ibn Qayyim al-Jawzīyah, *al-Ṭuruq al-Hukmīyah fī al-Siyāsah al-Shar'īyah*, A. al-'Ashārī, ed. (al-Qāhirah: al-Mu'assasah al-'Arabīyah lil-Ṭibā'ah wa-al-Nashr, 1961), p. 100.

⁵³ See especially his discussion of *nāzir al-mazālim*, "the enquirer into grievances"; al-Māwardī, *Aḥkām al-Sulṭānīyah*, pp. 148-70. Ibn Taymīyah counters al-Māwardī with a claim that the distinctions between the *qāḍī* and other judicial authorities have no basis in the Sharī'ah, but are only customary; *al-Ḥisbah fī al-Islām*, pp. 15-16.

"no text" (*lā naṣṣ*) on the matter.⁵⁴ As such, Saudi kings have issued decree laws or regulations (*nizām* pl. *anzīmah*) to address modern legal problems new to the kingdom, especially following the conquest of the Ḥijāz in 1925 and in the 1960s and 1970s after the kingdom was administratively unified; for example, they define unlawful narcotics, traffic laws, municipal regulations, and health standards.⁵⁵ The general result is that hundreds of *nizāms* now operate alongside the *fiqh* as a sort of subordinate system of law, supplementing the *fiqh* so that the law may confront modern conditions. *Nizāms* always attempt to avoid insult to *fiqh*, and when they are being drafted the 'ulamā' are usually extensively consulted and often enjoy a veto power.

In so doing, the 'ulamā' continue to counterbalance executive state power; however, they occupy a version of their traditional role in a system rendered radically different from the old one by its oil wealth. The nation-state has undoubtedly recast *siyāsah* in terms of its integration with the expanding apparatus of government, as well as the sheer quantity of *nizām*. In other words, the promulgation of *siyāsah* has largely shifted from the ruler to the state apparatus itself. This was more systematically articulated in terms of *siyāsah shar'īyah* in 1992 by King Fahd (d. 2005) when he enacted the Basic Law of Governance in Saudi Arabia (*al-Nizām al-Asāsī lil-Ḥukm bi-al-Mamlakah al-'Arabīyah al-Sa'ūdīyah*), which serves as a constitution-like charter; for example:

Article 44: The authorities of the state shall consist of the judicial power, the executive power, and the regulatory (i.e. *nizām*-making) power. These powers shall cooperate to fulfill

⁵⁴ E.g. 'Abd al-Wahhāb Khallāf, *al-Siyāsah al-Shar'īyah* (al-Qāhirah: al-Maṭba'ah al-Salafiyyah, 1350/1931).

⁵⁵ Vogel, *Islamic Law and Legal System*, pp. 174-5.

the tasks [of the state] in accordance with this and other laws. The King shall be the final resort (*marji'*) of these authorities.

Article 55: The King shall undertake the governing (*siyāsah*) of the nation in accordance with *siyāsah shar'īyah* in fulfillment of the rules of Islam...

Article 67: The regulatory authority shall have jurisdiction to enact the regulations (*nizāms*) and bylaws (*lawā'ih*) in order to attain welfare and avoid harm in the affairs of the state, in accordance with the general rules of the Islamic Sharī'ah...

Ḥāmid al-Jad'ānī, professor of Sharī'ah at Umm al-Qurá University has called attention to the close relationship between *ḥisbah* and *siyāsah shar'īyah* embodied in this charter, characterizing *ḥisbah* as essentially a form of Islamic *nizām*. In other words, the jurisdiction of *ḥisbah*, conceived broadly as a function of state, is a key expression of *siyāsah shar'īyah*: it integrates both the rights of God (*ḥuqūq Allāh*), the rights of man (*ḥuqūq al-insān*) and the rights joined between them, with its jurisdiction being centrally located between the *mazālim* and *qāḍī*.⁵⁶ 'Abd al-Raḥmān al-Madkhālī, CPVPV General Director in Jāzān, points out that a total of thirty articles in the Basic Law of Governance actually pertain to *ḥisbah* in this sense, or more than one-third of the charter's total.⁵⁷ These stem principally from Article 23: "The state protects Islam; it implements its Sharī'ah; it enjoins people to virtue and forbids vice; it fulfills the duty regarding God's call (*da'wah*)."⁵⁸

Theoretically, the Basic Law of Governance solves the problem of state legislation and judicial authority, especially in terms of balancing traditional notions of rule and legal sovereignty of the Sharī'ah with the exigencies of modern

⁵⁶ Ḥāmid al-Jad'ānī, "al-Ḥisbah fī Ḍaw' al-Siyāsah al-Shar'īyah," (paper presented at Nadwat al-Ḥisbah wa 'Ināyat al-Mamlakah al-'Arabīyah al-Sa'ūdīyah, al-Rīyāḍ, 11-12/4/1431); *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa 'Ināyat al-Mamlakah al-'Arabīyah al-Sa'ūdīyah, al-Rīyāḍ, 11-12/4/1431*, pp. 171-75.

⁵⁷ Al-Madkhālī, "al-Ḥisbah fī Ḍaw' Nizām al-Asāsī lil-Ḥukm fī al-Mamlakah al-'Arabīyah al-Sa'ūdīyah."

⁵⁸ *Al-Nizām al-Asāsī lil-Ḥukm bi-al-Mamlakah al-'Arabīyah al-Sa'ūdīyah*.

statecraft. Its emergence is generally understood by Saudi scholars as reflecting a rebirth of Islamic governance, with *ḥisbah* as its most crucial aspect.⁵⁹ Historians acknowledge the role of Shari‘ah as a principal factor in the process of Saudi state building, especially in terms of socio-political cohesion. In this sense, the inherited tradition of Islamic law is commonly understood to have enabled a considerable measure of indigenous control over the processes of modernization, with *ḥisbah* in its broadest conception providing the *raison d'état*. The Basic Law also helps illustrate how the understanding of *ḥisbah* has changed quite radically from past centuries.⁶⁰ Various organs of the executive and regulatory branches of government have largely usurped the traditional jurisdiction of the *muḥtasib* as part of their administrative and regulatory duties. While CPVPV jurisdiction has remained central in terms of representing authority that overlaps the various branches of government, it has come to correspond closely with moral censorship as opposed to market inspection.

In practice, however, the problem of legislative and judicial authority is ongoing. Relations between *siyāsah*-based regulatory agencies and ‘*ulamā*’ or ‘*ulamā*’-based institutions like the CPVPV are not embodied in the process of legislation and enforcement. Despite informal influence of the ‘*ulamā*’, Shari‘ah compliance is determined in an uncoordinated and ad hoc manner.⁶¹ *Siyāsah* is commonly considered inferior to *fiqh* by ‘*ulamā*’, who associate *nizām* with discretionary penalties and administrative (*idārī*) affairs of the executive branch and

⁵⁹ E.g. al-Baqamī, pp. 9-11; *al-Ri’āsah al-‘Āmmah li-Hay’at al-Amr bi-al-Ma’rūf wa-al-Nahy ‘an al-Munkar: Ta’rīkhuhā – A‘māluhā*, Ch. 2.

⁶⁰ E.g. al-Madkhālī, "al-Ḥisbah fī Ḍaw’ al-Nizām al-Asāsī lil-Ḥukm fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah"; al-Tarīqī, "al-Ḥisbah fī Anzīmat al-Sa‘ūdīyah wa fī Turāth al-Fuqahā’ (al-Māwardī Anmūdḥajan)."

⁶¹ Ayoub M. al-Jarbou, "The Role of Traditionalists and Modernists on the Development of the Saudi Legal System," *Arab Law Quarterly* 21 (2007): 191-229.

often ignore them.⁶² Laws have thus emerged based on Western jurisprudence, especially concerning criminal and commercial law, as well as public administration.⁶³ CPVPV regulations and bylaws, however, are considered to have a significant relation to *fiqh*, and the agency is seen to represent a more visible, albeit limited, symbol of *ḥisbah* and the application of *siyāsah sharʿīyah*.

4.4. *Ḥisbah* and the Legal Foundations of the CPVPV

In addition to the general constitution of Saudi Arabia, attention to the evolving institutional structure of the CPVPV helps illustrate the changing character of *ḥisbah* in the kingdom. Examination of CPVPV governing regulations (*nizāms*) from 1926 to the present demonstrates the connection between it, the ruler and the growing apparatus of state. Moreover, cast in relation to pertinent extra-legal details, such as previously unstudied accounts of CPVPV activities, this further illuminates nationalist historiography, as well as generally enriching the historical record.

From its comprehensive yet starkly simplistic founding charter, to its increasingly defined constitution, circumscribed according to the complexities of modern life, CPVPV *nizāms* help show its interrelationship with the nascent Saudi nation-state. On one hand, CPVPV structure has developed in line with other state agencies: it has become increasingly specialized in the regulation of *ʿibādāt* and sexual morality, ceding control of market regulation to other organs of state. On the other hand, CPVPV jurisdiction has remained central to Saudi Arabia's system of *siyāsah sharʿīyah*, in addition to functioning as a catalyst for national unity.

⁶² Vogel, *Islamic Law and Legal System*, pp. 175-6.

⁶³ Schacht, "Islamic Law in Contemporary States."

To begin with, details on the origins of the CPVPV prior to its foundation in 1926 help contextualize its later development. Historians have identified the *muṭawwaʿ* of Najd as the main nucleus of the CPVPV, as well as a significant force in the early process of Saudi state formation.⁶⁴ In Najdī dialect, the Arabic term *mutaṭawwiʿ* ("one who performs supererogatory deeds of piety over and above the duties laid upon him by the Sharīʿah"), which was used historically to denote volunteer *mujāhidīn*, is synonymous with *muṭawwaʿ* ("one who compels obedience").⁶⁵ According to local tradition, *muṭawwaʿ* is a term that refers to a class of volunteer *muḥtasibs* with limited expertises in Ḥanbalī *fiqh*. Originally composed of descendents of Ibn ʿAbd al-Wahhāb, they were members of the sedentary population based mainly in Riyadh and ʿUyaynah, who specialized in teaching Qurʾān and enforcing rules of *ʿibādāt*; however, they were a distinct group from the *ʿulamāʿ*, which was comprised of *qāḍīs* and *imāms* until the diversification of positions under King Fayṣal (r. 1964-75).⁶⁶

During the Wahhābī rule over the Ḥaramayn from 1803-13, it is highly probable that the *muṭawwaʿ* played a major role in this disputed period of history, particularly regarding the destruction of highly venerated tombs, mausoleums and domes erected at the birthplaces of the Prophet, ʿAlī, Abū Bakr, and Khadījah; the banning of the annual Pilgrimage caravans from Syria and Egypt; and the compulsory instruction of *ʿulamāʿ* and pilgrims in Wahhābī doctrines.⁶⁷ ʿAbd Allāh ibn Muḥammad ibn ʿAbd al-Wahhāb's account of the performance of *ḥisbah* after the

⁶⁴ Al-Rasheed, *A History of Saudi Arabia*, Ch. 2.

⁶⁵ Bosworth, "Mutaṭawwiʿa."

⁶⁶ Al-Rasheed, *A History of Saudi Arabia*, p. 46, 6ff.

⁶⁷ For a description of the conquest of Mecca, see Aḥmad ibn Zaynī Daḥlān, *Khulāṣat al-Kalām fī Umarāʾ al-Balad al-Ḥarām* (Bayrūt: Dār al-Sāqī, 1993). See also J. L. Burckhardt, *Notes on the Bedouins and Wahābys* (London: A. J. Valpy, 1830), vol. 1, pp. 284, 303.

conquest of Mecca offers further insight in this respect.⁶⁸ Main activities at that time included the abolition of taxes considered unlawful, and the destruction of all utensils for the consumption of tobacco and hashish, along with the prohibition of their use. Activities concerned with acts of worship and creed included: destruction of domes on graves and of other buildings taken to be places for worshipping anyone/anything other than God; compulsion of all believers to perform each obligatory prayer collectively behind a single *imām* (belonging to one of the four Sunnī *madhāhib*); intervention in the ritual practices of the *madhāhib* when considered to be incorrect; destruction of books that might lead to *shirk* or that might cause disturbance to people's belief (e.g. books on '*ilm al-manṭiq*'); abolition of the special position of the *Ahl al-Bayt* in society; prohibition of various practices designated as *bida'*, e.g., publicly using the *subḥah*, raising the voice at the place of *adhān* other than for the *adhān*, *tadhkīr* and *tarhīm*, gathering to hear *Mawlid al-Nabī* recitations, and gathering for *Rawātib al-Mashāyikh*, amongst others.⁶⁹

During his travels through central Arabia in 1862-3, W. G. Palgrave observed a group of twenty-two "zealots" amidst the Wahhābī revival: founded by Imām Fayṣal to eradicate any practices contrary to Wahhābī doctrine, they possessed many characteristics identical to those displayed by the *muṭawwa'* in the early 20th century. All persons who were found smoking, wearing gold or silk, singing or playing musical instruments, or who were lax in their religious observances were punished with a long cane (*qaṣbah*) carried by the "zealots" for such purposes.⁷⁰

⁶⁸ 'Abd Allāh ibn Muḥammad ibn 'Abd al-Wahhāb, *al-Hadīyat al-Sanīyah wa-al-Tuḥfat al-Wahhābīyat al-Najdiyyah*, Sulaymān ibn Saḥmān, ed. (Makkah, 1973, n.p.), pp. 35-52.

⁶⁹ Ibid.

⁷⁰ W. G. Palgrave, *Personal Narrative of a Year's Journey through Central and Eastern Arabia, 1862-1863* (London: Darf Publishers, 1985).

After his conquest of Riyadh in 1902, ‘Abd al-‘Azīz enlisted the *muṭawwa‘* as missionaries and teachers to the townspeople and Bedouin, in addition to further empowering them as *muḥtasibs*. At this time a more stringent application of *ḥisbah* by the *muṭawwa‘* is reported to have emerged by Saudi historians: "They enjoined and forbade, performed the *ḥudūd*, incarcerated those who deserved to be imprisoned and punished youth who abstained from prayer or congregated in suspicious gatherings outside the city."⁷¹ *Muṭawwa‘* are described as working under the chief guidance of Shaykh ‘Abd al-‘Azīz ibn ‘Abd al-Laṭīf Āl al-Shaykh as volunteer *muḥtasibs*:

When knowledge of the perpetration of an offense reached the Shaykh, he dispatched an attendant who ordered the perpetrator to come with him. The Shaykh then admonished the offender and threatened him with punishment. Generally, after this meeting the offender did not repeat his misdeed, but, if he did return to it, or committed another sin warranting punishment, the Shaykh gathered his attendants, had the wrongdoer lashed on account of his sins, and then dismissed him. Abandoning the Morning Prayer resulted in a public charge, which he imposed by having the offender led to a well and having a bucket of water emptied on the negligent scoundrel. He did not dismiss anyone without making it known that another punishment would be received if he re-offended. Punishment for sluggards at prayer was administered by the *muḥtasib*; he proclaimed their names in the mosque, stood waiting and took their headdress (*shimāgh*) and burnt it by the door of the mosque. This was considered a shameful punishment for them. Sometimes a monetary penalty was assigned to the offender.⁷²

Foreign sources also report that the *muṭawwa‘* were responsible for religious education and policing in Riyadh: they made regular roll-calls to check attendance at prayer in every mosque in the city, and commonly administered floggings for non-

⁷¹ ‘Abd al-‘Azīz al-Murshid, *Nizām al-Ḥisbah fī al-Islām*, p. 195

⁷² Ibid., p. 194.

attendance at prayer, smoking and other such offences.⁷³ Thanks to the education program of the *muṭawwaʿ*, ʿAbd al-ʿAzīz was able to create a semi-permanent fighting force called the Ikhwān, drawn from amongst the tribal confederations: historiography on the formation of the third Saudi state provides detailed analysis of this force with which ʿAbd al-ʿAzīz conquered various regions.⁷⁴

4.4.1. *Nizām* of 1345/1926

The *muṭawwaʿ* were active agents in legitimizing Saudi rule, visualizing and representing ʿAbd al-ʿAzīz's authority as missionaries, teachers and *muḥtasibs*; however, in addition to aiding state expansion and consolidation, they were also considered a source of instability, being responsible for the Ikhwān's zeal and possibly their bid for power.⁷⁵ In 1914 both ʿAbd al-ʿAzīz and the Wahhābī *ʿulamāʾ* singled out the Ikhwān and *muṭawwaʿ* for criticism, in an attempt to reign in their extremism.⁷⁶ The conquest of Ḥijāz in 1924-5 proved a turning point in this respect, with controversy over *muṭawwaʿ* and Ikhwān activities arising once again. In particular, their suppression of religious practices considered as *bidaʿ* as well as the destruction of mausoleums and tombstones at the cemetery of Baqīʿ al-Gharqad and elsewhere, gave rise to heated agitation in the Ḥijāz and many other Muslim societies across the world. Likewise, their intervention in traditional practices of the Pilgrimage led to serious clashes and even international crises, such as the so-called

⁷³ Dr. Paul W. Harrison, an American physician who visited Riyadh in 1917, reported on the *muṭawwaʿ*; "Al Riyadh, The Capital of Nejd," *MW*8 (1918), pp. 418-19.

⁷⁴ E.g. John S. Habib, *Ibn Saʿud's Warriors of Islam: The Ikhwan of Najd and Their Role in the Creation of the Saʿudi Kingdom, 1910-1930* (Leiden: Brill, 1978).

⁷⁵ Joseph Kostiner, *The Making of Saudi Arabia, 1916-1936*, p. 77.

⁷⁶ For English translations of letters from ʿAbd al-ʿAzīz and the most important Wahhābī *ʿulamāʾ*, which single out the Ikhwān and *muṭawwaʿ* for criticism, see Moss Helms, *The Cohesion of Saudi Arabia*, pp. 132-34.

maḥmal incident of 1926.⁷⁷ As a result of such events, ‘Abd al-‘Azīz became increasingly cautious in his selection of *muṭawwa’*, examining their loyalty to himself above all else.⁷⁸

In 1926, ‘Abd al-‘Azīz addressed the ‘*ulamā’* and notables of Mecca, emphasizing the need to enforce ‘*ibādāt*’ and announcing the appointment of *muḥtasibs* from amongst their ranks, which marks the beginning of *ḥisbah* as an official duty under the rule of a Saudi governor in the third state:

Verily, it is a duty we must accept from God; you and I are obligated to. There is no pilgrimage for one who invites to Islam while he abandons prayer... Trust that I understand this command, and have appointed men from amongst your good brothers to patrol in every market and gathering, enjoining people to prayer whenever the *mu’adhdhin* permits. As such, displace shopkeepers and have them pray; verily, this clearance has proved difficult. Arrange a guard for all the markets to preserve the time of prayer in them, until discipline returns to the people and there is no longer any need for overseers to enjoin people to perform these duties, God willing, because it is the foundation of religion and worldly life.⁷⁹

Shortly thereafter, the *qāḍī* and president of the Meccan judiciary, Shaykh ‘Abd Allāh ibn Bulayhid, made the first attempt to define the constitution of the CPVPV in his address to King ‘Abd al-‘Azīz on November 26th, 1926. Therein he designated fourteen men chosen from notable families of Mecca and Najd to work as head of the CPVPV, whose work was to be defined thusly:

Scrutinizing people's conduct with respect to civil transactions and customs, in accordance with the Law, halting that which is in contravention with it; preventing verbal obscenity which recurs amongst the population; exhorting people to perform the

⁷⁷ Martin Kramer, "Tragedy in Mecca," *Orbis* 32 (1988): 231-47; Dirk Boberg, *Ägypten, Nağd und der Ḥiğāz* (Bern: P. Lang, 1991).

⁷⁸ Kostiner, p. 78.

⁷⁹ ‘Abd Allāh al-Zāmil, *Aṣḍaq al-Bunūd fī Ta’rīkh ‘Abd al-‘Azīz Āl al-Sa’ūd*, pp. 173-184; al-Baqamī, p. 91.

five daily prayers in congregation; surveillance of mosques with respect to the diligence of their *imāms* and *mu'adhdhins*, and the attendance of people in them, and so forth; instigating reform, and thus following the path of the promotion of virtue and prevention of vice, through means conducive to achieving wisdom.⁸⁰

King 'Abd al-'Azīz consented to this proposition, formally establishing the CPVPV. Thereafter, Bulayhid appointed the Damascene scholar Shaykh Muḥammad Bahjat al-Bayṭār to compose an instructional digest for distribution to members of the CPVPV. An eighty-page treatise was thus composed, entitled "The *Niẓām* of Enjoining Virtue and Forbidding Vice," and published in the kingdom's official newspaper *Umm al-Qurá*.⁸¹ The *niẓām*'s main argument was the necessity of founding society upon Islam, which al-Bayṭār substantiated through a compilation of *fiqh* pertaining to the obligation of enjoining virtue and forbidding vice; the social effects of sin; research into the effects of the duty's collective performance; the characteristics of the *muḥtasib* and his manners; the definition of vices according to their types; the conditions that necessitate the forbiddance of vice; and the degrees of performing forbiddance, including the use of force. The *niẓām* also outlined the regular meeting of senior CPVPV members with the branch president every Thursday. Likewise, it highlighted the importance of public education through sermons and lessons in mosques in order to instruct people in the rules of their religion, with responsibilities delineated according to regional divisions.

The first account of CPVPV activities in Saudi historiography depicts the emergence of a robust and comprehensive application of *ḥisbah* throughout the new state:

⁸⁰ Cf. al-Murshid, p. 197-8.

⁸¹ "Niẓām al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Jarīdat Umm al-Qurá* 113 (8/8/1345).

The members of the Committee were patrolling the markets, and they forbid disorderly conduct, stopped unnecessary fraternization between men and women, and prevented the fraudulent use of weights and measures and abuse of livestock. They forbid barbers from removing beards by clipping or shaving, and punished them for that; they forbid wearing of long hair, and performed its clipping; they forbid smoking and punished smokers, confiscated tobacco from shops, burnt it, and punished sellers. They enjoined people to pray when it was called for. If a complicated issue arose, they referred it to their president, and investigators undertook it, ascertaining the acts of the accused, and reported the results of the interrogation to the General President. This phase witnessed the emergence of lashing, exile and imprisonment as punishments. They forbid the depiction of human form, and smashed such pictures. They forbid unlawful meat and destroyed instruments related to its butchery; after first appraising their value, they proceeded to confiscate these illegal items, and immediately thereafter to punish the possessor. There was a special prison for use by the Committee; they offered *da'wah* to offenders who were detained there justly.⁸²

Though austere, the morality described above bespeaks a degree of restraint and orderliness amongst CPVPV ranks; however, this should not be overestimated given the rudimentary training of members, still largely composed of volunteers, as well as the extremely limited amount of organizational structure and absence of bylaws. Moreover, the perceived moral laxity outside the towns of Najd and Qaṣīm would surely have continued to spur zeal amongst CPVPV members freshly recruited from amongst the *muṭawwa'* and Ikhwān.

4.4.2. *Nizām* of 1349/1930

By this royal decree all police agencies were gathered under a single administration called the General Directorate for Police, which derived its power directly from the

⁸² Al-Murshid, p 196.

king.⁸³ The *nizām* further demonstrates the consolidation of Saudi rule leading up to the country's formal unification in 1932; through it the CPVPV was unified by the General Directorate of Police in all thirteen regions of the kingdom, with territories being permanently designated to all CPVPV branches. Human resources were also assigned to CPVPV branches, such as presidents, field officers, employees, and volunteers. In a subsequent public address, ‘Abd al-‘Azīz elaborated upon his effort to apply *ḥisbah* through the *nizām*, including his dispatch of new CPVPV officials:

Of the events I have witnessed are those which illicit the disaffection of God and the loss of His Mercy; the duty of performing admonition is incumbent upon all Muslims, their princes and scholars... From amongst them I have observed their affairs, and have appointed scholars to establish committees in all Muslim communities, promoting virtue and preventing vice. Their importance lies in preserving peoples' obligations: the five congregational prayers, exhorting people with instructions for their religion, the prevention of vices, observing the duty of charity (*zakāh*), monitoring civil transactions, and the prohibition of usury, fraud and oppression.⁸⁴

The *nizām* marks a decisive effort to exert greater control over CPVPV ranks, especially by subordinating volunteer members within a defined hierarchy, presided over by scholars and executive officials. This comes as no surprise, falling after the Ikhwān rebellion of 1928-30, in which they turned against ‘Abd al-‘Azīz due to his modernizing policies and the increasing number of non-Muslims in the region, possibly incited by the *muṭawwa‘*. Moreover, the *nizām* defines the required method of association between the CPVPV and the police, such as in matters pertaining to CPVPV powers of investigation, as well as the demarcation of some *ta‘zīr* punishments. As such, ‘Abd al-‘Azīz was beginning to assert more control over the

⁸³ Al-Baqamī, p. 95.

⁸⁴ Record no. 887, *Wathā‘iq al-‘Arabīyah bi-Muqtanayāt Markaz al-Wathā‘iq wa-al-Mahfūzāt* (al-Rīyād: Dārat al-Malik ‘Abd al-‘Azīz, n.d.); cf. al-Baqamī, p. 92, 5ff.

delegation of *ta'zīr* authority. The Wahhābī formulation of *siyāsah shar'īyah* gave the ruler broad scope for the application of discretionary punishments, which he conferred upon *muhtasibs* and *qāḍīs*; however, limits and rules were required because of excessive use of force by *muṭawwa'* and Ikhwān within CPVPV ranks.

4.4.3. Committee of Public Security, 1355/1936

In association with the CPVPV and other senior Meccan government officials, King 'Abd al-'Azīz issued a decision to form another security committee to help prevent graft and enforce the Sharī'ah. Members of this committee were chosen entirely from Mecca, and were to work in collaboration with the CPVPV to enforce "religious deterrence" and forbid vice in the holy city.⁸⁵ This marks an effort to bolster 'Abd al-'Azīz's ongoing policy of consolidation, as well as demonstrating his ability to balance incompatible tendencies. On one hand lay the need to eliminate a high rate of corruption in the relatively liberal environment of Ḥijāz, where the visible presence of *ḥisbah* was key to justifying the Saudi regime's authority and unity. On the other hand lay CPVPV ranks with their more austere ethic and limited degree of training. While 'Abd al-'Azīz had already sought to temper *muṭawwa'* and Ikhwān severity and integrate Meccans by forming the CPVPV, reinforcement appears to have been necessary. CPVPV ranks probably required assistance in adjusting to the increasingly sophisticated environment following the kingdom's unification in 1932. The exigencies of national government had prompted 'Abd al-'Azīz to promulgate a wave of *nizāms* at that time, of which this is one example. The CPVPV was still largely composed of volunteer members with a very

⁸⁵ 'Alī ibn Ḥassan ibn 'Alī al-Qarnī, *al-Ḥisbah fī al-Māḍī wa al-Hāḍir bayn al-Thabāt al-Ahdāf wa Taṭawwur al-Uslūb* (al-Rīyāḍ: Maktabat al-Rushd, 1415), vol. 2, pp. 729-30.

rudimentary training in the *fiqh* of *‘ibādah* and *uṣūl al-dīn*, and this policy was a fledgling attempt to help professionalize *iḥtisāb* in relation to market inspection.

4.4.4. *Nizām* of 1356/1937

The President of the Judiciary reasserted his commitment to the CPVPV in 1356/1937 in royal decree number 25/1/74, which maintained the basic institutional form outlined for the CPVPV in previous *nizāms*, but with some modifications and increasing attention to administrative functions. The *nizām* is composed of thirty articles divided into three chapters, the first of which defined the competencies of the CPVPV and its substantiating *fiqh*; the second outlined administrative operations and regulations pertaining to officers; and the third detailed the administrative relations between the CPVPV and the President of the Judiciary.⁸⁶ In the first draft of the *nizām*, the supervision of officers was abandoned in minor cases that did not require any investigation or discretionary punishment; however, this was amended to specify that investigations had to be authorized by the CPVPV branch presidents or their deputies and conducted in the presence of an officer. This increased degree of oversight prefigures the great expansion of government with oil production—the state apparatus at this time lacked most vestiges of modernity, but lay on the cusp of rapid development.

4.4.5. *Nizām* of 1372/1952

⁸⁶ Al-Baqamī, pp. 106-115.

As a result of this *nizām*, CPVPV presidency in the Ḥijāz and its equivalent in the south of the kingdom was transferred directly to the president of the newly established Council of Ministers. The CPVPV was also significantly enlarged, with new branches opening in towns and villages throughout the country. The *nizām* is composed of sixteen articles of directives for the CPVPV that further delineated the following fields: the functional unity and interrelation of CPVPV activities; the general framework of operations; the operation of branches, committees and centers, and the definition of their competencies; and administrative formation.⁸⁷ The *nizām* essentially outlines CPVPV expansion under more centralized control; it falls in line with the general expansion of the state apparatus, which had begun to assume the vestiges of modern administration, spurred by oil production from Aramco. As such, it contains more standardized rules and marked a shift from a largely volunteer-based brigade to a more professionally constituted membership.

4.4.6. *Nizām* of 1396/1976

The text of this *nizām* refers to inaugurating a historical "phase of integration" through its sweeping modernization of the CPVPV constitution. In line with the broader reform and expansion of the state apparatus, the *nizām* established a functional administrative framework, imposing more standard operating procedures, educational qualifications, skilled labour standards, and so forth. It effected the integration of every CPVPV branch in Najd, the Ḥijāz and their dependencies in the east and south of the country from a loose confederation of committees into one cohesive organization. The management of work and administrative and financial planning were thus simplified as tasks became more defined, routinized and

⁸⁷ Royal Decree no. 5377 (10/2/1372); cf. *Nizām al-Ḥisbah fī al-Islām*, p. 206.

integrated with the operations of the modern Saudi state. The CPVPV became unified into a single agency with one budget under one president called the General Presidency of the Committee for the Promotion of Virtue and Prevention of Vice.⁸⁸

The *Nizām* of 1976 emerged as part of King Fayṣal's effort to modernize government bureaucracy through a surge of *siyāṣah* legislation, which was one of the most important facets of state building in Saudi Arabia's history. In consultation with the Ford Foundation, he addressed such problems as inadequate control and coordination, lack of planning and outdated procedures, ill defined functions, and overlapping jurisdictions.⁸⁹ Beginning in 1970, Fayṣal launched the first five-year plan designed to establish modern infrastructure and diversify the economy; with the *Nizām* of 1976 the CPVPV was integrated into this regime of strategic planning. At its heart was the redefinition of CPVPV competencies according to "duties of immediate importance to it historically," such as *iḥtisāb* in religious affairs, especially enforcing *Salafī* 'aqīdah and acts of worship, as well as policing public morality and a limited amount of civil transactions. This reduced jurisdiction was justified according to Ibn Taymīyah's commentary on the effective application of *ḥisbah*, in conjunction with his theory of *siyāṣah shar'īyah*:

(For both) general and particular conditions, it does not benefit the paymaster to issue ordinances upon conditions and conventions that limit the (application) of Law, allowing a state of justice to prevail in some times and places, but, conversely, a state of war in other times and places. As such, (this applies) to *ḥisbah* and the conditions of money.⁹⁰

⁸⁸ Royal Decree no. 64/mīm (1/9/1396); cf. *al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ʿan al-Munkar: Ta'rīkhuhā – A'māluhā*, p. 174.

⁸⁹ Abdulrahman M. al-Sadhan, "The Modernization of Saudi Arabia's Bureaucracy," W. A. Beling, ed., *King Faisal and the Modernization of Saudi Arabia* (London: Croom Helm, 1980), pp. 75-89; Joseph Kostiner, "al-Su'ūdiyya, al-Mamlaka al-ʿArabiyya."

⁹⁰ Ibn Taymīyah, *Majmūʿ Fatawā Shaykh al-Islām Ibn Taymīyah* (al-Qāhirah: Idārat al-Masāḥat al-ʿAskariyyah, 1404), vol. 28, p. 68; cf. *al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ʿan al-Munkar: Ta'rīkhuhā – A'māluhā*, p. 132.

Thus, most duties related to market inspection and municipal regulations were assigned to other specialist agencies, which were supposed to work in coordination with the CPVPV. It was considered otherwise impossible to develop and implement modern processes for the analysis of patterns, specification and measurement relative to manufactures, commercial transactions and safety standards. Moreover, Fayṣal is reputed to have used these reforms as a means by which to generally restrain CPVPV excesses.

4.4.7. *Nizām* of 1400/1980

A phenomenal rate of economic growth was experienced under King Khālīd as well as a corresponding measure of expansion in specialized state administration. The *Nizām* of 1400/1980 was intended to express this development organizationally within CPVPV, further enabling it to address "new customs and traditions requiring firm confrontation."⁹¹ It consists of twenty-one articles divided into four chapters, addressing the following topics: (1) the constitution of the General Presidency and its subsidiary branches, authoritative modes of investigation and types of punishments, as well as an affirmation of its independent organization tied directly to the Council of Ministers; (2) the jurisdiction of the General President and his final authority in the CPVPV, with power equivalent to that of a Minister; (3) the appointment and promotion of presidents, investigators, supervisors, assistants, officers, and volunteers of the CPVPV; and (4) the duties of the CPVPV in cities,

⁹¹ Al-Baqamī, p. 129.

towns and villages, as derived from previous *nizāms*, and methods of coordination between the CPVPV and other state agencies.⁹²

Despite its increased level of detail in comparison with previous *nizāms*, CPVPV jurisdiction remained vaguely defined and duties were not expressed through an entirely specific set of rules, remaining clearly subordinate to *fiqh* and principles *akhlaq*. The *nizām* did, however, articulate a more cohesive and centralized administrative structure, providing a more efficient basis for operations.⁹³ In practice, this increased organizational capability was also supported by an expanded mandate from executive authorities and the general public, leading to a reported surge in CPVPV activities. Following Juhaymān's failed rebellion in 1979, the CPVPV were reportedly granted *carte blanche* to impose a more stern morality: social dislocation, rapid cultural change and an influx of foreigners had fermented general unrest and the government reacted by further empowering the CPVPV.⁹⁴ Austere and increasingly invasive CPVPV measures were reported during the 1980s, especially concerning *'ibādāt* and sexual morality; for example, prayer and female veiling were more strictly enforced, as well as the closure of all cinemas.

Seven years later, these governing regulations were joined with a corresponding set of executive bylaws, issued by decision of the General President of the CPVPV in 1407/1987.⁹⁵ It consists of fifty-six articles, divided into five chapters, addressing the following topics: (1) the duties of the CPVPV; (2) methods of arrest, seizure, interrogation, and investigation; (3) regulations related to vices as

⁹² Royal Decree no. 37/mīm (26/20/1400); "Nizām Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Jarīdat Umm al-Qurā* 2853 (17/3/1401); see App. 1 for full text.

⁹³ See Fig. 1 for detailed administrative structure.

⁹⁴ Lacey, pp. 52-3, 85; Al-Rasheed, *A History of Saudi Arabia*, p. 148.

⁹⁵ See App. 2 for full text.

subjects of the law, or with no relationship to it; (4) immediate disciplinary punishments, temporary detainment and temporary imprisonment; and (5) operating conditions between the police and the CPVPV.⁹⁶ The executive bylaws are an expansion of the earlier governing regulations, containing more specific rules. The influence of modern law enforcement techniques is apparent in its standard operating procedures. Relative to previous *nizāms*, it resembles a legal code to a much greater extent, such as the definition of vices in its first section; however, these rules are still vague in comparison with most modern civil codes, and remain subordinate to *fiqh* and *akhlāq*, as well as aspects of custom (*urf*). Jurisdictional restrictions are also apparent as a result of greater specificity—the CPVPV is now clearly specialized in the enforcement of *ibādāt*, *aqīdah* and public morality, as opposed to market inspection, i.e. commercial and municipal regulations, and the superintendence of other civil transactions (*muʿāmalāt*). Although the enforcement of criminal law remains an element of CPVPV bylaws, it has become a restricted component of its jurisdiction. The bylaws also signalled the CPVPV's loss of its own prison, although it maintained temporary detention facilities, as well as increased protocol surrounding discretionary punishments.⁹⁷ With the enactment of the *Nizām* of Penal Procedures in 1422/2001, the criminal aspect of its jurisdiction became subject to further specification and restrictions in terms of discretionary powers, as well as greater rights for the accused.⁹⁸

⁹⁶ Decision of the General President of the CPVPV no. 2740 (24/12/1407); "al-Lā'ihah al-Tanfīdhīyah li-Nizām Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Jarīdat Umm al-Qurā* 3203 (30/7/1408).

⁹⁷ Sa'd ibn Muḥammad ibn 'Alī ibn Zafīr, "al-Ikhtisāṣāt al-Janā'īyah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar fī Zill al-Anẓimah al-Sa'ūdīyah," *Majallat al-Buḥūth al-Amnīyah* 16/36 (2007): 17-76.

⁹⁸ Royal Decree no. 39/mīm (28 Rajab 1422); *Jarīdat Umm al-Qurā* 3867 (17/8/1422); see App. 3 for pertinent articles.

4.5. *Hisbah* and Other Saudi State Agencies

In a unique study of *hisbah* in Saudi Arabia from the Higher Judicial Institute at al-Imām Muḥammad ibn Sa‘ūd Islamic University, Shaykh Ṭāmī al-Baqamī examines the full scope of its application between 1932 and 1987, with especially useful details from 1980 onward.⁹⁹ It examines not only *hisbah* in terms of the CPVPV's function as office of the *muḥtasib*, but also in terms of its emerging function through various other state agencies. Al-Baqamī's study is the most detailed body of research to-date on the subject, which can be augmented with additional reports to illustrate *hisbah*'s further development into the reign of King Abdullah (2005-).

Al-Baqamī argues that a broadening and bifurcation has occurred to *hisbah* with the development of the Saudi nation-state. In other words, *hisbah* has basically been divided by the enforcement of *‘ibādāt*, assigned to the CPVPV, and *mu‘āmalāt*, assigned to an increasing array of other state agencies. Despite the unprecedented nature of these changes, al-Baqamī claims that they are actually congruent with the historical evolution of *hisbah*. According to al-Baqamī, despite Ibn Taymīyah's conception of *hisbah*, he did not decisively classify its jurisdictional categories; thus, he points to the works of al-Shayzarī and Ibn al-Ukhūwwah as more comprehensive in terms of classifying the range of duties that pertain to the *muḥtasib*.¹⁰⁰ Al-Baqamī claims that these duties have been more effectively served by the detachment of specialized tasks from CPVPV jurisdiction, which allowed the state to apply modern expertises in service of *iḥtisāb*. In so doing, the public derived more benefit in a

⁹⁹ Al-Baqamī, *al-Taṭbīqāt al-‘Amaliyah lil-Ḥisbah fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah min ‘ām 1351-1408*.

¹⁰⁰ Al-Shayzarī, *Nihāyat al-Rutbah fī Ṭalab al-Ḥisbah*, p. 10; Muḥammad ibn Muḥammad ibn al-Ukhūwwah, *Ma‘ālim al-Qurbah fī Ahkām al-Ḥisbah* (al-Qāhirah: Hay‘at al-Maṣrīyat al-‘Āmmah lil-Kitāb al-Sunnah, 1976), p. 29; c.f. al-Baqamī, p. 38.

broad array of fields, such as the regulation of commercial fraud, manufactures and labour standards, as well as the supervision of stores and merchants through the formulation and enforcement of laws based on standardized measurements.¹⁰¹

Al-Baqamī admits that a loss of power and prestige have affected the CPVPV as a result of the *Nizām* of 1400/1980, however, it is justified out of necessity—the enormous burden it shouldered in applying *ḥisbah* in a modern society had to be alleviated.¹⁰² In an age of technical specialization, determining and enforcing standards required for marketplace supervision in an efficient manner was too large a task for the CPVPV alone. According to al-Baqamī, expert training was required to accomplish this, such as medical doctors, pharmacologists, chemists, experts in fraud and forgery, mechanical engineers, computer scientists, and so forth; however, he ignores the important role that expert consultants to the *muḥtasib* (*ʿurafāʾ*) have played in pre-modern history, as demonstrated, for instance, in medical science.¹⁰³ Instead, al-Baqamī stresses the CPVPV's need to relinquish formal oversight over such matters and specialize in religious affairs, "at a time when the sublime art of Islam is ruined by its enemies, and the flow of perverse ideas brings misguidance for the debauchery of Muslim youth."¹⁰⁴

Al-Baqamī argues that the core competencies of the CPVPV have remained consonant with the classical definition of the *muḥtasib*'s duties, which includes the enforcement of orthodox creed, obligatory acts of worship, public morality and manners, as well as basic aspects of civil transactions and criminal law. Other agencies acquired jurisdiction over regulating more technical aspects of civil

¹⁰¹ Al-Baqamī, p. 160.

¹⁰² Ibid.

¹⁰³ Surty.

¹⁰⁴ Al-Baqamī, p. 160.

transactions and criminal law, in terms of both *fiqh* and *siyāsah*-based legislation pertaining to market inspection; however, this reassignment has occurred without superseding the CPVPV's authority over *ḥisbah* in theory. In other words, like the historical *muḥtasib*, CPVPV jurisdiction is principally determined by cases of evident corruption, or violations of the Sharī'ah in *flagrante delicto*, as well as the moral authority to enjoin virtue and forbid vice:

[CPVPV jurisdiction] is in the field—the streets, roads, markets, and stores—in the midst of people, circulating in gatherings wherever they are, in this broad field, and at an immediate proximity. Moreover, the man of *ḥisbah* is not like other officers of state—he must repudiate the habits of commissioned institutions by simply confronting errant officials and relieving them of responsibilities. Indeed, the *muḥtasib* is connected to work through a binding religious duty, which may not be unfastened from him, nor divided in any place, nor detached from him; he is accountable in any place and at any time, because it is a religious duty, the true motive of which is accountability in the face of God, at any time or place. Verily, he who enjoins and forbids everywhere, all the time, realizes God's command: "The believers, men and women, are *awḥiyā'* of one another; they enjoin *al-ma'rūf*, and forbid *al-munkar*; they perform prayer, and give charity, and obey God and His Messenger. God will have mercy on them."¹⁰⁵

Al-Baqamī thus emphasizes the public role of the CPVPV and the moral authority of this office over other state agencies in terms of enjoining virtue and forbidding vice, despite its loss of responsibility for a large portion of its traditional duties. He draws parallels between CPVPV authority and past *muḥtasibs* who confronted wayward judges and leaders, such as the *muḥtasib* of Baghdād during the reign of 'Abbāsīd caliph al-Mustazhir (r. 487-512/1094-1118).¹⁰⁶

¹⁰⁵ Ibid., p. 161.

¹⁰⁶ Ibid. For further details of this event, see 'Abd al-'Azīz ibn Muḥammad ibn Murshid, *Nizām al-Ḥisbah fī al-Islām: Dirāsāt Muqāranah*, pp. 135-6.

Al-Baqamī is at pains to stress the informal relations which continue to operate between the CPVPV and other modern experts that have shared governance of *ḥisbah* since 1980. He asserts pervasive cooperation exists between the CPVPV and other specialist agencies in surveillance and prosecution deemed beneficial to society, such as in cases of corruption, monopoly, and transaction of prohibited merchandise.¹⁰⁷ A wide degree of mutual assistance is noted between the CPVPV and other state agencies in combating the abuse and trafficking of intoxicants and narcotics; for instance, cooperation with the Ministry of the Interior and the Committee for the Control of Narcotics is regarded as having evolved out of the CPVPV's successful record of enforcing prohibition since its early struggle against alcohol in the Ḥijāz.¹⁰⁸ This reinforces the notion of extensive collaboration occurring between the king and 'ulamā' in this field, with wide correspondence between *fiqh* and *nizām*.¹⁰⁹

Al-Baqamī cites other collaborative efforts related to the criminal jurisdiction of the CPVPV, including cooperation with the Administration of Prisons and Police Stations for the execution of various punishments and rehabilitation efforts, such as the education of their inmates, reform campaigns to reduce vice, and managing the application of discretionary punishments. Close cooperation exists between the CPVPV and the Ministry of Justice, especially in the escort of female prisoners to and from courts.¹¹⁰ In cases of moral and creedal offences, the CPVPV coordinates activities with the Ministry of Information for the supervision of literature and

¹⁰⁷ *Al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Mā'rūf wa-al-Nahy ʿan al-Munkar: Tārīkhuhā, A'māluhā*, p. 251.

¹⁰⁸ *Ibid.*, pp. 250-1; al-Baqamī, pp. 158-60.

¹⁰⁹ E.g., Vogel, *Islamic Law and Legal System*, pp. 253-4.

¹¹⁰ *Al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Mā'rūf wa-al-Nahy ʿan al-Munkar: Tārīkhuhā, A'māluhā*, p. 251

public displays, and surveillance of written publications and audio-visual materials. This includes censorship related to sorcery, magic, soothsaying, and superstition, as well as collaboration with the Internet Services Unit, for blocking mostly pornography and other content related to drugs, bombs, alcohol, gambling, the propagation of other religions and prohibited Islamic sects, and the defamation of Islam and Saudi laws.¹¹¹

Al-Baqamī details how CPVPV efforts are pursued in close association with the Ministry of Education and the General Presidency for Girls' Education, through the delivery of lectures and addresses in institutes and schools, the direction of regular discussion groups, the prosecution of offences at educational institutions, and the surveillance of delinquent behaviour among youths. The CPVPV regularly collaborates with the Ministry of Islamic Affairs, *Da'wah* and Guidance in missionary efforts, especially for instruction during the season of *ḥajj*, when it operates from five centers in Mecca; pilgrims are admonished to abandon vices and embrace Salafī *'aqīdah*, and are educated about the rites of *ḥajj* and the other pillars of Islam. Furthermore, educational projects, publications and related philanthropy are realized in collaboration with Saudi Islamic universities, especially al-Imām Muḥammad ibn Sa'ūd.¹¹²

Ḥisbah has witnessed the most development independent of the CPVPV in the field of market supervision, especially the combat of commercial fraud; however, al-

¹¹¹ Ibid., p. 250; see also Iyās ibn Samīr al-Hājirī, *Tārīkh al-Intirnit fī al-Mamlakah al-'Arabīyah al-Sa'ūdīyah* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1425); King Abdulaziz City for Science and Technology, *Internet Services Unit: A Brief Guide* (Riyadh: King Fahd National Library, 2003); Jonathan Zittrain and Benjamin Edelman, "Documentation of Internet Filtering in Saudi Arabia" (Berkman Center for Internet & Society, 2002); available from <http://cyber.law.harvard.edu/studies/saudi>, accessed Oct. 25, 2009.

¹¹² *Al-Ri'āsah al-'Ammah li-Hay'at al-Amr bi-al-Mā'rūf wa-al-Nahy 'an al-Munkar: Tārīkhuhā, A'māluhā*, pp. 251-2.

Baqamī stresses close cooperation is maintained between the CPVPV and various specialist agencies in this regard. The CPVPV collaborates with the Administration of Civil Defence for the supervision of public events, and the Administration of Immigrant Labour Admissions for the control of illegal immigrants, counterfeit permits, and the surveillance of criminal enterprises. Market patrols are carried out in coordination with the Ministry of Provincial and Municipal Affairs in order to monitor infringements of the Shari‘ah related to planning and design in establishments or designated public spaces for women. Similarly, cooperation exists with the Ministry of Commerce in the supervision of merchandise in obvious conflict with the provisions of the Shari‘ah as well as instances of commercial corruption.¹¹³

Standards for commercial transactions are largely regulated by *siyāsah*-based legislation, which seeks to defend society against fraud, cheating and manipulation of prices, merchandise and medicines. These *nizāms* aim to define the correct form of transactions to ensure that consumers benefit from the purchase of sound goods free from adulteration, such as precious metals and gemstones.¹¹⁴ Enforcement is specifically based on the *Nizāms* of Commercial Fraud, Combating Forgery, and Precious Metals and Gemstones, as well as specifications issued by the Ministry of Industry and the General Committee for Standards and Measurements. This body of law and its supervision is reinforced by a multiplicity of other agencies, like the Public Administration for the Defence of the Consumer, the Administration of Quality Control and Laboratories.¹¹⁵

¹¹³ Ibid., pp. 250-1.

¹¹⁴ Al-Baqamī, p. 316

¹¹⁵ Ibid., pp. 316-20.

According to al-Baqamī, through historical evolution *ḥisbah* is no longer limited to the CPVPV within the Saudi nation-state. He understands the role of the *muḥtasib*, in fact, as being similar to the state generally: "the pledge of undertaking good through (the *muḥtasib*'s) performance, conduct and behaviour, is akin to the performance of the state's rule of its people, through its incorporeal personality, and by it correction of basic elements in social reform."¹¹⁶ As such, he argues for the need to develop beyond ad hoc policies and disorganization that plague the implementation of *ḥisbah* in Saudi Arabia, to a more rationalized and systematic form of application.

While al-Baqamī supports the regulations and bylaws which have emerged for the CPVPV since 1400/1980, he argues that the institution must be further modernized from this basis. Greater financial support is considered necessary to develop more substantial programs of research and training, so that officers may more effectively combat modern vices and communicate with youths, especially regarding substance abuse and *da'wah*.¹¹⁷ He also recommends that the latter task should be integrated within a larger regulatory body, as *da'wah* suffers from a lack of coordination and efficiency in the kingdom.¹¹⁸ In the fields of market and municipal regulations, al-Baqamī re-asserts the Sharī'ah-compliance of existing *nizāms*, but argues for greater rationalization and attention to precision. This should occur in conjunction with subjugating the multifarious regulatory agencies presently in existence to a single national supervisory agency for *ḥisbah*—a central organization

¹¹⁶ Ibid., p. 456.

¹¹⁷ Ibid., pp. 160-1, 177-79.

¹¹⁸ Ibid., pp. 240-1.

that would need the support of expert research and well trained human resources to enable the practical expansion of *ḥisbah*.¹¹⁹

The period following that covered by al-Baqamī's research was marked by several trends regarding *ḥisbah*; in particular, issues related to the government response to Islamism became increasingly clear from 1988 onward. As mentioned above, part of the Saudi regime's response to Juhaymān's Meccan revolt was to grant the CPVPV free reign to enforce a stricter observance of Islam, at least in terms of *ʿibādāt*, and customary norms. This policy did not entirely succeed because Islamism continued to grow in strength. One controversial issue that has exacerbated opposition is interest-based financial transactions under Saudi commercial laws in conflict with the Shariʿah.¹²⁰ Responses from *ʿulamāʾ* have ranged from counselling the forbiddance of this vice through tactful admonition toward banks, to activist prosecution of cases involving *ribā* in Shariʿah courts;¹²¹ more radical critics have outright condemned the lack of effective censure by government agencies.¹²²

On March 7th, 2002, a fire broke out at a girls' school in Mecca that was guarded by CPVPV field officers who were not prepared to let their charges exit without veiling, nor allow firefighters to enter.¹²³ Fifteen girls died and fifty were injured, provoking outrage in the Saudi press over the distorted priorities of the CPVPV. Thereafter, all girls' schools were summarily removed from the care of religious authorities and the CPVPV subjected to increasing scrutiny by the Saudi

¹¹⁹ Ibid., pp. 316-320.

¹²⁰ E.g., al-Jarbou, pp. 210-29; Vogel, *Islamic Law and Legal System*, pp. 305-8.

¹²¹ Al-ʿUthaymīn, "Naṣīḥah fī al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar," *Majmūʿ Fatawā wa Rasāʾil Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-ʿUthaymīn*, vol. 27, p. 510.

¹²² E.g., al-Masʿarī, *al-Adillah al-Qaṭʿīyah ʿalā ʿAdam Sharʿīyat al-Dawlah al-Saʿūdīyah*, p. 62; Muḥammad Surūr, *al-Sunnah* 40 (1417): 82.

¹²³ "Religious Police Reportedly Thwart Girls' Rescue in Fire," *Chicago Tribune* (3/18/2002): 6.

press and more liberal officials. The government's critical attitude toward the CPVPV was further emboldened following the Riyadh compound attacks in 2003, which prompted more stringent action against terrorism. As previously mentioned, the CPVPV have been criticised for their late initiation of anti-terrorist education programs and their failure to effectively integrate Saudi *mujāhidīn* returning from the Soviet-Afghan war into their ranks. The CPVPV has since responded with a detailed defence of its anti-terrorist initiatives, offering a chronological account of its educational and counselling activities, pre-dating the attacks.¹²⁴ The net result has been the CPVPV's increasing transformation into an anti-terrorist agency.¹²⁵

In a step toward realizing al-Baqamī's recommendation to establish a paradigm of research in *ḥisbah*, on March 27th-28th, 2010 in Riyadh, King Abdullah sponsored the first national symposium on "*Ḥisbah* and Its Contemporary Application in Saudi Arabia." The event allowed experts to define pressing problems and recommend solutions for the application of *ḥisbah*, in addition to demonstrating the continued need for the Saudi regime to publically justify its authority upon it. It was also an example of King Abdullah's desire to balance the patronage of *ḥisbah* with the aims of modernization and reform, which he has promoted as hallmarks of his reign. Many of the assembled intellectuals, '*ulamā'*' and public officials reasserted the kingdom's unique role in this respect; one member of the *Shūrā* Council declared his hope that: "A quintessential example may be created through the CPVPV, expressing to the entire world an institution that is unique to the Kingdom of Saudi Arabia,

¹²⁴ Al-Sahfī, *Juhūd al-Ri'āsah al-Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar fī al-Mamlakah al-'Arabīyah al-Sa'ūdīyah fī Maḥārbat al-Irḥāb*, pp. 16-18.

¹²⁵ For more details see Ch. 3, sect. 3.2.

both envied and despised, like a crown upon its head, and as a valve of security."¹²⁶

Likewise, historical accounts uniformly depicted the legitimacy of all Saudi states as having derived from the application of *ḥisbah*, while others defined the close legal relationship required between *ḥisbah* and *siyāsah sharʿīyah*, and the continuing aspects of the CPVPV's criminal jurisdiction.¹²⁷

Strategic recommendations at the symposium included stressing the need for expanding material resources available to the CPVPV, better training for its officers, increased jurisdictional autonomy, and improved cooperation with specialist agencies.¹²⁸ In line with al-Baqamī's expansive conception of *ḥisbah* and the nation-state, some scholars discussed the limitless legislative possibilities in which *ḥisbah* may be applied, and argued for the expansion of the CPVPV's role in overseeing municipal services and anti-corruption measures.¹²⁹ More groundbreaking calls for anti-corruption specialists and female officers (*muḥtasibāt*) have surfaced at other

¹²⁶ Al-Dūsarī, "al-Istishrāf al-Mustaqbilī li-Majālat al-Iḥtisāb fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah," (paper presented at Nadwat al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Rīyāḍ, 11-12/4/1431); *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Rīyāḍ, 11-12/4/1431*, pp. 133-41.

¹²⁷ Al-Ṭarīqī, "al-Ḥisbah fī Anẓimat al-Saʿūdīyah wa fī Turāth al-Fuqahāʾ," *ibid.*, pp. 75-7; al-Furayḥ, "ʿInāyah Wulāt al-Amr Ḥukkām al-Dawlah al-Saʿūdīyah bi-al-Ḥisbah ʿIlmīyan wa ʿAmālīyan," *ibid.*, pp. 62-7; al-Madkhālī, "al-Ḥisbah fī Dawʾ al-Nizām al-Asāsī lil-Ḥukm fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah," *ibid.*, pp. 67-71; al-Jadʿānī, "al-Ḥisbah fī Dawʾ al-Siyāsah al-Sharʿīyah," *ibid.*, pp. 171-7; al-Dakhīl, "Dawr Hayʾat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar fī Ḍabṭ al-Jināʾi," *ibid.*, pp. 78-81; al-Rizayn, "Muẓāhir al-Ḥisbat al-Waqāʿīyah fī al-Anẓimat al-Iqtisādīyat al-Saʿūdīyah," *ibid.*, pp. 82-4.

¹²⁸ Al-Furayḥ; al-Dūsarī; Yāsir ibn ʿAlī al-Shihri, "Naḥwa Istrāṭījīyah Ittiṣālīyah lil-Riʿāsat al-ʿAmmah li-Hayʾat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar," (paper presented at Nadwat al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Rīyāḍ, 11-12/4/1431); *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārikīn fī al-Ḥisbah wa ʿInāyat al-Mamlakah al-ʿArabīyah al-Saʿūdīyah, al-Rīyāḍ, 11-12/4/1431*, pp. 129-32; ʿAbd Allāh ibn Muḥammad ibn Maṣṣūr ʿAl al-Shaykh, "Alāqah Hayʾat al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar bi-al-Ajhizat al-Sharʿīyah," *ibid.*, pp. 156-62.

¹²⁹ Fuʿād ʿAbd al-Munʿim Aḥmad, "al-Ḥisbah fī al-Nizām al-Asāsī fī al-Mamlakah al-ʿArabīyah al-Saʿūdīyah," *ibid.*, pp. 72-4; Ḥamad ibn Saʿd al-ʿUmar, "Alāqat al-Ḥisbah bi-al-Aʿmāl al-Baladīyah," *ibid.*, pp. 163-4.

public forums on *ḥisbah* from ‘*ulamā*’ and publicly elected municipal officials, suggesting a broad base of public demand.¹³⁰

Some of these recommendations have already been initiated during the reign of King Abdullah, with an increase of funding and material support being granted to the CPVPV, and the development of modernized research and training programs. Many new CPVPV centers have been opened, including a headquarters for the General Presidency in Riyadh, and efforts have been made to develop its level of administrative organization.¹³¹ Along with the aforementioned symposium, a new web-site has been opened, and the Higher Judicial Institute for the Promotion of Virtue and Prevention of Vice was established at Umm al-Qurā University. Three research chairs in *ḥisbah* studies have also been founded—one each at King Sa‘ūd University, Prince Nā‘if University for Security Sciences, and King ‘Abd al-‘Azīz University—with plans to open another at al-Imām Muḥammad ibn Sa‘ūd Islamic University.¹³²

A similar event occurred between December 22nd, 2010, and January 2nd, 2011, when the CPVPV Riyadh branch hosted the *Khayr Ummah* Conference at the Riyadh Convention Center, under the patronage of the Amīr of Riyadh, Salmān ibn ‘Abd al-‘Azīz Āl Sa‘ūd. Keynote addresses were delivered by notable Shaykhs, including ‘Abd al-‘Azīz al-Ḥumayd, ‘Abd Allāh al-Shithrī, Ṣāliḥ al-Maghāmsī, and Salmān al-‘Awdah. Discussions were focused on the theme: "the technique and support of quality," articulating how essential aspects of *ḥisbah* can be subjected to the processes of quality control and development, and assisted by information and

¹³⁰ E.g. ‘Abd al-‘Azīz al-‘Umarī, "al-Iḥtisāb wa al-Raqābah al-Idārīyah fī Taṭbīqātihā al-Ta’rīkhīyah."

¹³¹ See Tables 1-5.

¹³² *Al-Ri’āsah al-‘Āmmah li-Hay’at al-Amr bi-al-Ma’rūf wa al-Nahy ‘an al-Munkar, Usus wa Mabādī’: Ta’rīkh wa A’māl*, p. 47.

communication technology. Speakers considered how enhanced public relations could be used in support of the CPVPV's mission to admonish and guide society. Recommendations from the previous year's symposium, especially those regarding CPVPV partnership agreements, research program and engagement with youth, were also further refined in relation to the latest CPVPV five-year plan.¹³³

4.6. Conclusion

This chapter focused on *ḥisbah* and the Saudi nation-state, attempting to explain how exactly the institution's survival should be interpreted in relation to its broader legal and political context. More specifically, the nature and significance of *ḥisbah* was explored in relation to nationalism and the processes of modern state formation, like bureaucratization and centralization. In so doing I aimed to discover more precisely how the image of the *muṭawwaʿ* has become an iconic national symbol in Saudi Arabia. In other words, I hoped to trace the continued evolution of the *muṭawwaʿ* into the CPVPV, and show how it has contributed to Saudi nationalism, as well as how its jurisdiction has developed in relation to the growth of state power.

The evidence presented delineated four main aspects of *ḥisbah* and the Saudi nation-state, the first of which examined the historical justification of Saudi nationalism in terms of *ḥisbah*, with particular attention to the narrative of official historiography as represented by the CPVPV. Secondly, the legal foundations of the Saudi state were discussed in terms of *ḥisbah*, as discerned from the official doctrine of *siyāṣah sharʿīyah* and the Basic Law of Governance as well as pertinent extra-legal factors that provide historical context. Thirdly, the legal foundations of the

¹³³ ʿAbd al-ʿAzīz al-Ḥumayd, "al-Khiṭāb al-ʿĀmm" (paper presented at Muʿtamar Khayr Ummah, Markaz Maʿārid al-Rīyāḍ, 22/12/2010).

CPVPV in relation to the Saudi state were examined through account of its evolving constitution from 1926 to the present, considering decree laws (*nizāms*) in addition extra-legal factors relevant to their historical application. Finally, the legal and administrative basis of *ḥisbah* jurisdiction amongst other Saudi state agencies is explored, as well as their practical record and degree of coordination with the CPVPV, as determined from research conducted at the Higher Judicial Institute, al-Imām Muḥammad ibn Sa‘ūd Islamic University.

More specifically, first of all, in terms of the historical justification for Saudi nationalism, *ḥisbah* has been deployed in historiography sanctioned by Saudi state agencies and Islamic universities, which employs a distinct, neo-traditional style reminiscent of certain critiques of progress and historicism in Western intellectual history. This trend is represented by an institutionally authored treatise on the history of *ḥisbah* from the CPVPV, which synthesizes a broad discourse on national history as well as augmenting the record of CPVPV development. It retains significant classical and medieval conventions, while tracing the origins of the modern Saudi nation to the expression of *ḥisbah* throughout history. It thus remains focused on legal and administrative issues, anchored in Islamic concepts of authoritative knowledge, in accord with Saudi *‘ulamā’s* criteria for valid nationhood. In other words, *ḥisbah* is conceived as the only authoritative basis for Saudi nationalism, and connects the CPVPV to *ḥisbah’s* origins in Islamic history.

Secondly, in terms of *ḥisbah* and the legal foundations of the Saudi state, a close relationship exists between *ḥisbah* and *siyāsah shar‘īyah* embodied in the Basic Law of Governance; therein, *ḥisbah* is essentially characterized as a form of Islamic *nizām*. In other words, the jurisdiction of *ḥisbah*, conceived broadly as a function of

the state, is a key expression of *siyāsah sharī‘ah*. Theoretically the Basic Law of Governance solves the problem of state legislation and judicial authority, especially in terms of balancing traditional notions of rule and legal sovereignty of the Sharī‘ah with the exigencies of modern statecraft. Its emergence is generally understood by Saudi scholars as reflecting a rebirth of Islamic governance, with *ḥisbah* as its most crucial aspect. In practice, however, the problem of legislative and judicial authority is ongoing. Relations between *siyāsah*-based regulatory agencies and ‘*ulamā’* or ‘*ulamā’*-based institutions like the CPVPV are not embodied in the process of legislation and enforcement. Despite informal influence of the ‘*ulamā’*, Sharī‘ah compliance of *nizāms* is determined in an uncoordinated and ad hoc manner.

Thirdly, in terms of *ḥisbah* and the legal foundations of the CPVPV, in addition to the Basic Law of Governance, attention to the evolving institutional structure of the CPVPV helps illustrate the changing character of *ḥisbah* in Saudi Arabia. From its comprehensive yet starkly simplistic founding charter to its increasingly defined constitution, circumscribed according to the complexities of modern life, CPVPV *nizāms* demonstrate its interrelationship with the nascent Saudi nation-state. On one hand, CPVPV structure has become increasingly specialized in the regulation of ‘*ibādāt* and sexual morality, ceding control of market regulation to other organs of state in order to support increased levels of administrative efficiency. On the other hand, the CPVPV's narrowed jurisdiction has remained central to symbolizing Saudi Arabia's system of *siyāsah sharī‘īyah*, in addition to functioning as a catalyst for national unity. Moreover, the increasing level of CPVPV operating protocol reflects efforts to enforce greater discipline and higher standards of performance amongst its ranks.

Finally, in terms of *ḥisbah* and other Saudi state agencies, in a landmark study of *ḥisbah* in Saudi Arabia from the Higher Judicial Institute, al-Baqamī demonstrates the full scope of its application between 1932 and 1987, with especially useful details from 1980 onward. He demonstrates *ḥisbah* not only in terms of the CPVPV's function, but also in terms of its emergence through various other state agencies. Al-Baqamī argues that a broadening and bifurcation has occurred to *ḥisbah* with the development of the Saudi nation-state, with *ḥisbah* basically divided by the enforcement of *ʿibādāt*, assigned to the CPVPV, and *muʿāmalāt*, assigned to an array of other agencies. Despite the unprecedented nature of these changes, al-Baqamī claims they are actually congruent with the historical evolution of *ḥisbah*: the *muḥtasib*'s duties have been more effectively served by the detachment of specialized tasks from CPVPV jurisdiction, which has allowed the state to apply modern expertise in the service of *iḥtisāb*. In so doing, the public has supposedly derived more benefit in a broad array of fields, such as the regulation of commercial fraud, manufactures and labour standards, as well as the supervision of stores and merchants through the formulation and enforcement of laws based on standardized measurements. Al-Baqamī, however, also stresses the need to develop beyond the ad hoc policies and disorganization that plagues the implementation of *ḥisbah* in Saudi Arabia, to a more rationalized and systematic form, as well as further modernization of the CPVPV from its present legal basis along these lines.

In sum, this examination of *ḥisbah* in relation to the Saudi nation-state raises questions in the face of ongoing modernization and expansion policies for Saudi state agencies, including the CPVPV and others responsible for *ḥisbah* regulations: Is the further evolution of *ḥisbah* possible away from the reform movement's origins in

the *muṭawwa*‘ and their primary concern with ‘*ibādāt*, to a program conceived more broadly to include *mu‘āmalāt*? Will discourse on nationalism continue to associate *ḥisbah* symbolically with the CPVPV, or come to associate it more generally with the Saudi nation-state? Will a more systematic and coordinated approach to *ḥisbah* emerge from the CPVPV and other organs of the Saudi nation-state, or will ad hoc policies and informal association persist in defining their respective roles of moral censorship and market inspection?

5. General Conclusion

In the preceding dissertation I have addressed the absence of any detailed research on the CPVPV in Saudi Arabia as well as its basis in the broader duty of enjoining virtue and forbidding vice. I thereby documented operations of the CPVPV since its establishment in 1932 as well as defining its moral and legal constitution in order to shed light on this unique and infamous, but largely unknown institution, which bears much importance to the history of Saudi Arabia and to understanding the relationship between law and religion. While building on earlier historical work, I tried to avoid methodological problems that have hindered previous analyses; for example, I endeavoured to move beyond assumptions of the validity and historical inevitability of secularism and studies that dismiss religious and legal claims in contest with modern liberalism as fundamentalism, as well as providing an accurate accounting of concepts like public and private, law and morality. In so doing, I hope to have added a new dimension to discourse on the CPVPV as well as the *muḥtasib* and *ḥisbah*, the history of Saudi Arabia, Salafism, and the public role of Islam.

In general, I argued that the CPVPV shares defining characteristics with the pre-modern *muḥtasib* in terms of the moral basis of its function in enjoining virtue and forbidding vice, its legal constitution, procedures and practice, as well as its relation to state and society. At the same time, the CPVPV expresses aspects of variation in the same categories: the processes of modernization have shaped *ḥisbah* in Saudi Arabia so that the CPVPV is no longer simply a *muḥtasib* in the traditional sense, but rather has developed as part of a particular moral and legal culture into a type of "religious police force." While modernization has proceeded within a regime of Islamic law and morality, CPVPV jurisdiction has been restricted to religious

tenets that do not inhibit the state's administration and coercive power over civil transactions (*mu'āmalāt*). It is necessary, in fact, to understand *ḥisbah* as a function of both the CPVPV as well as the Saudi nation-state.

The dissertation was divided into four chapters focused on the main aspects of evidence: the pre-modern-*muḥtasib*; conceptualizing *ḥisbah* in Saudi Arabia; the Saudi law of *ḥisbah* and its enforcement by the CPVPV; and *ḥisbah* and the Saudi nation-state. The first chapter served to identify the basic characteristics of *ḥisbah* in pre-modern history and provide a basis for comparison and contrast in order to determine what it has become in Saudi Arabia. Theoretical and practical dimensions of *ḥisbah* were thus uncovered from a survey of key primary and secondary sources, which identified constant and variable aspects of this jurisdiction in both moral and legal terms, as well as the enforcement of substantive law by *muḥtasibs*. As such, three main aspects appear to have defined *ḥisbah* in pre-modern history: its moral basis, embodied in the duty to enjoin virtue and forbid vice (*al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*); its legal basis, expressed through *fiqh* and *siyāsah* legislation; and its practical application, including the historical context of its conception and its actual enforcement by *muḥtasibs*.

The moral basis of *ḥisbah* in pre-modern history is revealed through analysis of the four elements of ethical relations surrounding the duty to enjoin virtue and forbid vice, which illustrates the specific kind of ethical subject that was intended through the cultivation of *akhlāq* and practice of *fiqh*. This was expressed through a common understanding of ethical substance (ontology), mode of subjection (deontology), ethical work (ascetics), and *telos* (teleology). Examination of *ḥisbah*'s moral basis in pre-modern history draws attention to commonalities with its expression in Saudi

Arabia, in addition to several issues that bear importance to its specific development there. Namely, the variation of emphasis that historically existed for particular virtues appealed to and vices condemned; for example, *ḥayā'* was understood by some as a key element of moral psychology, and was praised by others as supreme virtue. The degree of recognition for individual versus collective agency also differed concerning enjoining virtue and forbidding vice: ethical autonomy was conceived as operating according to varying degrees of independence within the bounds of the Shari'ah. Moreover, the exact configuration of theistic teleology affected the austerity of ethics and its emphasis upon acts of worship.

The moral basis of *ḥisbah* in pre-modern history existed alongside its legal basis in *fiqh*, through which obligations arising from this virtue were articulated for the *muḥtasib*. Administrative and procedural aspects of *ḥisbah* as a state office were also elaborated upon this basis, including discretionary punishments. The *muḥtasib's* jurisdiction, however, also included *siyāsah* legislation (*qānūn*): as both a judicial and executive officer, he adjudicated and enforced substantive law that included regulations prescribed by both jurists and rulers. The *muḥtasib's* duties can be distinguished principally by his method of approach: he concerned himself with infractions based on obvious and incontestable facts, such as when a perpetrator was caught in *flagrante delicto*, over which he possessed extensive powers to intervene of his own accord and apply a wide variety of penalties, ranging from public rebuke to corporal punishment. Within this scope, his duties were generally associated with two main categories: market inspection, which included the prohibition of fraud in commercial transactions, supervision of public safety standards, and regulation of trades and professions; as well as moral censorship, which included enforcing public

morality and religious obligations like sex segregation, performance of the five daily prayers, and so forth. Moreover, intrusive aspects of the *muhtasib*'s powers were mitigated by several factors, including the prohibition against spying, limitations of pre-modern government, informality of legal proceedings, and coherence between law and society through a shared morality. Examination of *hisbah*'s legal basis in pre-modern history draws attention to similar aspects of its expression in Saudi Arabia, in addition to several issues relevant to its specific development there: the degree to which the *muhtasib* may legitimately prosecute offences on his own accord, or regulations concerning his level of coercive and disciplinary powers; the aims, type and severity of authorized discretionary punishments in relation to both *fiqh* and *siyāsah* legislation; and the exact categorization of the *muhtasib*'s duties, especially concerning his two primary roles as moral censor and market inspector, considering the relatively greater historical emphasis upon the latter.

In terms of the practical basis of *hisbah* in pre-modern history, on one hand, it is possible to discern variable elements in the law of *hisbah* more clearly in relation to different social, political and economic factors that contextualized *fiqh* on the subject, including the works of al-Ghazālī, al-Māwardī, Ibn Taymīyah, and al-Shayzārī. This helps illustrate the interaction of legal and extra-legal factors in the conception of *hisbah*, showing how this jurisdiction changed in response to different problems affecting public morality, as well as the relationship between it and different regimes. On the other hand, it is possible to discern aspects convergence and divergence between the *fiqh* of *hisbah* and its historical application through examination of substantive laws, i.e. both *fiqh* and *siyāsah* legislation, and their application in a specific period. Evidence for this lies in the laws of *hisbah* contained

in Ottoman *qānūn*, as well as accounts of its execution by Ottoman *muḥtasibs* in the sixteenth and seventeenth centuries. Examination of *ḥisbah*'s practical basis in pre-modern history highlights a pattern of variability that marked its conception and application, which yields insightful to its development in Saudi Arabia. Several issues stand out as particularly relevant in this respect: the conflict and cooperation between scholars and rulers to exert influence over contemporary moral and legal problems; the crucial role of *siyāsah sharʿīyah* in forging compromise between these parties; and the importance of extra-legal factors surrounding *ḥisbah*'s application, especially in relation to changes in state and society. The latter issue in particular calls to mind the ultimate scope of the *muḥtasib*'s coercive and disciplinary powers as an office of state, as well as changes resulting from the processes of modernization. Foucaultian notions of autonomous rationality, inconspicuous punishment, hegemony, and subordination of the docile subject were absent in pre-modern Islamic history; however, such issues must be considered in the case of the CPVPV as an organ of the modern Saudi nation-state.

The second chapter focused on examining how exactly *ḥisbah* has been theoretically reformulated through scholarly discourse in Saudi Arabia, in both its general sense as the moral duty to enjoin virtue and forbid vice, as well as its specific sense as the derivative function of the *muḥtasib*. An overview was thus provided of key points of its conceptualization from both official and unofficial sources, comprising a more detailed historical record of its theorization in terms of *akhlāq* and *fiqh* as well as commentary thereupon. In so doing, elements of continuity and change between *ḥisbah* in Saudi Arabia and in pre-modern history were also further clarified. As such, *ḥisbah* in Saudi Arabia was generally understood as a linchpin

between morality and law. In other words, enjoining virtue and forbidding vice, as both an individual duty and function of the *muḥtasib*, is considered a main mode by which individual ethical subjects are called upon or incited to obey the Sharī‘ah and cultivate an honourable disposition. Literature on *ḥisbah*, including both *akhlāq* and *fiqh*, thus serves as a guide to ethical work required for reform of the self and society as the counterpart of *jihād* during peacetime. *Ḥisbah* in Saudi Arabia is founded upon notions that are generally rooted in pre-modern Islamic tradition; however, its conception in terms of both virtue ethics and law also displays elements of variation, including a more prominent expression than in the past, which simultaneously struggles against being categorized in modern terms as well as grappling with demands for change.

Analysis of the four elements of ethical relations in Saudi discourse surrounding the duty to enjoin virtue and forbid vice helped illustrate the specific kind of ethical subject intended through the cultivation of *akhlāq* and practice of *fiqh*. First of all, the ethical substance officially recognized in Saudi Arabia, or morally problematic aspects of the self as pertains to ethical judgment, falls in line with the pre-modern *akhlāq* tradition: the "heart" (*qalb*) and "soul" (*nafs*). Reflection on these and the desire for their transformation is of central concern in Saudi literature, which preserves a theory of human nature based on innate disposition and the cultivation of virtuous character through "care for the self," drawing especially from earlier Ḥanbalī and Shāfi‘ī scholarship; however, this approach to ethics is applied to problems faced by contemporary individuals and society, with *ḥisbah* as a central topic of concern, and reflecting a more modern administrative perspective. Evidence for this lies in Saudi *akhlāq* literature, including treatises issued by the

CPVPV and endorsed by the High Council of Islamic Scholars (*Hay'at Kibār 'Ulamā*).

Secondly, the mode of subjection, or how the individual is called upon to establish its relation to moral obligations, remains respect for God's will as revealed through the Sharī'ah, generally, and a sense of modesty or shame (*ḥayā'*) as part of faith (*īmān*), particularly. Emphasis, however, is placed upon a particular constellation of virtues and practices, especially the cultivation of *ḥayā'*; indeed, the sentiment of shame, assumes a heightened centrality in the Saudi context, and is mainly attenuated to its devotional, sexual and authoritarian aspects as a cardinal virtue that enables reform. Like the previous category, evidence for this also lies in *akhḥāq* literature sanctioned by the Saudi religious establishment, which forms an archetype for the *fiqh* of *ḥisbah* in Saudi Arabia.

Thirdly, the techniques of the self remain largely unchanged in Saudi Arabia. Like the pre-modern tradition, these practices center upon acts of worship, which form the moral and religious basis of the law (*dīn*), and are constituted primarily by the Five Pillars (although their scope technically embraces the entire Sharī'ah, including civil transactions). These ethical practices are likewise regulated by the principle of mutual self-discipline expressed in the duty of all Muslims to enjoin virtue and forbid vice, or *ḥisbah* in its general sense, which itself constitutes a virtuous act. The performance of this duty causes shame and cultivates modesty through embodying the role of "watcher" or "warner." The individual subject and its ethical formation is also conceived as operating in the context of a "shame culture" that defines public and private roles, and where autonomy is delimited by the Sharī'ah and its pre-suppositions concerning human and divine agency. On the other

hand, the prominent position of enjoining virtue and forbidding vice in Saudi Arabia stands out from previous history: the muscular Ḥanbalī tradition has been adapted to an institutionalized role in a modern state under the prescriptive agency of an official ‘*ulamā*’ and the CPVPV, thus generating intensive discourse on the topic. Within this context a spectrum of opinions are expressed by Saudi scholars and public figures, ranging from support for the religious establishment's collective responsibility over *ḥisbah*, to concern over restrictions to individual ethical agency and the limited focus of CPVPV activities. Some critics stress the need to broaden the scope of *ḥisbah* to include more aspects of *mu‘āmalāt*. Knowledgeable practice of the duty is also advocated, which includes good manners (*ādāb*) and ethical preparedness, while more radical voices advocate the intensification of forbidding vice by force at the individual level. Evidence for this lies in CPVPV literature on enjoining virtue and forbidding vice, in addition to discourse on the topic by Saudi ‘*ulamā*’, political activists and radicals.

Finally, the *telos* of ethics is recognized as *īmān* by Saudi ‘*ulamā*’, that is, true belief, or a state of total surrender to God, as both an inner action and outer adherence to the message of the Prophet Muḥammad. In other words, their concept of *īmān* includes all the acts of the heart and beliefs of a person, as well as encompassing all the outward acts of submission to God that are considered exclusively part of *islām*. This is consonant with pre-modern Ḥanbalī notions of *īmān*, which required the fulfillment of exterior acts of obedience as the prerequisite for true belief: *islām* in the sense of ritual observance is the guarantee of faith. More particular to Saudi Arabia, however, is the Wahhābī expression of the interrelated states of *īmān* and *islām* through the concept of *tawḥīd* ("monotheism") and its

opposite (*kufī*), and the associated focus upon strict enforcement of *‘ibādāt* and *‘aqīdah* ("creed") as objects of *ḥisbah*, which comprise the main focus of its reform program. Scholarly opinions on this issue range from conservative confirmation and desire for its intensification, to reaction against it and desire to expand the ethical and legal conception of *ḥisbah* to address broader issues of social, economic and political reform. Evidence for this lies in literature and public commentary related to *ḥisbah* and reform by Saudi *‘ulamā’*, intellectuals and activists.

In sum, Chapter 2 raised several questions concerning the evolution of *ḥisbah*'s conception in Saudi Arabia: Given the political significance of *ḥisbah* in Saudi Arabia, will calls for its broader application in ethical and legal terms remain focused on devotional and creedal matters, or will a more coordinated and systematic institutionalization emerge that may lead to wider social reform and political participation? Given calls for increased public dialogue on issues of religion and public life in Saudi Arabia, will calls for *ḥisbah*'s engagement therein be seriously developed? More particularly, will conceptions of *ḥisbah* come to engage the categories of modernity at a more meaningful level in public discussions and education? Will issues like inter and intra-religious dialogue be addressed more substantively in discourse, such as concerning other Islamic sects and minority groups, or issues related to pluralism and globalization?

The third chapter focused on identifying what exactly the law of *ḥisbah* is as the function of the CPVPV and how it is enforced. The constant and variable features between it and the pre-modern *muḥtasib* were also investigated, along with the particular social problems the CPVPV is responding to. In other words, this chapter aimed to discover more precisely how *ḥisbah* has been legally defined and

applied by the CPVPV in contemporary Saudi history in order to understand more clearly how it functions in comparison and contrast with the *muhtasib* of pre-modern history, as well as to identify significant social issues that affect its practice of *hisbah*. Evidence was drawn from the *Nizām* of the CPVPV (see Appendix 1), which has been in effect since 1980, the Executive Bylaws of the CPVPV (see Appendix 2), which has been in effect since 1987, and articles from the *Nizām* of Penal Procedures concerning CPVPV fieldwork (see Appendix 3), which have been in effect since 2001. Together these documents form the CPVPV's legal foundation, respectively defining its governing constitution, rules for its application of *hisbah*, and additional regulations concerning arrest, seizure and punishment. Proof is also drawn from CPVPV operating statistics, which provide an official record of its enforcement activities and material resources from 1997-2007 (see Tables 1-13). Additional references are made to literature and *fatāwā* by Saudi '*ulamā*', Saudi press reports and other official publications from the CPVPV for further detail on specific issues of importance pertaining to CPVPV performance.

As such, in the law and enforcement of *hisbah* four main aspects of continuity and change were identified to exist between the CPVPV and its pre-modern counterpart: the form of law, range of duties, punishments, and relation to state and society. More specifically, first of all, the Saudi laws of *hisbah* remain bounded within a traditional Islamic legal system, representing a key intersection therein: an integrated approach to law and morality is formally maintained, whereby the *nizām* (*siyāsah* legislation) of *hisbah* presupposes the categories and authority of *fiqh* and custom (*urf*) as well as the archetype of *akhlāq*, partially reminiscent of Ottoman *ihtisab qanūnnāmleri*; however, there is a marked shift towards enforcing a more

codified morality in the form of bylaws and regulations specialized in the rules of worship and tenets of Wahhābī creed. Moreover, the CPVPV's legal charter defines a modern state agency with the associated bureaucratic and administrative procedures, and is indicative of increased juridification.

Secondly, in terms of the range of duties, the decisive aspect of CPVPV jurisdiction continues to be the prosecution of *shar'ī* violations apprehended in *flagrante delicto*, by which officers perform the *muhtasib*'s traditional role as moral censor. CPVPV participation in cases of investigation conducted by other security forces and cooperation with other government agencies is also in line with traditional collaboration between the *muhtasib* and other offices like the *qāḍī* and *shurṭah* as well as expert consultants (*'urafā'*) in cases of overlapping jurisdictions. The role of market inspector, however, has virtually disappeared from CPVPV jurisdiction, with regulations and enforcement activities now centered upon religious rules, especially pertaining to prayer and sexual morality, and other aspects of criminal law and public safety only marginally addressed. Though largely informal, CPVPV collaboration with other agencies is also marked by expanded powers of surveillance, whereby major violations of the Sharī'ah apprehended by its officers require a full investigation in order to obtain an indictment and arrest warrant from a *qāḍī*. Moreover, while CPVPV forbiddance of vice in the form of prosecutorial activities have generally increased over the ten years in question, there has been a noticeable shift during the reign of King Abdullah to the promotion of virtue.

Thirdly, in terms of punishments, the CPVPV maintains authority to adjudicate and execute *ta'zīr* penalties within the limits prescribed by Ḥanbalī *fiqh*, including the traditional categories of physical harm (e.g. flogging) and explicit

shaming (e.g. public rebuke). CPVPV forbiddance of vice thus falls within the scope of the *muḥtasib*'s historical criminal law jurisdiction; however, corporal punishments are now surrounded by more protocol and increasing emphasis is placed on rehabilitation programs, not to mention its restricted ability to impose discretionary penalties on the strength of *siyāṣah*, which were considerably more severe in earlier history. Arrests resulted in the vast majority of cases documented by the CPVPV, indicating that its officers end up adjudicating and punishing the majority of violations they initially prosecute. Violations of worship comprise the majority of cases resulting in arrest and/or discretionary punishment; although policing violations related to sexual morality comprise the central focus of policing activities generally. Furthermore, more non-Saudis than Saudis faced were administered penalties by the CPVPV in every category of offence.

Finally, in terms of the relation to state and society, like the pre-modern *muḥtasib* the CPVPV acts as a vehicle to enforce law and order in support of the ruling regime and prescriptive authority of the *‘ulamā*; however, unlike previous Ḥanbalī history, it does not operate in a minority community, but is institutionalized as an organ of the nation-state with greater intrusive powers at its disposal, resembling a type of "religious police force." In line with other Saudi state agencies, modernization and expansion continues to be the theme of CPVPV planning, especially as it pertains to the advance of financial and human capital, technology, strategic partnerships, and performance improvements attributed to better quality and development. There is a growing emphasis on CPVPV programs for public education and training for field officers, which takes into consideration recommendations to improve its guidance services and administration. These

programs address social problems specific to Saudi Arabia, including the blackmail of women (*al-ibtizāz*), the design logistics of public sex-segregation and privacy standards, and the dangers of black magic, in addition to more general concerns like the *fiqh* of worship and juvenile delinquency. These programs also reflect the CPVPV's new role as anti-terrorist agency, as well as answering to mounting criticism from the mass media and human rights advocacy groups regarding the excessive use of force and breach of penal procedures.

In sum, Chapter 3 raised several questions concerning the continued application of *ḥisbah* in Saudi Arabia: Given the overwhelming emphasis upon policing acts of worship and sexual morality, will a more coordinated strategy avail itself to tackle corruption in other fields of public life? With expanding focus upon CPVPV activities pertaining to the enjoinder of virtue, how will CPVPV programs evolve to engage modern technologies as well as the conceptual categories of modern liberalism to a greater degree? Will increasing modernization of the legal form and function of *ḥisbah* lead to greater instrumentalization of religion and government surveillance through the auspices of the CPVPV, particularly through its new role as anti-terrorist agency? Will this, in turn, foster the increased need for human rights watchdogs because of the potential for abuses by the CPVPV and its collaborators? What will become of the phenomenon of CPVPV prosecution of black magic as an unexpected popular reaction to modernization in Saudi Arabia?

The fourth chapter focused on *ḥisbah* and the Saudi nation-state, attempting to explain how exactly the institution's survival should be interpreted in relation to its broader legal and political context. More specifically, the nature and significance of *ḥisbah* was explored in relation to nationalism and the processes of modern state

formation, like bureaucratization and centralization. In so doing I aimed to discover more precisely how the image of the *muṭawwaʿ* has become an iconic national symbol in Saudi Arabia. In other words, I hoped to trace the continued evolution of the *muṭawwaʿ* into the CPVPV, and show how it has contributed to Saudi nationalism, as well as how its jurisdiction has developed in relation to the growth of state power. In other words, I hoped to trace the continued evolution of the *muṭawwaʿ* into the CPVPV, and show how it has contributed to Saudi nationalism, as well as how its jurisdiction has developed in relation to the growth of state power.

Evidence delineated four main aspects of *ḥisbah* and the Saudi nation-state: the historical justification of Saudi nationalism in terms of *ḥisbah*, based on the narrative of official historiography as repressed by the CPVPV; the legal foundations of the Saudi state in terms of *ḥisbah*, based on the official doctrine of *siyāsah sharʿīyah* and the Basic Law of Governance as well as pertinent extra-legal factors that provide historical context; the legal foundations of the CPVPV in relation to the Saudi state, based on its evolving constitution from 1926 to the present, considering decree laws (*nizāms*) in addition extra-legal factors relevant to their historical application; and the legal and administrative basis of *ḥisbah* jurisdiction amongst other Saudi state agencies as well as their practical record and degree of coordination with the CPVPV, based on research from the Higher Judicial Institute, al-Imām Muḥammad ibn Saʿūd Islamic University.

More specifically, first of all, in terms of the historical justification for Saudi nationalism, *ḥisbah* has been deployed in historiography sanctioned by Saudi state agencies and Islamic universities, which employs a distinct, neo-traditional style reminiscent of certain critiques of progress and historicism in Western intellectual

history. This trend is represented by an institutionally authored treatise on the history of *ḥisbah* from the CPVPV, which synthesizes discourse on national history as well as augmenting the record of CPVPV development. It retains significant classical and medieval conventions, while tracing the origins of the modern Saudi nation to the expression of *ḥisbah* throughout history. It thus remains focused on legal and administrative issues, anchored in Islamic concepts of authoritative knowledge, in accord with Saudi *‘ulamā’s* criteria for valid nationhood. In other words, *ḥisbah* is conceived as the only authoritative basis for Saudi nationalism, and connects the CPVPV to *ḥisbah’s* origins in Islamic history.

Secondly, in terms of *ḥisbah* and the legal foundations of the Saudi state, a close relationship exists between *ḥisbah* and *siyāsah sharī‘iyah* embodied in the Basic Law of Governance; therein, *ḥisbah* is essentially characterized as a form of Islamic *nizām*. In other words, the jurisdiction of *ḥisbah*, conceived broadly as a function of the state, is a key expression of *siyāsah sharī‘ah*. Theoretically the Basic Law of Governance solves the problem of state legislation and judicial authority, especially in terms of balancing traditional notions of rule and legal sovereignty of the Sharī‘ah with the exigencies of modern statecraft. Its emergence is generally understood by Saudi scholars as reflecting a rebirth of Islamic governance, with *ḥisbah* as its most crucial aspect. In practice, however, the problem of legislative and judicial authority is ongoing. Relations between *siyāsah*-based regulatory agencies and *‘ulamā’* or *‘ulamā’*-based institutions like the CPVPV are not embodied in the process of legislation and enforcement. Despite informal influence of the *‘ulamā’*, Sharī‘ah compliance of *nizāms* is determined in an uncoordinated and ad hoc manner.

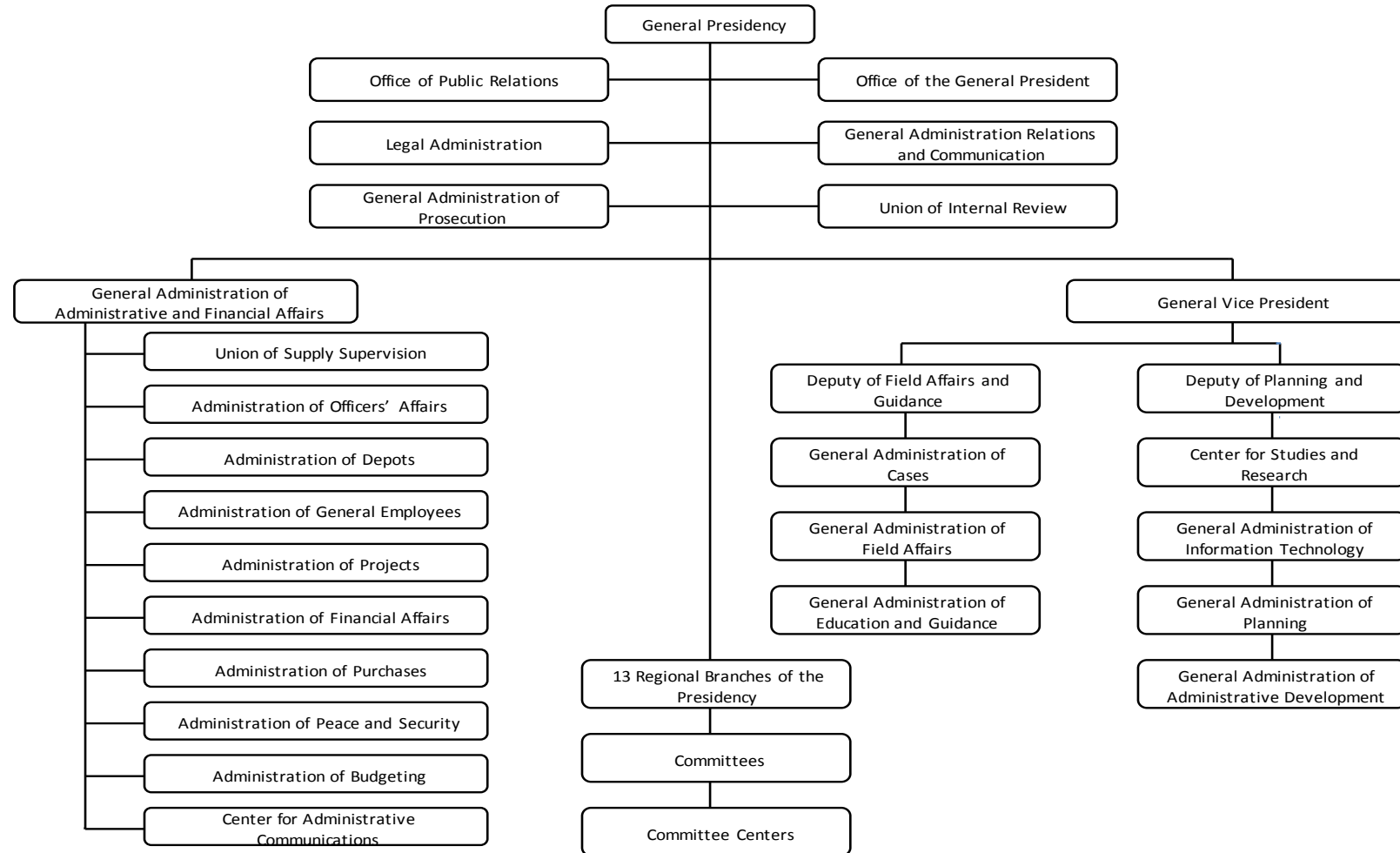
Thirdly, in terms of *ḥisbah* and the legal foundations of the CPVPV, in addition to the Basic Law of Governance, attention to the evolving institutional structure of the CPVPV helps illustrate the changing character of *ḥisbah* in Saudi Arabia. From its comprehensive yet starkly simplistic founding charter to its increasingly defined constitution, circumscribed according to the complexities of modern life, CPVPV *nizāms* demonstrate its interrelationship with the nascent Saudi nation-state. On one hand, CPVPV structure has become increasingly specialized in the regulation of *ʿibādāt* and sexual morality, ceding control of market regulation to other organs of state in order to support increased levels of administrative efficiency. On the other hand, the CPVPV's narrowed jurisdiction has remained central to symbolizing Saudi Arabia's system of *siyāṣah sharʿīyah*, in addition to functioning as a catalyst for national unity. Moreover, the increasing level of CPVPV operating protocol reflects efforts to enforce greater discipline and higher standards of performance amongst its ranks.

Finally, in terms of *ḥisbah* and other Saudi state agencies, in a landmark study of *ḥisbah* in Saudi Arabia from the Higher Judicial Institute, al-Baqamī demonstrates the full scope of its application between 1932 and 1987, with especially useful details from 1980 onward. He demonstrates *ḥisbah* not only in terms of the CPVPV's function, but also in terms of its emergence through various other state agencies. Al-Baqamī argues that a broadening and bifurcation has occurred to *ḥisbah* with the development of the Saudi nation-state, with *ḥisbah* basically divided by the enforcement of *ʿibādāt*, assigned to the CPVPV, and *muʿāmalāt*, assigned to an array of other agencies. Despite the unprecedented nature of these changes, al-Baqamī claims they are actually congruent with the historical evolution of *ḥisbah*: the

muhtasib's duties have been more effectively served by the detachment of specialized tasks from CPVPV jurisdiction, which has allowed the state to apply modern expertise in the service of *ihtisāb*. In so doing, the public has supposedly derived more benefit in a broad array of fields, such as the regulation of commercial fraud, manufactures and labour standards, as well as the supervision of stores and merchants through the formulation and enforcement of laws based on standardized measurements. Al-Baqamī, however, also stresses the need to develop beyond the ad hoc policies and disorganization that plagues the implementation of *ḥisbah* in Saudi Arabia, to a more rationalized and systematic form, as well as further modernization of the CPVPV from its present legal basis along these lines.

In sum, Chapter 4 raised questions in the face of ongoing modernization and expansion policies for Saudi state agencies, including the CPVPV and others responsible for *ḥisbah*-based regulations: Is the further evolution of *ḥisbah* possible away from the reform movement's origins in the *muṭawwaʿ* and their primary concern with *ʿibādāt*, to a program conceived more broadly to include *muʿāmalāt*? Will discourse on nationalism continue to associate *ḥisbah* symbolically with the CPVPV, or come to associate it more generally with the Saudi nation-state? Will a more systematic and coordinated approach to *ḥisbah* emerge from the CPVPV and other organs of the Saudi nation-state, or will ad hoc policies and informal association persist in defining their respective roles of moral censorship and market inspection?

Figure 1. Organizational Structure of the General Presidency of the Committee for the Promotion of Virtue and Prevention of Vice



Source: al-Ri'āsah al-'Āmmah, *Assas wa Mabādī': Ta'rīkh wa A'māl* (al-Riyāḍ: Maktab al-Malik Fahd al-Waṭaniyah Athnā' al-Nashr, 1431), p. 77.

TABLE 1. DISTRUBUTION OF COMMITTEES AND CENTERS ACCORDING TO REGION

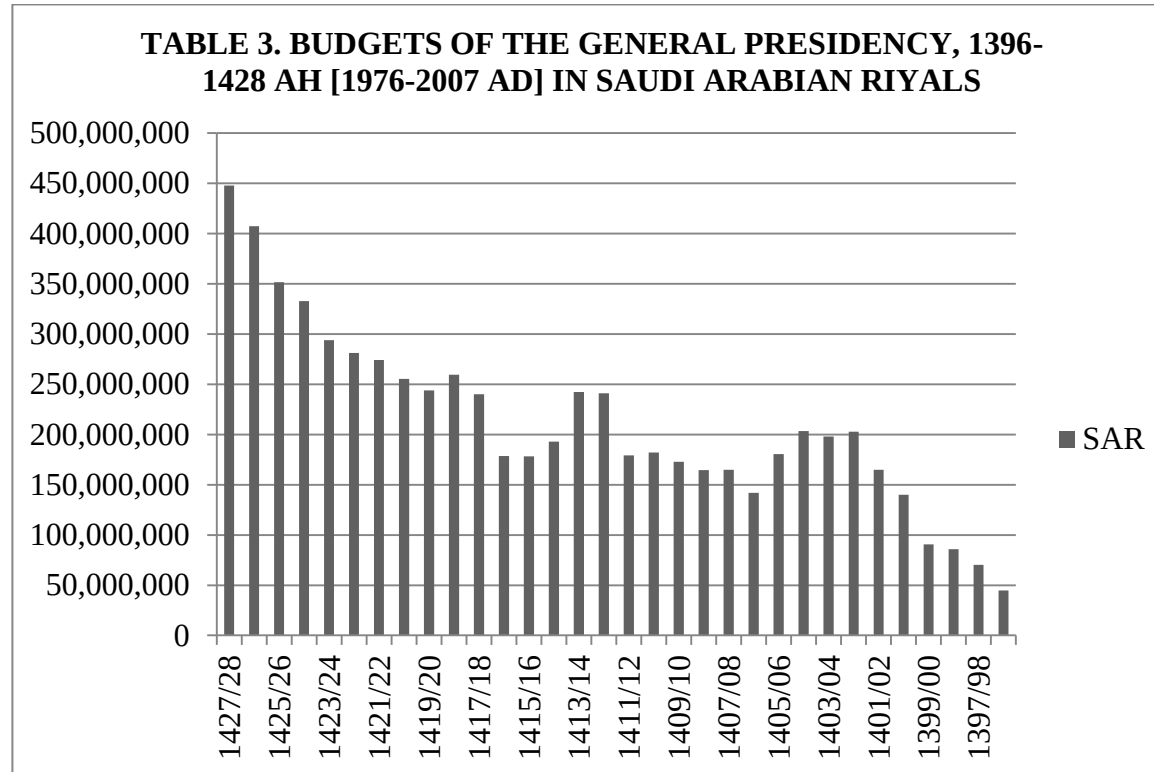
	al-Rīyāḍ	Makkah	Madīnah	al-Qaṣīm	al-Sharqīyah	ʿAsīr	Tabūk	Hā'il	al-Ḥudūd al-Shamālīyah	Jazīrah	Najrān	al-Bāḥah	al-Jawf
City Committee	1	1	1	1	1	1	1	1	1	1	1	1	1
District Committee	19	11	6	10	10	11	5	3	2	12	5	6	2
Committee Center	97	69	19	29	25	21	4	23	7	11	5	11	5

TABLE 2. EMPLOYEES COMMISSIONED BY THE GENERAL PRESIDENCY ACCORDING TO TYPE, 1412-1428 AH [1991-2007 AD]

	27/28	26/27	25/26	24/25	23/24	22/23	21/22	20/21	19/20	18/19	17/18	16/17	15/16	14/15	13/14	12/13
Administrators & Security	1,156	745	738	713	712	692	683	683	683	683	681	681	681	682	682	681
Field Officers	3,583	3,557	3,492	3,430	3,431	3,340	3,300	3,301	3,301	3,301	3,291	3,291	3,291	3,291	3,292	3,330
Drivers & Reporters	308	461	461	461	461	461	461	461	461	461	459	459	459	459	459	459
Labourers	120	266	266	240	240	240	240	240	240	240	240	240	240	240	240	240

Source: al-Ri'āsah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa al-Nahy ʿan al-Munkar, *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28 (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1428), pp. 23, 25.

TABLE 3. BUDGETS OF THE GENERAL PRESIDENCY, 1396-1428 AH [1976-2007 AD] IN SAUDI ARABIAN RIYALS



Source: al-Ri'āsah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa al-Nahy ʿan al-Munkar, *al-Taqrīr al-Sanawī lil-Injāzāt, 1427-28* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah Athnā' al-Nashr, 1428), p. 26.

TABLE 4. COMMISSIONED EMPLOYEES OF THE GENERAL PRESIDENCY DURING THE FINANCIAL YEAR 1427/1428 AH
[2006/07], BY TYPE OF OCCUPATION

Total Employees	5,167
Field Officers	3,583
Administrators	1,036
Security Officers	120
Drivers	239
Reporters	69
Labourers	120

TABLE 5. COMPOSITION OF THE GENERAL PRESIDENCY IN THE FINANCIAL YEAR 1427/1428 AH, BY MATERIAL ASSETS

Total Budget	447,582,000.00 SAR (9.91% increase from previous year)
Government Buildings	51 (10% of total branch and committee centers)
Rented Buildings	426 (86% of total branch and committee centers)
Shared Buildings	(4% of total branch and committee centers)
Cars Owned	1,725

Source: al-Ri'āṣah al-ʿĀmmah li-Hay'at al-Amr bi-al-Ma'rūf wa al-Nahy ʿan al-Munkar, *al-Taqrīr al-Sanawī lil-Injāzāt, 1427-28* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1428), pp. 21, 22.

TABLE 6: ACTIVITIES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF ESTABLISHING GUIDANCE CENTERS AND DELIVERING LECTURES, WORDS OF GUIDANCE, AND SYMPOSIA, DURING 1418-1428 [CA. 1997-2007]

Activities	1418	1419	1420	1421	1422	1423/24	1424/25	1425/26	1426/27	1427/28
Guidance Centers	—	—	—	—	36	141	55	50	66	33
Ratio of Change	—	—	—	—	—	—	-61%	-9%	-32%	-50%
Symposia	—	—	—	—	218	1764	1266	741	583	100
Ratio of Change	—	—	—	—	—	—	-28%	-41%	-21%	-83%
Lectures	—	—	—	—	5794	6834	4425	2756	2733	3578
Ratio of Change	—	—	—	—	—	—	-35%	-37%	-1%	31%
Combined Lectures & Symposia	8983	2421	10867	12611	5877	8598	5691	3497	3316	3678
Ratio of Change	—	-73%	349%	16%	-53%	46%	-34%	-39%	-5%	11%
Words of Guidance	—	—	—	—	9500	18310	21340	21517	44134	29957
Ratio of Change	—	—	—	—	—	—	17%	1%	105%	-32%
Total Activities	8983	2421	10867	12611	15413	27049	27086	25064	47516	33667
Ratio of Change	—	-83%	349%	16%	22%	75%	0%	-7%	90%	-29%

Note: Detailed statistical accounting of activities began in the year 1422.

Source: *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28, p. 53.

TABLE 7: ACTIVITES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF THE GUIDANCE OF SOCIETY
(DISTRIBUTION OF PUBLICATIONS) DURING 1418-1428 [CA. 1997-2007]

Form of Demonstration	1418	1419	1420	1421	1422	1423/24	1424/25	1425/26	1426/27	1427/28
Books	—	—	—	—	135611	688404	321890	296816	293589	125426
Ratio of Change	—	—	—	—	—	—	-53%	-7%	-1%	-57%
Pamphlets	—	—	—	—	1370234	1944243	2335155	2161651	3705729	4116796
Ratio of Change	—	—	—	—	—	—	20%	-7%	71%	11%
Folded Publications	—	—	—	—	1947054	4557677	3987350	3445607	2770057	3747071
Ratio of Change	—	—	—	—	—	—	-13%	-14%	-16%	30%
Total Written Publications	1646340	1718873	4594473	5733029	3042139	7190324	6644325	5904074	6879375	7989293
Ratio of Change	—	4%	127%	25%	-47%	136%	-8%	-11%	17%	16%
Audio Recordings	511720	607915	671955	1104547	819454	1905432	2475647	1103887	956617	809504
Ratio of Change	—	19%	11%	64%	26%	133%	30%	-55%	-13%	-15%
Total Publications	2158060	2326788	5266428	6837576	3861593	9095756	9120042	7007961	7835992	8798797
Ratio of Change	—	8%	126%	30%	-44%	136%	0%	-23%	12%	12%

Note: Detailed statistical accounting of activities began in the year 1422.

Source: *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28, p. 54.

TABLE 8: ACTIVITIES OF THE GENERAL PRESIDENCY AND ITS BRANCHES IN THE FIELD OF VISITS 1418-1428 [CA. 2006-07]

Form of Demonstration	1418	1419	1420	1421	1422	1423/24	1424/25	1425/26	1426/27	1427/28
Visits of Inspection & Instruction	3168	459	3682	3608	592	4162	4476	4949	7372	8139
Ratio of Change	—	-76%	702%	-2%	-74%	603%	8%	11%	49%	10%
To Government Bureaus	—	—	—	—	1831	7120	8727	8175	10558	12913
Ratio of Change	—	—	—	—	—	—	23%	-6%	29%	22%
To Educational Institutions	—	—	—	—	727	3639	4344	3924	4980	7407
Ratio of Change	—	—	—	—	—	—	19%	-10%	27%	49%
Admonition	—	—	—	—	324	13716	14041	14682	25497	27869
Ratio of Change	—	—	—	—	—	—	2%	5%	74%	9%
To Those Seeking Knowledge	—	—	—	—	170	6555	8872	7808	12542	9808
Ratio of Change	—	—	—	—	—	—	35%	-12%	61%	-22%
Combined Initiated Visits	3168	459	3682	3608	3189	35192	40460	39538	60949	66136
Ratio of Change	—	-86%	702%	-2%	-12%	1004%	15%	-2%	54%	9%
From Government Bureaus	—	—	—	—	381	4072	5798	6432	9316	13869
Ratio of Change	—	—	—	—	—	—	42%	11%	45%	49%
From Educational Institutions	—	—	—	—	314	3177	4441	5738	6649	9371
Ratio of Change	—	—	—	—	—	—	40%	29%	16%	41%
From Those Seeking Knowledge	—	—	—	—	347	8326	11085	11318	16906	16251
Ratio of Change	—	—	—	—	—	—	23%	2%	49%	-4%
From Dignitaries of State	—	—	—	—	49	11256	12161	34771	14110	13667
Ratio of Change	—	—	—	—	—	—	8%	186%	-59%	-3%
Combined Visits From Others	—	—	—	—	—	26831	33485	58259	46981	53159
Ratio of Change	—	—	—	—	—	—	25%	74%	-19%	13%
Total Visitation Activity	3168	459	3682	3608	3189	26023	73945	97797	107930	119295
Ratio of Change	—	-86%	702%	-2%	-12%	1845%	19%	32%	10%	11%

Source: *al-Taqrīr al-Sanawī*, p. 66.

TABLE 9: CLARIFICATION OF TERMINOLOGY FROM THE PROCEEDING TABLES FOR THE CLASSIFICATION OF INCIDENTS SUBJECT TO DISCIPLINE BY COMMITTEES AND CENTERS

Creed	All transgressions related to the slander of sound belief, as determined by the People of Tradition and the Community such as: blaspheming God, His Prophet, the Companions, or magic and sorcery, possession of amulets and charms, and heretical burial practices.
Worship	Manifest abandonment of the obligatory rites of Islam, or contradiction of them, such as: failure to pray in congregation, continuing to work after the Adhān, and breaking fast during Ramaḍān.
Morality	Transgression of honour through speech or deed, such as: prostitution and pimping, fornication and illicit seclusion, extortion and theft, sodomy and perversion, and molestation and sexual assault.
Intoxicants	Consumption of intoxicants, and their manufacture and distribution.
Narcotics	Use of narcotics, or their possession, or distribution.
Public Manners	All transgressions of public manners in society, such as: wanton displays and unveiling of the face or hair, wearing indecent clothes, and the (lewd) portrayal of women in public places.
Publications	Publications which disagree with sound creed or harm virtuous morals, such as: licentious pictures and films, and pictures depicting human beings.
Commercial Stores	All transgressions of principles of public organization for work in commercial stores, such as: mixed-gender reception areas in restaurants, placing privacy screens within stores for feminine supplies, and covering display windows in stores for feminine supplies.
Other	Cases which are not classified under the previous categories, such as gambling.

Source: *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28, p. 66.

TABLE 10: CLASSIFICATION OF INCIDENTS DURING 1427-28 [CA. 2006-07], ACCORDING TO TYPE, NATIONALITY AND MEASURE

Type of Incident	Number of Cases	Ratio	Number of Persons			No. of Offences	Ratio	Number of Persons			Total Incidents	Ratio	Combined Offenders & Non-Offenders				Total Persons	Ratio
			Saudi	Non-Saudi	Total			Saudi	Non-Saudi	Total			Saudi	Ratio	Non-Saudi	Ratio		
Creed	585	2.42%	134	898	1032	0	0.00%	0	0	0	585	0.19%	134	0.16%	898	0.37%	1032	0.32%
Worship	8150	33.76%	2632	17544	20176	222560	80.42%	31986	190573	222559	230710	76.68%	34618	41.15%	208117	86.85%	242735	74.97%
Morality	10322	42.76%	8685	8175	16860	24504	8.85%	19702	4799	24501	34826	11.57%	28387	33.74%	12974	5.41%	41361	12.78%
Intoxicants	1723	7.14%	2158	1245	3403	0	0.00%	0	0	0	1723	0.57%	2158	2.57%	1245	0.52%	3403	10.5%
Narcotics	322	1.33%	383	167	550	0	0.00%	0	0	0	322	0.11%	383	0.46%	167	0.07%	550	0.17%
Public Manners	0	0.00%	0	0	0	20144	7.28%	14046	6098	20144	20144	6.69%	14046	16.70%	6098	2.54%	20144	6.22%
Publications	751	3.11%	88	987	1075	942	0.34%	522	421	943	1693	0.56%	610	0.73%	1408	0.59%	2018	0.62%
Commercial Stores	78	0.32%	18	120	138	5558	2.01%	1532	4025	5557	5636	1.87%	1550	1.84%	4145	1.73%	5695	1.76%
Other	2210	9.15%	924	2865	3789	3034	1.10%	1319	1715	3034	5244	1.74%	2243	2.67%	4580	1.91%	6823	2.11%
Total, Reported Yr.	24141	100%	15022	32001	47023	276742	100%	69107	207631	276738	300883	100.00%	84129	100.00%	239632	100.00%	323761	100.00%
Total, Previous Yr.	23865		17335	24623	41958	392891		100353	292538	392891	416756		117688		317161		434749	
Ratio of Change	1%		-13%	30%	12%	-30%		-31%	-29%	-30%	-28%		-29%		-24%		-26%	

Source: *al-Taqrīr al-Sanawī lil-Injāzāt, 1427-28*, p. 96.

TABLE 11: CLASSIFICATION OF INCIDENTS AND THEIR VERIFICATION DURING 1427-28 [CA. 2006-07] IN THE REGIONS OF THE KINGDOM ACCORDING TO METHOD AND MEDIUM OF EXECUTION BY THE COMMITTEES, CENTERS, AND FIELD WORKERS

Regions	Cases Referred to Specialists			Offences Resulting in Arrest			Total Incidents	Ratio of Total	Total Persons	Total Incidents	Change from Prev. Yr.	No. of Comm. & Centers		No. of Field Officers			Means of Discipline by Field Officers			Means of Discipline by Comm. & Center		
	No. of Cases	Ratio	No. of Persons	No. of Offences	Ratio	No. of Persons	in Rep. Yr.	Total in Rep. Yr.	in Rep. Yr.	Prev. Yr.	Yr.	Rep. Yr.	Prev. Yr.	Rep. Yr.	Prev. Yr.	Ratio of Change	Rep. Yr.	Prev. Yr.	Ratio of Change	Rep. Yr.	Prev. Yr.	Ratio of Change
al-Riyāḍ	9240	14%	18943	57300	86%	58300	67540	22%	77243	105085	-36%	117	117	1002	1031	-3%	67	102	-34%	577	898	-39%
Makkah	5565	7%	10125	78270	93%	78270	83835	28%	88395	114844	-27%	81	81	541	537	1%	155	214	-28%	1035	1418	-27%
al-Maḍīnah	2408	15%	3545	13256	85%	13256	15664	5%	16801	22950	-32%	26	26	185	174	1%	85	132	-36%	602	883	-32%
al-Qaṣīm	471	5%	795	8277	95%	8277	8748	3%	9072	12574	-30%	40	40	313	304	3%	28	41	-32%	219	314	-30%
al-Shirqīyah	1095	2%	1882	51294	98%	51294	52389	17%	53176	26197	-16%	36	36	258	257	0%	203	242	-16%	1455	1728	-16%
ʿAsīr	538	3%	947	15809	97%	15805	16347	5%	16752	21507	-24%	53	53	246	236	4%	66	91	-27%	308	406	-24%
Tabūk	2407	14%	5989	14708	86%	14708	17115	6%	20697	24097	-29%	10	10	75	78	-4%	228	309	-26%	1712	2410	-29%
Ḥā'il	247	2%	345	13091	98%	13091	13338	4%	13436	14017	-5%	27	27	152	150	1%	88	93	-6%	494	519	-5%
al-Ḥudūd S.	63	2%	96	4073	98%	4073	4136	1%	4169	6924	-40%	10	10	63	61	3%	66	114	-42%	414	692	-40%
Jāzan	1065	13%	2360	7378	87%	7378	8443	3%	9738	11917	-29%	24	24	150	144	4%	56	83	-32%	352	497	-29%
Najrān	463	8%	740	5582	92%	5582	6045	2%	6322	8468	-29%	11	11	52	54	-4%	116	157	-36%	550	770	-29%
al-Bāḥah	268	8%	569	3199	92%	3199	3467	1%	3768	5712	-39%	18	18	84	95	-12%	41	60	-31%	193	317	-39%
al-Jūf	311	8%	687	3505	92%	3505	3816	1%	4192	6464	-41%	8	8	57	57	0%	67	113	-41%	477	808	-41%
Total	24141	8%	47023	276742	92%	276738	300883	100%	323761	416756	-28%	461	461	3178	3178	0%	95	141	-28%	653	904	-28%

Source: *al-Taqrīr al-Sanawī lil-Injāzāt, 1427-28*, p. 97.

TABLE 12: COMPARISON OF INCIDENTS (CASES REFERRED TO SPECIALISTS, OFFENCES RESULTING IN ARREST)
COMPLETED BY OFFICERS BETWEEN 1417-1428 [CA. 1986-2007], ACCORDING TO TYPE OF INCIDENT

Year	Creed	Worship	Morality	Intoxicants	Narcotics	Publications	Commercial Stores	Public Manners	Other	Total
1417	220	72131	16624	2112	145	1632	6878	6095	4373	110210
1418	509	123868	23098	2898	202	2101	8107	10189	7787	178759
1419	608	180759	34169	2901	262	3273	8913	10318	4692	245905
1420	863	241872	41890	2722	490	4222	8983	13842	6107	320991
1421	896	238024	41759	3008	349	2678	9223	16058	3501	315496
1422	527	243670	41095	3237	493	2190	10388	21367	4593	327612
1423/24	2515	297250	45004	3366	785	3093	9423	15191	6004	382631
1424/25	647	277963	48603	5708	1473	6128	9945	23894	9983	384344
1425/26	444	302825	45709	3379	810	3533	5030	20500	7887	390117
1426/27	455	318986	49745	3009	655	2789	6658	26455	8004	416756
1427/28	585	230710	34826	1723	322	1693	5636	20144	5244	300883
Ratio of Total	0.20%	76.70%	11.60%	0.60%	0.10%	0.60%	1.90%	6.70%	1.70%	100%
Change from Prev. Yr.	29%	-28%	-30%	-43%	-51%	-39%	-15%	-24%	-34%	-28%

Source: *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28, p. 111.

TABLE 13: COMPARISON OF INCIDENTS (CASES REFERRED TO SPECIALISTS, OFFENCES RESULTING IN ARREST) COMPLETED BY OFFICERS BETWEEN 1418-1428 [CA. 1986-2007], ACCORDING TO BRANCHES OF THE PRESIDENCY

Year	al-Rīyāḍ	Makkah	Madīnah	al-Qaṣīm	al-Shirqīyah	‘Asīr	Tabūk	Ḥa’īl	al-Shamāfiyah	Jāzān	Najrān	al-Bāḥah	al-Jūf	Total
1418	22272	46061	10873	6511	32767	19801	11204	5030	5684	8504	3871	2936	3245	178759
1419	79858	45445	15040	5335	34070	22879	13912	4876	5725	6695	6676	3040	2334	245905
1420	143691	52078	18841	4521	38657	21135	9358	5395	6346	9769	5932	4027	1241	320991
1421	132430	63646	15914	5915	40760	18976	8521	5040	6189	7511	3506	4282	2806	315496
1422	125536	61023	25601	5628	37962	19487	12110	7641	6555	11281	4928	4784	5076	327612
1423/24	137889	98102	13015	12176	23553	22802	22616	11635	6776	19818	4244	4441	5564	382631
1424/25	146627	103125	12181	6910	29497	25181	17857	7658	6194	11839	4463	6673	6139	384344
1425/26	113001	99213	22814	10586	56827	25596	15678	9041	5617	10004	9505	5560	6675	390117
1426/27	105085	114844	22950	12574	62197	21507	24097	14017	6924	11917	8468	5712	6464	416756
1427/28	67540	83835	15664	8748	52389	16347	17115	13338	4136	8443	6045	3467	3816	300883
Ratio of Total	22.45%	27.86%	5.21%	2.91%	17.41%	5.43%	5.69%	4.43%	1.37%	2.81%	2.01%	1.15%	1.27%	100%
Change from Last Yr.	-36%	-27%	-32%	-30%	-16%	-24%	-29%	-5%	-40%	-29%	-29%	-39%	-41%	-28%

Source: *al-Taqrīr al-Sanawī lil-Injāzāt*, 1427-28, p. 112.

Appendix 1: *Nizām* of the Committee for the Promotion of Virtue and the Prevention of Vice⁷⁴¹

Section 1: Formation of the General Presidency of the Committees for the Promotion of Virtue and Prevention of Vice:

Article 1: The General Presidency of the Committee for the Promotion of Virtue and Prevention of Vice is an independent organization, linked directly to the President of Council of Ministers, and all of the Committees for the Promotion of Virtue and Prevention of Vice are subsumed as organs within this organization, or those which will develop in it.

Article 2: The General President of the Committee is appointed to service at the rank of minister, by royal decree. Two deputies are associated to him, and up to fifteen others may be appointed to serve in this capacity; they shall end their service by a decision from the Council of Ministers. Numerous inspectors, investigators, officers, and members are attached to the Committee.

Article 3: The Committee's branches shall exist in all regions for the promotion of virtue and prevention of vice, the formation of which occurs by decision of the General President, including the appointment of a General Manager and Assistant General Manager, and his deputation if he so requires, or appointment when the position is vacant. Numerous members and officers are subordinate to him, i.e., administrators and assistants, and through him numerous centers are opened, according to need, in cities and villages.

Article 4: The General Presidency of the Committee for the Promotion of Virtue and Prevention of Vice is formed from amongst Committee members; legal investigators assume the following responsibilities:

- A. Investigation in cases of unlawful offences pertaining particularly to the Sharī'ah courts.
- B. Moral cases and cases of accusation and settlement, the type of punishment for which is: incarceration, rebuke, and corporal discipline by lashing, delimited by a maximum of fifteen lashes, or punishment by imprisonment for a maximum period of three days.
- C. (i) Administering lashing and imprisonment in regional centers and correctional facilities, (ii) with consent of the regional Prince.

⁷⁴¹ Royal Decree no. 37/mīm (26/10/1400); "Nizām Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Jarīdat Umm al-Qurā* 2853 (17/3/1401).

Consent may be granted to or withheld from the Committee, in terms of administering corporal punishment or incarcerating offenders. But, if the Prince decides that further deliberation is required for a case, then it must be submitted to further legal proceedings; after a judge's ruling upon the case, it will be returned to the Committee for the enforcement of punishment, in the event of a guilty verdict.

Section 2: Powers of the General Presidency:

Article 5: The General President of the Committee for the Promotion of Virtue and Prevention of Vice is the direct and final representative for these Committees, and he is directly linked to the President of the Council of Ministers, and through this connection derives the powers in his ministry.

Article 6: It is for the General President of the Committee for the Promotion of Virtue and Prevention of Vice to consider requests from regional princes for the referral of cases to Shari'ah courts.

Section 3: Appointment and Promotion of Members and Officers of the Committees and Their Discipline:

Article 7: The ultimate choice of a President, members of the Committee for the Promotion of Virtue and Prevention of Vice, inspectors and investigators, presidents of regional divisions, supervisors, and assistants for the procurement of practical and appropriate equipment and signs, shall be based upon good character and purity of conduct, for a provisional term delimited by the Executive Bylaws, which should be issued by the General President in agreement with the President of the General Council for Service of the City.

Article 8: With respect to the state of the Committee's service to cities, its assessment shall be based upon the two following conditions:

- A. Its reputation and judgment shall be based upon its control of crime.
- B. Evaluations shall be founded in relation to its reputation and its judgment.

Section 4: Obligations of the Committee in Cities and Villages:

Article 9: The most important of the obligations of the Committee for the Promotion of Virtue and Prevention of Vice include guiding people, admonishing them to follow religious obligations defined in the Islamic Shari'ah, and instructing people upon its rules; the forbiddance of vice and violations of the Shari'ah, or the following of customs and traditions of misdeed or reprehensible innovation, in a way

that entirely adheres to procedure. In so doing, the objective of effective punishment, as detailed in this *Nizām*, is pacification.

Article 10: The Committees are obliged to perform the promotion of virtue and the prevention of vice by the decisions and binding authority issuing forth from the Book of God, the Sunnah of the Messenger of God, the imitation of his biography—Peace and Blessing of God be upon him—and his Rightly Guided Caliphate after him. The reformed bylaws circumscribe obligations and prohibitions, methods of repudiation, and the employment of people who are best suited to apply the principles of the Shari‘ah through social reform.

Article 11: The Committee of the Promotion of Virtue and Prevention of Vice administers the discipline upon perpetrators or culprits, or those negligent of obligations of the Islamic Shari‘ah, and their investigation; participation in the representative investigation is through legal authorization of a prince. Important matters are delimited by agreement between the Minister of the Interior and the General President of the Committee for the Promotion of Virtue and Prevention of Vice.

Article 12: The Committee has the legally authorized right to participate in the censorship of that which harms creed, behavior or public manners; it is within the Committee's justified mandate to participate in the censorship of public directives, educational initiative, and prohibitions, based on these grounds.

Article 13: Subsidiary centers of the Committee for the Promotion of Virtue and Prevention of Vice are invested with the control of punishment on behalf of the President of the Committee, who may deputize them for comprehensive investigation.

Article 14: A representative from the Committee for the Promotion of Virtue and Prevention of Vice must participate in the investigation of cases which are connected to the competence of the Committee; its control is completed by known security forces, or Princes. The promulgation of rule in cases which are connected to the competence of the Committee requires the participation of a representative from this Committee in the execution of punishment.

Article 15: The Committee for the Promotion of Virtue and Prevention of Vice assumes competence over cases which are connected to its duties, and, when necessary, the repetition of investigation; in so doing, it must abide by rules stipulating the terms of participation for a legal representative of the authorized Prince in investigations.

Article 16: Shari‘ah courts must direct Committees for the Promotion of Virtue and the Prevention of Vice in cases which pertain to it from that Committee, for the enforcement of its prosecution.

Article 17: Replenishment of Committees for the Promotion of Virtue and Prevention of Vice with adequate numbers of men from the Police, and the delimitation of their movement and performance of their duties within the bounds of the Committee, is through agreement between the Minister of the Interior and the General Presidency of the Committee for the Promotion of Virtue and Prevention of Vice.

Article 18: It is incumbent upon government agencies and different specialists to cooperate with the Committee for the Promotion of Virtue and Prevention of Vice, in order to implement this *Nizām*.

Article 19: The General President of the Committee for the Promotion of Virtue and Prevention of Vice governs this *Nizām* with the Minister of the Interior.

Article 20: This *Nizām* precludes any state of conflict with its laws.

Article 21: This *Nizām* operates in consideration of its historical publication in the Official Newspaper.

Appendix 2: The Executive Bylaws for the Committee of the Promotion of Virtue and Prevention of Vices⁷⁴²

Chapter 1: Duties of the Committee:

Article 1: It is incumbent upon members of the Committee of the Promotion of Virtue and Prevention of Vices—to perform duties according to the condition of the ninth article of the *Nizām* of the Committee, promulgated by Royal Decree number 37/mīm (26/10/1400), (the importance of which lies in guiding people, admonishing them to follow religious obligations defined in the Islamic Shari‘ah, and leading people in its direction; as such, this includes the forbiddance of vice, violations of the Shari‘ah, or the following of customs and traditions of misdeed or reprehensible innovation), to be elaborated by the following:

Firstly—Admonishing people to adhere to the pillars of orthodox religion: prayer, charity, fasting, and pilgrimage; the display of noble manners; offering invitation to the benefits of legally determinate good deeds, such as honesty, good manners, commitment to faith, acting with integrity, respecting parents, expressing compassion and respecting the rights of the neighbor, charity for the poor and needy, helping the weak, hospitality, and remembrance of God by recalling the Day of Judgment. Indeed, “it is from pious work and from it alone, and in relation to its performance.”

Secondly—Prayer is of the pillars of the religion, and is their leader; members of the Committee must police its performance during legally delimited times in mosques, and admonish people confidently to respond to their duties; they must enforce the closure of shops, and prohibit transactions during the times of its performance.

Thirdly—Patrol of public markets, streets, parks, and other public places, preventing the occurrence of the following illegal vices:

1. Promiscuity and wanton public displays in violation of the Shari‘ah.
2. Imitation of the opposite gender.
3. Exposure of men to women by speech or deed.
4. Overt displays of invidious shame, or unbecoming manners.
5. Operating of a radio, television, recorders, or the likes thereof, close to mosques or in such a way as to throw worshippers into confusion.

⁷⁴² Decision of the General President of the Committee for the Promotion of Virtue and Prevention of Vice no. 2740 (24/12/1407); "al-Lā'ihah al-Tanfidihiyah li-Nizām Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar," *Jarīdat Umm al-Qurā* 3203 (30/7/1408).

6. Exhibiting un-Islamic beliefs or confessional rituals, or exhibiting disregard for the beliefs of Islam and its rules.
7. Exposing or selling pictures, books, or musical recordings, which are Islamically inappropriate, exhibit disregard for Islamic belief, or participation with parties involved in such an offence.
8. Exposing pictures of (human) models, licentiousness, or representations of un-Islamic confessional rites, such as the Crucifix, Star of David, a picture of the Buddha, and so forth.
9. Manufacturing intoxicants and their merchandizing, or participating in their trafficking with involved parties.
10. Soliciting or inviting the perpetration of obscene acts, like fornication, sodomy and gambling, or the administration of houses or places for the perpetration of vices and obscenities.
11. (Religiously) innovative phenomena such as the glorification of times or places which are legally unstipulated, or ceremonial feasts and innovatory occasions which are un-Islamic.
12. Works of magic and sorcery, and the fraudulent consumption of people's money through such unrighteous means.
13. Modification of scales and measures.
14. Unregulated abattoirs, lacking the Islamic requirements of slaughter.
15. Public disorder and the adornment of women's clothing.

Chapter 2, Section 1: Discipline, Arrest, Investigation, and Interrogation:

Article 2: Members of the Committee must discipline all Islamic vices stipulated upon in Section 1 which they witness, by the authority of this bylaw, and arrest perpetrators; as such, they must discipline all other Islamic sins they witness being perpetrated, or in a state of acclamation by its victim or the general public, arresting the felon upon perpetration. Arrest must also occur if they find the perpetrator in possession of weapons, implements which were employed in the perpetration of crime, things which are derived from its perpetration, or material vestiges indicating its perpetration or its contribution to perpetration.

Article 3: If there was a crime or a sin which is witnessed in a state undemonstrative of vices stipulated upon in Section 1 of these bylaws, competent sides must be alerted for investigation, and it must be submitted to authorized persons through requisite official summons.

Article 4: What appertains to the Committee is learned through reports attached to the vices, legally stipulated upon in Section 1 of these bylaws, which documents the performance of its inspection, gathering information about it, the investigative

proceedings, especially all of that which is not legally prohibitive, or pertaining to public manners, and that which is not injurious to individuals and their rights; there must be proof of all aspects of the investigation, information must be gathered about everything performed in relation to the incident, and the results thereof, in the official report.

Article 5: During their performance, members of the Committee must investigate and gather all information about the accounts of the event's audience, and witnesses with proof thereof, in the official report of investigation.

Article 6: All information received by the Committee is to be recorded in a special register, including confessions, which is to be accomplished in the form of an exact record, the organization of which is determined through the interior bylaw.

Article 7: All information which is received by the Committee unrelated to Islamic vices stipulated upon in Section 1 of these bylaws should remain confidential to competent sides of its investigation; it is unnecessary for members of the Committee to adopt procedures of investigation for it.

Article 8: It is not possible to arrest based upon speculation, given the lack of available, likely and critically reliable proof.

Article 9: In all situations it is necessary that seizures and arrests employ exact procedure, and the affairs decisions and directions related to criminal information, and in exact relation to the rules of Section 18 of the *Nizām* of Public Security issued by Royal Ordinance to the High Council no. 691/3817/8/10, confirmed by Decree no. 3594 (29/3/1329), in conjunction with Article 194 of the *Nizām* of Interior Security Forces, issued by Royal Decree no. 30 (4/12/1384); the bylaw exactly specifies the principles of arrest, temporary incarceration and provisional detention, in relation to the decision of the Minister of the Interior no. 233 (17/1/1404).

Article 10: As such, It is necessary to define all cases of investigation in a specific register, for the center of the Committee, which belongs to the Head of Investigations; it is necessary to include therein a designated entry beginning with the time of the investigation, its cause and the time of its conclusion; the entry must be completed in the register exactly according to the organization determined by the interior bylaw.

Section 2: Investigation:

Article 11: Investigation is to be engaged without the intent to incur aggression, injury, or otherwise, for discipline of the Islamic vice associated with the perpetrator. If and when proof of other criminal matters is determined during the investigation, it is necessary to discipline it, to preserve evidence, and to notify competent sides; if and when the suspect is found in possession of a weapon, he is to be charged by the police and placed under arrest.

Article 12: The investigation of women is to be conducted by means of two women of certifiable integrity; before the investigation, their credibility is to be confirmed by a legal oath of exact formula, based upon ordinance *wāw* from Article 150 of the *Nizām* of Public Security.

Article 13: It is necessary for competence to be employed by members of the Committee for the investigation of residences and similar places for the discipline of Islamic vices which are indicated in the text of Section 1 of these bylaws, or for arrest of those committing it.

Article 14: Investigation of residences is not permissible except in cases of its systematic pacification; orders, decisions and instructions attached to criminal measures and exact measures of pacification, are to be used, according to the exact measures of pacification referred to in Section 17 of the *Nizām* of Public Security. Implementation of the following is to be respected:

- A. In cases of lack of consent and willingness from the owner of the residence, cases which require speed, or incidents of destruction, drowning, fire, or entry of the victim to a residence, a warrant of investigation is not required, other than a warrant of authoritative reference from key local witnesses or their representative, very important persons present and potential witnesses, or the owner of the residence, one of his relatives, or someone attached to him; this may be satisfactorily obtained from residences of persons of very important status in regions where there is no precinct.
- B. Daytime investigation of residences is standard operating procedure. Entrance is not allowed at night, except if there was a crime witnessed, in a state of obvious perpetration, or if circumstances warrant such urgency; for instance, the fear that the object of discipline will disappear, or escape of the wanted person.

Article 15: If there is found in the residence proof related to the investigation women, and their investigation was not the intended purpose of the investigation,

then do not investigate them; the leader of the investigation must order them to remain concealed, and depart from the place so as not to harm the result and interests of the investigation.

Article 16: If persons are found inside the place of investigation demonstrating culpability, the leader of the investigation is required to place them in custody, until the proceedings of the investigation are concluded; if a serious connection is established between one of them to the concealment of something pivotal, his search and interrogation is required.

Article 17: The Committee is to perform pacification during investigation of appropriate cases attached to vices of the Sharī‘ah, which are specified in Section 1 of these bylaws.

Article 18: In conditions detailed in Section 1 of these bylaws, which require the initiative of official powers, the Committee is to participate by a representative commissioned for investigation.

Article 19: If the competent auditor observes a repetition of investigation which was awarded to the Committee, for which the Committee is competent, he is to intervene with a representative of the Prince.

Article 20: It is necessary for a representative to participate with the Committee for the investigation of cases involving the pacification of Islamic vices described in Section 1 of these bylaws, which appear to be within the expertise of security forces, or control of the Prince, when his invitation is required.

Article 21: In other cases of crimes and vices witnessed in a state of obvious perpetration, it is necessary to investigate within the limits defined in Section 1 with expert parties, competent for exactly that which is defined in these bylaws, for investigation in cities having more than one center for the Committee within the Presidential Administration. A branch center is to appoint an investigator for discipline and arrest, and the investigation of persons by them is restricted to Presidential Centers, ultimately completing the procedures of discipline in order to prevent the dereliction of evidence that enables the enforcement of justice, just as stipulated upon regarding cases within the jurisdiction of the regional Prince.

Article 22: It is necessary that the investigation proceeds according to what is stated by the regulations, ordinances, decisions, and instructions, attached to criminal proceedings, and by competent parties, for that which is related to investigation from the *Nizām* of Public Security; in all cases, proof is required for everything related to

information, interrogations, witnesses, disciplinary proceedings, arrests, and official investigation of cases in violation of the exact requirements of security procedures.

Article 23: It is necessary to halt proceedings in cases when the rules previously mentioned are not formally respected, if not performed sequentially without omission, if permission was not obtained causing a void in the sequence of evidence, if not performed in accordance with the sequence mentioned by the official procedures, or if there were no witnesses, or no proof was obtained immediately after its occurrence.

Article 24: It is necessary to affirm in the following within all investigative reports:

1. Time, day, date, place of incident, and the procedure performed.
2. Name of investigator, or all investigators, their rank, and their positions.
3. Order of authority in the performance of investigation or penal procedure, just as it is required to affirm in all reports the time, day, and date of its occurrence, the causes which premised the conclusion of the investigation, and the form of resolution which was defined.

Article 25: It is necessary that the investigator relates everything attached to persons introduced by his account, their identities, and the identification of situations which involved unannounced threats to public security, just as it is necessary for the investigator to include the particulars of its proceedings, everything attached to the involved detective, account of all pertinent acts or speech during the investigation and that which has been illuminated by it, everything witnessed or heard, and everything remembered about measures adopted in the interrogation, arrest, and investigation.

Article 26: It is necessary for the investigator to include evidence of the manner in which the method of investigation was performed, or the arrest and interrogation at any rate, and the manner of performance in the places inspected, that which was witnessed in it pertaining to characteristics and persons, evidence derived thereof, and any casualties. Particular aspects of investigation are required, as follows:

- A. Proof of accurate characterization, such as characterizing the manner of interrogation, or the method of arrest, the nature of obtained evidence and its characteristics and conditions, and everything observed and otherwise determined, measured, weighed, or sized, through elucidating the manner of its investigation, the place or subject which it was found on or in, from whom it was seized, and what it determined, or its respective context.

- B. Description of persons arrested, or those who were found at the place where the vice occurred, or at the place where the investigation was conducted, the condition they were all found in; that which was found on their person, relating to evidence, or identifying characteristics, and the preservation and inspection thereof; that which was observed of the actions or sayings of the accused, and anything found with any of the accused pertaining to their criminal search, or that considered to be associated with the constituent characteristics of the crime.
- C. Proof of characteristics and features which appeared from inspection of the place where the incident was perpetrated, or from inspection of any other place demonstrating proof of concealment, which was attributed to perpetrators and their belongings, including reports of the moment of perpetration.
- D. Samples taken from accurately completed procedures, and transmitted to competent technical experts before perishing, for its analysis or inspection, and technical reports which are performed by experts on the results of their work.
- E. Related persons which witnessed all the incidence of Islamic vice, or some of the constituent actions, or those present during its disciplining; the arrest of accused persons as a result of the inspection, or the seizure of implements which were employed by the perpetrator, or things acquired from the investigation, with records of witnesses, appended with their signatures, without changes; all evidence obtained from the investigation, the discussion of particulars, and the ultimate conclusions.

Article 27: In addition to the preceding, it is necessary to document the findings of investigation concerning supposed sayings about the incident, and, accordingly, what was revealed about it. Likewise, it is necessary to prove all aspects of veracity surrounding evidence and the testimony of witnesses, for documented proof of any procedure adopted within the investigation; all required proofs must be documented in the record of investigation.

Article 28: If statements are related to the perpetration of Islamic vice from amongst those stipulated upon in Section 1 of these bylaws, and it may be classified as a major crime, there is a referential precedent authorizing detention—the pertinent rule of the of the Shari‘ah requires accredited confession; if the crime confessed to was not an Islamic vice stipulated upon in Section 1 of these bylaws, it is necessary to refer deliberation to competent sides for investigation.

Article 29: It is necessary that the reporting officer signs all reports of investigation, or officers which performed as their assistants, or those who participated in the disciplinary proceedings, interrogation, or inspection. Likewise, signatures are required to acknowledge seizure of evidence or indicators, or its inspection; those who participated in detailed examination or acquired evidence from probative interrogation, and witnesses of the interrogation, must sign corresponding reports, along with their comments, cross-examination, and any postulation upon the interrogation. Accreditation must be established by the impression of the station's seal upon the requisition.

Section 3: Arrests:

Article 30: Arrests which occur unrelated to the vice of the subject case, or which do not benefit the investigation, will not be granted immediate admission, nor will related seizures be considered lawful, nor should it be considered criminal intervention within the disciplinary report for the designated authority by the investigator of that crime.

Article 31: If and when there are seizures of money related to a case, or jewelry, or valuable things – the responsibility of its deposition is assumed by authorized sides in the investigation, thereafter placing the jewelry, or valuable things under appropriate guard, and documenting proof of that in the investigative report.

Article 32: Something seized other than money must be protected in proportion to its value and nature, and sealed for protection with red wax by the stamp of the authorized investigating party. Protection must be ascertained for its statement of identification, identifying its transaction number, the name of he who was disciplined on account of it, the date of the discipline, its location, and its cause; signatures are required of those responsible for the declarations, just as proof and confirmation thereof is required in the report of investigation.

Article 33: He who is responsible for administering discipline upon an incident is required to take statements about the location of seizures from competent sides, proof of which must be included in the report of investigation.

Article 34: If and when it is proved that the seizures have been exposed to damage, or that the expense of its maintenance is extravagant and there is no commensurability with its value – consecutive with agreement of its owner, or he who has right to its possession, its appraisal is to be left with sides of the investigation who possess responsibility of decision in the case; if and when

agreement of its owner, or he who has right to its possession is reached, it is to be sold, with the permission of the Sharī'ah judge.

Article 35: Remaining things which authorized sides decide to seize are to be detained insofar as it is necessary for the investigation or for the period of the case, while observing the preceding requirements surrounding the defense of its determination by the administering judge.

Article 36: During the period of the case, if and when judgment is not issued upon seized things, and if a decision was not promulgated by sides authorized for its confiscation, it must be returned to whom it was seized from, or who is entitled to it.

Article 37: The interior bylaws of the Committee define the correct method required for the preservation of seizures, the organization of work surrounding it, and records required for the seizure, the procedural method of recording it, and who is responsible for it, while not transgressing regulations, and decisions which are related to it as such.

Section 4: Immediate Disciplinary Punishments, Provisional Detention and Seizures

Part 1: Account of Immediate Disciplinary Punishments:

Article 38: Upon immediate completion of a disciplinary action, or arresting the perpetrator of the related vice, the referral of seizures and the carefully recorded details of the discipline and seizure are required from competent parties for the completion of the investigation.

Article 39: Interrogation of culprits is required from the investigating parties, hearing aspects of their defense within 24 hours after their arrest.

Article 40: If authorized parties entered into the investigation of an incident not including a transgression, or a crime is not determined, discharge of the investigation is to be abandoned or completed by taking account of its circumstances. Authorized agreement of the investigating parties must be documented, or its consideration instructed; if it is established that the incident is not from amongst the vices of the Sharī'ah which appertain to the Committee, as mentioned in Section 1 of the bylaws, or that they are from amongst the vices of the Sharī'ah whose investigation appertains to other, specifically designated parties, authorized approval is required for the referral of dealings to competent parties.

Article 41: If there was an incident committed from amongst the cases moral infraction, or cases of accusation – it is necessary that competent investigating parties immediately refer it to the Commission, as referred to by Article 4 of the *Nizām* of the Committee, having jurisdiction in the consideration of this type of case.

Article 42: The Commission formerly referred to, must consider cases immediately, adopting decisions which allow it to appropriately enforce the rules of the *Nizām* and the articles of these bylaws.

Article 43: If the judgment of the Commission formerly referred to lacks a claim of crimination within its decision, the case in question is to be dismissed immediately.

Article 44: If judgment of the Commission formerly referred to authorizes correctional punishment or undertakes to sentence the offender, it is to enforce that immediately.

Article 45: If judgment of the Commission formerly referred to is punishment of the offender by lashing greater than 15 lashes, or by extending his custody more than 3 days, proceedings are immediately delegated to the regional Prince for agreement upon this decision; enforcement of the decision referred to should not occur except after agreement of the regional Prince, and punishment of the offender, from amongst the previous two examples, may only be enforced once.

Article 46: It rests upon the regional Prince to immediately institute proceedings for the above mentioned request, and promulgate a decision, which includes:

- A. Either agreement upon what was determined by the Commission, regarding lashing or imprisonment, returning to the proceedings immediately for applying what was decided in the case, then discharge of the prisoner accordingly;
- B. Or immediate deferral of proceedings for further legal determination thereupon and, henceforth, a return of proceedings to the Committee for application of the legal decision;
- C. Or referral of proceedings to specialist parties for completion of the investigation.

Part 2: Provisional Detention:

Article 47: In the cases and accusations previously referred to, if a punishment is enacted within an investigation during the 24 hours following the initial arrest of the charged person, it is not allowed for investigating parties to issue an order to provisionally detain him henceforth in excess of three days, which is to be established by written order in the report of investigation, and is also to be recorded in the special register for detention in the Committee's center in charge of the investigation.

Part 3: Protective Custody

Article 48: As previously mentioned in the end of the above section on "Provisional Detention," it is necessary that investigations of the Committee be conducted according to the rules stipulated upon in the previously indicated principles of arrest, regarding particular aspects referred to in Articles 8-14, and following the proceeding measures:

Firstly: If it was not a vice from amongst the major crimes of the Sharī'ah, it necessitates:

- A. Referral of seizures from it to the designated authority, which are to remain in his custody;
- B. Discharge of the arrested party to the acting sponsor, on the condition that there is a place of continuous and known residence for him in the Kingdom, and, if necessary, the completion of the investigation after the end of a period of three days following his arrest.

Secondly: If it was a vice from amongst the major crimes of the Sharī'ah, before the end of the period of provisional detention, it necessitates:

- A. Issuing an indictment of the prisoner and a warrant for his protective custody, and handing him over to a detention facility or a prison;
- B. Submission of proceedings to an administering judge immediately after the completion of investigation. It is not possible to issue a warrant of arrest referring to the former, except a specialized one based upon the claim of arrest with proof of motive for protective custody in the following instances:

1. If he is arrested red-handed in perpetrating a crime, which was referred to by Article 2 of these bylaws.
2. If the perpetration of the crime is legally certified to be willfully putative.
3. If it is indicated by the claim of legal evidence, or reasonable evidence of the likelihood of crimination.
4. If his remaining free constitutes a danger to his life or the lives of others, or risks the performance of an offence to public security, or will likely create a disturbance or confusion between people.
5. If he does not have a place of permanent, known residence in the Kingdom, or he was apprehended escaping, or it will have an adverse effect upon the course of the investigation.

Thirdly—There is to be a warrant of protective custody issued from the agent of investigation, as referred to in the previous section; it shall be active for a period not exceeding 21 days from the date of arrest upon whom the claim is issued.

Fourthly—If excused from completing the investigation before the formerly indicated period of 21 days, it is required of investigating parties to submit, less than three days before the date of that period's completion, a summary about the case and its proof, including evidence available before the arrest, details about that which required his protective custody, aspects of deficiency in the investigation, issues which prevented its completion, and matters which are reckoned by its investigating parties to be incomplete and any provisional request for the authorization of continued detention of the prisoner during that period, without exceeding 30 days from the date of the completion of the 21 days from the first arrest warrant.

Fifthly—The issue in the previous section is to be referred to the regional Prince; the regional Prince will not authorize it through subordinate Princes in his region.

Sixthly—It is necessary to alert the detention facility or prison, which is used for protective custody, by date and warrant number, to signal a request of continued detention.

Seventhly—Continuing detention in protective custody, along with the continuation of investigative parties for the case's completion, shall be enforced by incoming directives from the Prince as to its requisites; it is incumbent upon investigating parties to alert the detention facility or prison which facilitates protective custody, of the Prince's decision about the continuation of his imprisonment or discharging of his release, and the transmission of pertinent details of the case.

Eighthly—Under all conditions it is required of investigating parties to submit proceedings to the presiding judge before a period of 30 days elapses, following the

21 days delimitation of the first warrant of arrest, and that in the report to the Prince; the warrant (of the Regional Prince) is to be considered in light of these bylaws.

Part 4: In the Detention of Women, Children and Girls, and Investigation of them:

Article 49: It is not permissible to perform interrogation upon women, except in the presence of their guardian, or by establishing its need upon requisites of instruction, for seizures, or for the sake of public security.

Article 50: It is strictly impermissible to detain women in centers of the Committee except during the time of performing the investigation; besides that, they are to be evacuated from the office of detention in a special fashion after sunset. It is not permissible to enforce their punishment of imprisonment in cases of moral violations, or in cases of consumption referred to in Article 4 of the *Nizām* of the Committee, and those which pertain to the rights of women, except in prisons especially for women.

Article 51: Do not abandon the rules of these bylaws in favour of exceptional rules for children, except according to the decision of the council of Ministers no. 611 (13/5/1395), which settled the role of the bylaws for the social regulation of children through warrants, and the decision of the Council of Ministers no. 868 (19/7/1395), which settled upon the establishment of a special form custody for women and girls under the age of 30 years, comprised of the following requirements:

- A. Admission to a facility of social custody immediately upon arrest, and admission of girls to a girls' institution.
- B. Warrants are not required for investigation of incidents involving a child or girl, except in cases of detention in a facility of social custody, or in an institution within which the responsible official is present.
- C. Running a trial for children or girls inside the facility of detention or institution, by a known, competent judge.
- D. The execution of ruled punishments inside the detention facility or institution, exactly according to what is stipulated by the special bylaw in all respects.

Part 5: Required Conditions for the Discharge of Detainees and their Rights in Complaints about Matters of Detention:

Article 52: Do not abandon the rules of these bylaws, as the rules of the bylaws are the principles of detention, as previously indicated. It is necessary to release discharge of custody in cases stipulated by Articles 16-18. In such cases an order to investigating parties of the Committee to remand custody is the rightful claim of the Prince; he may demand of the investigating parties of the Committee continue protective custody after the completion of the valid period of the warrant of detention, or after the completion of a period of exactly 30 days, according to the rules stipulated by Articles 19-21 of the bylaws concerning the principles of arrest.

Section 5: Police Working with the Committee:

Article 53: An adequate number of police agents are required to work with the Committee and its different centers; the General President of the Committee and the Director of Public Security determine the relationship, training and arrangement between them.

Article 54: The allocation of work and the determination of its time and place amongst individual police agents working with the Committee must be determined by institutional specialists in the Committee, to be accomplished without conflict with Military agencies. It is permissible for them to be licensed by Public Security Forces for arrangements with the Committee.

Article 55: It is permissible for responsible agents in the Committee to request additional forces from the Police, provisionally, if that requisition is necessary; it is incumbent upon the Director of Police to cooperate accordingly with competent parties.

Article 56: Through the promulgation of interior bylaw (1), the General President of the Committee for the Promotion of Virtue and Prevention of Vice hereby organizes work in the Committee and its different centers, determines its responsibilities and particular aspects of the competencies referred to in these bylaws, determines the manner of enforcing punishments referred to in Article 4 of the *Nizām* of the Committee through its centers, determines places of provisional detention pending investigation, and may not interfere with these bylaws.

Appendix 3: Articles of the *Nizām* of Penal Procedures concerning field work of the Committee for the Promotion of Virtue and Prevention of Vice

The *Nizām* of Penal Procedures⁷⁴³ was issued and actively applied from 18/1/1423 (1/4/2002), whereupon the following were determined from the most important articles concerning work associated with the Committee for the Promotion of Virtue and Prevention of Vice through their qualifications as officers in accordance with that which appears in the 26th section of the *Nizām*, in the following manner:

Article 2: No person shall be arrested, searched, detained, or imprisoned except in cases specified by the law. Detention or imprisonment shall be carried out only in the places designated for such purposes and shall be for the period prescribed by the competent authority.

A person under arrest shall not be subjected to any bodily or moral harm. Similarly, he shall not be subjected to any torture or degrading treatment.

Article 3: No penal punishment shall be imposed on any person except in connection with a forbidden and punishable act, whether under Shari‘ah principles or under statutory laws, and after the person has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shari‘ah principles.

Article 15: All public law enforcement persons shall implement the orders of judicial entities entered pursuant to this Law, and may use any appropriate means thereof.

Article 24: Search for and arrest of criminal offenders and collection of information and evidence necessary for the investigation and indictment shall be undertaken by criminal investigation officers.

Article 25: Criminal investigation officers shall, in conducting their duties as provided for in this Law, be subject to the supervision of the Bureau of Investigation and Prosecution. This Bureau may ask the competent authority to consider any violation or omission by any such officer and may request that disciplinary action be taken against him, without prejudice to the right to initiate criminal prosecution.

Article 26: The proceedings relating to criminal investigation shall be conducted by the following persons, each within his jurisdiction:

1. Members of the Bureau of Investigation and Prosecution within their jurisdiction.
2. Directors of police and their assistants in the various provinces, counties, and districts.

⁷⁴³ Royal Decree No. (39/M) 28/7/1422; "*Nizām al-Ijrā‘āt al-Jazā‘iyah*," *Jarīdat Umm al-Qura* 3867 (17/8/1422).

3. Public security officers, secret service officers, passport officers, intelligence officers, civil defence officers, prison directors and officers, border guard officers, special security forces officers, National Guard officers and military officers, each in accordance with their specified duties with respect to crimes committed within their respective jurisdictions.
4. Heads of counties and chiefs of districts.
5. Captains of Saudi ships and airplanes, with respect to crimes committed on board.
6. Heads of centers of the Bureau for the Promotion of Virtue and Prevention of Vice, with respect to matters falling within their jurisdiction.
7. Employees and other individuals who have powers of criminal investigation pursuant to special regulations.
8. Entities, commissions and other persons who have been assigned to conduct an investigation pursuant to the regulations.

Article 27: Criminal investigation officers shall, each within his jurisdiction, accept notifications and complaints communicated to them with respect to all crimes, conduct the investigation, collect relevant information in the form of records that shall be signed by them, summarize and date the same in a special register, and promptly notify the Bureau of Investigation and Prosecution. The criminal investigation officers shall move to the crime scene to maintain its integrity and seize all that may be relevant to the crime, reserve evidence, and take whatever action required under the circumstances. He shall enter these matters in the special register.

Article 28: During the process of collection of evidence, the criminal investigation officer shall hear statements of those who may possess information with respect to facts and perpetrators of crimes, question any suspect, and enter the same in the relevant records. They may seek the assistance of experts, including physicians, and seek their advice in writing.

Article 29: The complaint filed by the person harmed because of a crime shall be considered as a claim of private right of action, unless he expressly waives such right before the Investigator. The Investigator shall enter any such waiver into the record and shall have it witnessed. In case of defamation and *qīṣāṣ*, such waiver shall be certified by the competent court.

Article 30: A crime shall be deemed to be *flagrante delecto* when it is actually being committed, or shortly thereafter. It shall also be deemed *flagrante delecto* if the victim is found pursuing another person or that person is being pursued by a shouting crowd subsequent to the commission of the crime, or when the perpetrator is found a short time after commission in possession of tools, weapons, property, equipment, or other things indicative that he is the perpetrator or an accomplice, or if it found in his person at the time some indications or signs pointing to that.

Article 31: In case of *flagrante delecto*, the criminal investigation officer shall promptly move to the scene of the crime to view and preserve material evidence, and note the conditions of the places and people and whatever may serve to determine

the truth. He shall take the testimony of those present or any person in possession of information relevant to the crime and its perpetrator. He shall promptly notify the Bureau of Investigation and Prosecution of his movement to the scene of the crime.

Article 32: In case of *flagrante delecto*, the criminal investigation officer may, upon his arrival at the crime scene, stop whoever is found at the scene from leaving or moving away from that place until the required record is drafted. For that purpose, he may immediately summon any person from whom information relevant to the case can be obtained.

If any person present at the scene fails to obey the order of the criminal investigation officer, or if the person summoned refuses to appear, a note to that effect shall be entered into the record and the violator shall be referred to a competent court to take whatever action deemed necessary.

Article 33: Where a crime is in the process of commission, the criminal investigation officer shall arrest the suspect present at the scene of the crime where there is sufficient evidence for his implication. A record of that shall be made and the Bureau of Investigation and Prosecution shall be immediately notified. In all cases, the person under arrest shall not be detained for more than twenty-four hours, except pursuant to a written order from the Investigator.

If the accused is not present, the criminal investigation officer shall issue an order for his arrest and a note to that effect shall be entered into the record.

Article 34: The criminal investigation officer shall immediately hear the statement by the accused. If the accused fails to establish his innocence, the officer shall, within twenty-four hours, refer him, along with the record of the Investigator who shall within twenty-four hours, interrogate the accused under arrest and shall order either that the accused be detained or released.

Article 35: In cases other than *flagrante delecto*, no person shall be arrested or detained except on the basis of order from the competent authority. Any such person shall be treated decently and shall not be subjected to any bodily or moral harm. He shall also be advised of the reasons of his detention and shall be entitled to communicate with any person of his choice to inform him of his arrest.

Article 36: No person shall be detained or imprisoned except in the places designated for that purpose by Law. The administration of any prison or detention center shall not receive any person except pursuant to an order specifying the reasons and period for such imprisonment duly signed by the competent authority. The accused shall not remain in custody following the expiry of the period specified in that order.

Article 40: The privacy of persons, their dwellings, offices, and vehicles shall be protected. The privacy of a person protects his body, clothes, property, and belongings. The privacy of a dwelling covers any fenced area or any other place enclosed within barriers or intended to be used as a dwelling.

Article 41: A criminal investigation officer may not enter or search any inhabited place except in the cases provided for in the laws, pursuant to a search warrant specifying the reasons for the search, issued by the Bureau of Investigation and Prosecution. However, other dwellings may be searched pursuant to a search warrant, specifying the reasons, issued by the Investigator. If the proprietor or the occupant of a dwelling refuses to allow the criminal investigation officer free access, or resists such entry, he may use all lawful means, as may be required in the circumstances, to enter that dwelling.

A dwelling may be entered in case of a request for help from within, or in case of a demolition, drowning, fire, or the like, or in hot pursuit of a perpetrator.

Article 42: A criminal investigation officer may search the accused where it is lawful to arrest him, which may include his body, clothes, and belongings. If the accused is a female, the search shall be conducted by a female assigned by the criminal investigation officer.

Article 43: In the case of *flagrante delecto*, a criminal investigation officer may search the dwelling of the accused and collect relevant items that may help determine the truth, if there is credible evidence that such items exist there.

Article 44: If it appears from circumstantial evidence during the search of a dwelling of an accused that he, or any other person who has been present therein, is concealing any relevant evidence, the criminal investigation officer shall be entitled to search that person.

Article 45: No search shall be conducted except for the purposes of searching for items relevant to the crime being investigated or for which information is being collected. However, if such search incidentally reveals unlawful material the possession of which is unlawful or any evidence associated with any other crime, the criminal investigation officer shall collect such evidence and a note to that effect shall be entered into the record.

Article 46: A dwelling shall be searched in the presence of its owner or his representative or any adult member of his family residing with him. If no such person is present, the search shall be conducted in the presence of the ‘*Umdah* (Chief) of the quarter or any comparable officer or two witnesses. The owner of the dwelling or his representative may peruse the search warrant and a note to that effect shall be entered into the record.

Article 47: The search record shall include the following:

1. The name of the officer who has conducted the search, his title, date and time of the search.
2. The text of the search warrant or an explanation of the urgency that necessitated the search without a warrant.

3. The names and signatures of the persons who were present at the time of the search.
4. A detailed description of the seized items.
5. Declaration of any action taken during the search and those taken with respect to the seized items.

Article 48: The criminal investigation officer may not open sealed or closed documents found in the dwelling of the accused. A statement to this effect shall be entered into the record and be submitted to the competent Investigator.

Article 49: Before leaving the place of search, items and documents found therein shall be kept in a safe and locked place, tied together whenever possible, and sealed. The date of seizure and a reference to the matter for which the seizure was made shall be recorded on a strip inside the seal.

Article 51: The search shall be conducted during daytime, after sunrise and before sunset in accordance with the powers conferred by law. No access to dwellings during the night shall be allowed except during the commission of a crime.

Article 52: If there is no person other than an accused woman in the dwelling to be searched, the officers carrying out the search shall be accompanied by a woman.

Article 53: Subject to the provisions of Articles 42 and 44, if there are some women in the dwelling, and if the entry of that dwelling is not for the purpose of arresting or searching these women, the officers in charge of such search shall be accompanied by a woman. The women inside the dwelling shall be given time to put on their veils or leave the dwelling and shall be afforded all reasonable assistance that does not negatively affect the search and its results.

Article 54: No person other than the accused and no dwelling other than his shall be searched, except where there are strong indications that such search would help in the investigation.

Article 55: Mail, cables, telephone conversations and other means of communication shall be inviolable and, as such, shall not be perused or surveiled except pursuant to an order stating the reasons thereof and for a limited period as herein provided for.

Article 56: The Director of the Bureau of Investigation and Prosecution may issue an order authorizing seizure of mail, publications, and parcels and surveillance and recording of telephone conversations, if such procedure is deemed useful in determining the truth related to a crime that has actually been committed. Such order shall state the reasons thereof and shall be for a period not exceeding ten days renewable according to the requirements of the investigation.

Article 60: The Investigator and whoever obtains information about the articles and documents seized shall keep the same undisclosed, and shall not make use thereof in any way or otherwise disclose the same to a third party, except in circumstances

required by the law. In case he unlawfully discloses or makes use of the same by whatever means, he shall be held accountable.

Article 65: The Investigator may designate in writing any of the criminal investigation officers to carry out one or more of the investigation proceedings other than the interrogation of the accused. The officer so designated shall enjoy the same powers of the Investigator in such proceedings. If the circumstances of the case warrant that the Investigator act beyond his powers, he may refer the case to an Investigator of the competent department or one of its criminal investigation officers, according to circumstances. This proceeding shall be carried out by the Investigator himself should such procedure be deemed necessary for the investigation.

Article 67: The procedure relating to investigation and the results thereof are deemed confidential which the Investigators and their assistants - clerks, experts, and any other person connected with or participating in the investigation by reason of their occupation or profession - shall not disclose such procedure. The violator shall be held accountable.

Article 95: The Investigator shall hear the statements of the witnesses called by the litigants unless he considers that their testimony would be useless. He may also hear statements from others whom he deems necessary with respect to the facts that may lead to the proof of the crime, its circumstances, and its attribution to the accused or his innocence.

Article 116: Whoever is arrested or detained shall be promptly notified of the reasons for his arrest or detention, and shall be entitled to communicate with any person of his choice, to inform him (of his arrest or detention), provided that such communication is under the supervision of the criminal investigation officer.

Article 148: A person harmed by a crime and his heirs shall, at any time during the proceedings of the case in issue, be entitled to submit a request to the trial court regarding his private right of action regardless of the amount thereof, even though his action has been rejected during the investigation.

Article 153: If a claimant of the private right of action abandons his action in the proceedings initiated before a court handling the criminal case, he may continue the action before that court and shall not be entitled to initiate the action before another court.

Article 154: If the person harmed by the crime files an action for damages with a competent court, and then a criminal action is filed, he may abandon his action before that court and file it with the court hearing the criminal action.

Article 163: If the accused denies the offense of which he is charged, or refuses to respond, the court shall proceed to hear the evidence and take whatever action it deems necessary with respect thereto. It shall interrogate the accused in detail

regarding the evidence and the content of memorandum of the charges. Each of the parties may cross-examine the witnesses called by the other party and discuss its evidence.

Article 164: Each of the litigants may request to call any witnesses and review evidence they may present and request taking a specific action in connection with investigation proceedings. The court may reject such a request if it considers that it is intended for delay, malice, or deception or that granting such a request is not probative.

Article 165: The court may call any witness whenever it concludes that there is a need to hear or cross-examine his statements. It may also hear any person who, on his own accord, appears before the court, if it considers that to be useful in determining the truth.

Article 166: Subject to the *Shari'ah* rules governing the testimony with respect to *ḥadd* cases, a person summoned to testify, pursuant to a judge's order, shall appear before the court at the designated place and time.

Article 167: If it is established that a witness has knowingly given false statements, he shall be punished for the crime of perjury.

Article 191: The invalidity of a certain action shall not affect the validity of the prior actions, nor the subsequent actions, unless they have been based thereon.

Article 217: If a convicted person is sentenced to a term of imprisonment and has already served part of that term while being detained in connection with the case that has been adjudicated, the period of such detention shall be deducted from the term of imprisonment imposed on the accused. An accused person, who has been harmed as a result of malicious accusation or as a result of being detained or imprisoned for a period exceeding the term prescribed for such detention or imprisonment, shall be entitled to compensation.

Article 220:

- a. Judgments imposing death, stoning, or amputation shall only be executed pursuant to a Royal Order to be issued by the King or his authorized representative.
- b. Representatives of the Administrative Governor, the Court, the Bureau of the Promotion of Virtue and Prevention of Vice, and the police shall witness the execution of the judgment involving death, stoning, amputation, or flogging.

Article 224: This law shall repeal any provisions inconsistent therewith.

BIBLIOGRAPHY

Arabic Language Sources

Publications of the Government of Saudi Arabia

‘Ayād, ‘Abd al-Raḥmān. *Aḥmīyat al-‘Ibādah*. al-Rīyāḍ: Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar, n.d.

al-Fāyiz, ‘Abd Allāh ibn Dāwūd. *al-Akhlāq fī al-Islām*. al-Rīyāḍ: Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar, n.d.

al-Jallāl, ‘Abd al-Majīd ibn Muḥammad. *Qirā‘ah fī al-Taqrīr al-Iḥṣā‘ li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar*. al-Rīyāḍ: al-Ri‘āṣah al-‘Ammah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar, 1431.

"al-Lā‘ihah al-Tanfīdhīyah li-Nizām Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar." *Jarīdat Umm al-Qurā* 3203 (30/7/1408).

al-Lajnah al-Dā‘imah lil-Buḥūth al-‘Ilmīyah wa-al-Iftā’. *Fatāwā al-Lajnah al-Dā‘imah lil-Buḥūth al-‘Ilmīyah wa-al-Iftā’*, vol. 1. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 2005.

al-Nizām al-Asāsī lil-Ḥukm. al-Rīyāḍ: al-Markaz al-Waṭanī lil-Wathā‘iq wa-al-Maḥfūzāt al-Sa‘ūdīyah, 1465/2004.

Nizām Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar wa Lā‘ihatihi al-Tanfīdhīyah. al-Rīyāḍ: Maṭābi‘ al-Ḥukūmah al-Amnīyah, 1411.

"Nizām al-Ijrā‘āt al-Jazā‘īyah." *Jarīdat Umm al-Qurā* 3867 (17/8/1422).

"Nizām Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar." *Jarīdat Umm al-Qurā* 2853 (17/3/1401).

"Record no. 9/2/5/1666." *Majmū‘at 1379*. al-Rīyāḍ: Dārat al-Malik ‘Abd al-‘Azīz, n.d.

"Record no. 887." *Wathā‘iq al-‘Arabīyah bi-Muqtanayāt Markaz al-Wathā‘iq wa-al-Maḥfūzāt*. al-Rīyāḍ: Dārat al-Malik ‘Abd al-‘Azīz, n.d.

al-Ri‘āṣah al-‘Ammah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar. *al-Ri‘āṣah al-‘Ammah li-Hay‘at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar: Ta‘rīkhuhā – A‘māluhā*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 1419/1999.

-----, *al-Taqrīr al-Sanawī lil-Injāzāt, 1427-28*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā‘ lil-Nashr, 1428.

- , *al-Ri'āṣah al-‘Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa al-Nahy ‘an al-Munkar, Usus wa Mabādī’: Ta'rīkh wa A'māl*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1431.
- , *Mulakhkhaṣāt al-Buḥūth wa-al-Sīrah al-Dhātīyah lil-Bāḥithīn al-Mushārīkīn fī al-Ḥisbah wa ‘Ināyat al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah, al-Rīyāḍ, 11-12/4/1431*. al-Rīyāḍ: al-Lajnah al-‘Ilmīyah, Markaz al-Buḥūth wa-al-Dirāsāt, 1431.
- , "Bi-Sha'n Manh al-Malik ‘alā al-Amr bi-al-Ma'rūf wa-al-Nahy ‘an al-Munkar" (18/3/2011); available from www.hesba.gov.sa, accessed 18/3/2011.
- , *Kalimāt Sajallahā al-Ta'rīkh* (Far‘ Minṭaqat al-Rīyāḍ, al-‘Alāqāt wa-al-I'lām, 1430/2009).
- al-Sahfī, ‘Abd Allāh ibn Dajīn. *Juhūd al-Ri'āṣah al-‘Āmmah li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy ‘an al-Munkar fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah fī Muḥārabat al-Irhāb*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1429.
- Tawāṣī, J. "Thimār al-Iḥtisāb fī Ma'raḍ al-Kitāb," (5/3/2011): www.hesbah.gov.sa, accessed 5/3/2011.
- Wazīr al-Ta'lim al-‘Ālī. "Wazīr al-Ta'lim al-‘Ālī Yar'ā Itlāq Kursī al-Amīr Sulṭān li-Abḥāth al-Shabāb wa Qaḍāyā al-Ḥisbah fī Jāmi‘at al-Malik ‘Abd al-‘Azīz." 13/01/1431: www.mohe.gov.sa, accessed 30/12/2009.

Other Arabic Language Works

- ‘Abd Allāh, ‘Abd al-Mānī’. *Jarīdat al-Rīyāḍ* (9/3/2011).
- Āl ‘Abd al-Laṭīf, ‘Abd al-‘Azīz. *Nawāqid al-Imān al-Qawfīyah wa-al-‘Amālīyah*. al-Rīyāḍ: Dār al-Waṭan, 1414.
- ‘Abd al-Raḥmān, Ṭāhā. *Rūḥ al-Ḥadāthah: al-Madkhal ilā Ta'sīs al-Ḥadāthah al-Islāmīyah*. Dār al-Bayḍā': al-Markaz al-Thaqāfī al-Maghribī, 2006.
- , *Su'āl al-Akhḻāq: Musāhamah fī al-Naqd al-Akhḻāqī lil-Ḥadāthah al-Gharbīyah*. Dār al-Bayḍā': al-Markaz al-Thaqāfī al-Maghribī, 2000.
- Abū Dāhish, ‘Abd Allāh ibn Muḥammad Ḥusayn. "Malāmiḥ al-Qaḍā' wa-al-Ḥisbah bi-Tihāmah wa ‘Asīr fī ‘Ahd al-Malik ‘Abd al-‘Azīz 1338-1373: Dirāsah Wathā'iqīyah." *Buḥūth al-Mu'tamar al-‘Ālamī ‘an Ta'rīkh al-Malik ‘Abd al-‘Azīz*, pp. 1075-99. al-Rīyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1419.

- Abū Dharr. *Thawrah fī Rihāb Makkah*. Kuwayt: Dār Ṣawt al-Ṭalabah, 1980.
- Abū Zayd, Bakr ibn ‘Abd Allāh. *Ḥirāsat al-Faḍīlah*, 5th ed. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭaniyyah Athnā’ al-Nashr, 1431.
- al-Albānī, Muḥammad Nāṣir al-Dīn. *Jilbāb al-Mar’ah al-Muslimah*. al-Qāhirah: al-Maktabah al-Islāmīyah, 1996.
- , *Ṣaḥīḥ al-Jāmi‘ al-Ṣaghīr*. Dimashq: al-Maktab al-Islāmī, 1969.
- , *Ṣifat Ṣalāt al-Nabī*. Madīnah: al-Jāmi‘ah al-Islāmīyah, 1405.
- al-Ālūsī, Shihāb al-Dīn al-Sayyid Maḥmūd. *Rūḥ al-Ma‘ānī fī Tafsīr al-Qur’ān al-‘Aẓīm wa-al-Sab‘ al-Mathānī*. Deoband: Muḥammad Ghānim ibn ‘Abd al-Aḥad, 1970-77.
- Amīn, Hudā ‘Abd al-Ghafūr. *al-Ḥisbah fī al-Islām wa Dawruhā fī al-Muḥāfaẓah ‘alā al-Bī’ah*. al-Rīyāḍ: Markaz al-Malik Fayṣal lil-Buḥūth wa-al-Dirāsāt al-Islāmīyah, 1431.
- "Amīr Nā’if ilā ‘Ukāz." *al-‘Ukāz al-Uṣbū’īyah*. (4/11/2002).
- al-Anṣārī, ‘Abd al-Quddūs. "Kalimāt Ḥaqq bi-Munāsabat Dhikrā al-Yawm al-Waṭanī lil-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah." *al-Manhal* 6 (1399/1979): 546-552.
- al-Anṣārī, Muḥammad ibn Niẓām al-Dīn. *Fawātiḥ al-Raḥmūt bi-Sharḥ Musallam al-Thubūt*, vol. 1. al-Qāhirah: al-Maṭba‘ah al-Amīriyyah, 1322.
- al-‘Ashīr, Marzūq ibn Muḥammad. *Wazīfat al-Dawlah al-Islāmīyah fī al-Majāl al-Ijtima‘ī*. Ph.D. dissertation. Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1428.
- al-Ashqar, Muḥammad Sulaymān ‘Abd Allāh. *al-Wāḍiḥ fī Uṣūl al-Fiqh*. al-Qāhirah: Dār al-Salām, 2004.
- al-‘Awdah, Salmān ibn Fahd. "al-Ḥisbah." *al-Ḥayāh Kalimah*, audio broadcast (5/28/2010): www.islamtoday.net, accessed 6/3/2010.
- ‘Azīz, Fawwāz. "Ḥasabū Hay’at al-Amr bi-al-Ma‘rūf." *Jarīdat al-Waṭan al-Sa‘ūdīyah*. (16/4/2009).
- al-Badr, Nadin. "al-Ḥaqqīqah." Television broadcast, Dream 2 TV, 1/10/2012.
- al-Baghawī, al-Ḥusayn ibn Mas‘ūd. *Ma‘ālim al-Tanzīl*. Bayrūt: Dār al-Ma‘rifah, 1986.
- al-Baqamī, Ṭāmī ibn Hudayf. *al-Taṭbīqāt al-‘Amaliyyah lil-Ḥisbah fī al-Mamlakah al-*

'*Arabīyah al-Sa'ūdīyah min 'ām 1351-1408*. Ph.D. dissertation. Jāmi'at al-Imām Muḥammad ibn Sa'ūd al-Islāmīyah, 1415.

Bilāl, 'Alī. "Hay'at al-Ittiṣālāt al-Sa'ūdīyah Tahjub Mawāqī' al-Fatāwā." *Jarīdat Shams al-Sa'ūdīyah* (4/9/2010).

al-Bishr, Badrīyah bint Sa'ūd ibn Muḥammad. *Fiqh Inkār al-Munkar*. al-Rīyāḍ: Dār al-Faḍīlah, 1421.

al-Bishr, Muḥammad, ed. *al-Iṣlāḥ al-Mujtama'ī: al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar fī al-Sa'ūdīyah*. al-Rīyāḍ: Dār Ghīnā' lil-Nashr, 1428.

al-Bukhārī, Muḥammad ibn Ismā'īl. *Ṣaḥīḥ al-Bukhārī*. Bayrūt: Dār al-Kutub al-'Ilmiyah, 2002.

al-Ḍaḥḥāk al-Shaybānī, Abī 'Aṣim. *al-Āḥād wa-al-Mathānī*. al-Rīyāḍ: Dār al-Rāyah, 1411/1991.

Daḥlān, Aḥmad ibn Zaynī. *Khulāṣat al-Kalām fī Umarā' al-Balad al-Ḥarām*. Bayrūt: Dār al-Sāqī, 1993.

al-Darīb, Sa'ūd ibn Sa'd. *al-Malik 'Abd al-'Azīz wa Waḍ' Qawā'id al-Tanzīm al-Qaḍā'ī fī al-Mamlakah*. Jiddah: Dār al-Maṭbū'āt al-Ḥadīthah, 1408.

al-Darwīsh, Ṣāliḥ ibn 'Abd Allāh. *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar wa Wāqī' al-Muslimīn al-Yawm*. al-Rīyāḍ: Dār al-Waṭan lil-Nashr, 1412.

Al Dāwūd, 'Abd al-'Azīz. "Fī Ḥiwār li-Majallat al-Ḥaras al-Waṭanī Ma'ālī al-Ra'īs al-'Amm li-Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar." *al-Ḥaras al-Waṭanī* 126 (1413/1993): 22-27.

al-Dhahabī, Abī 'Abd Allāh Shams al-Dīn ibn 'Uthmān. *al-Ṭibb al-Nabawī*. al-Rīyāḍ: Dār al-Nafā'is, 2004.

al-Dhayīdī, Misharī. *al-Sharq al-Awsaṭ* (24, 25/2/2004).

al-Dunyā, 'Abd Allāh ibn Abī. *Makārim al-Akhlāq*, Bashīr 'Uyūn, ed. Dimashq: Maktabat al-Fārabī, 1423/2002.

al-Fawzān, 'Abd al-'Azīz ibn Fawzān. *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar wa Atharuhumā fī Taḥqīq al-Amn*. al-Rīyāḍ: Dār Ṭaybah, 1424.

-----, "Ḥaqq al-Muslim 'alā al-Muslim." *Fiqh al-Akhlāq*. Television broadcast. Qanāt al-Majd al-Faḍā'iyyah, 2009.

-----, *Athar al-'Ilm wa-al-Imān fī Mukāfaḥat al-Irhāb wa-al-'Udwān*. al-Rīyāḍ: Dār Ṭaybah, 1428.

- , "al-Islām wa-al-Ḥurriyah." Paper presented at Mercure Hotel, Riyadh, 26/4/2010.
- al-Fawzān, Ṣāliḥ ibn Fawzān. *al-Muntaqá min Fatāwá al-Shaykh Ṣāliḥ ibn Fawzān al-Fawzān*, vol. 1. al-Rīyāḍ: Maktabat Mishkāṭ al-Islāmīyah, 1425.
- , *Taḥrīm al-Ikhtilāf wa-al-Radd ‘alá man Abāḥuhu*. al-Rīyāḍ, 2011, n.p.
- al-Fayrūzābādī, Muḥammad al-Dīn. *al-Qāmūs al-Muḥīṭ*. Bayrūt: al-Mu'assasat al-‘Arabīyah lil-Ṭibā‘ah wa-al-Nashr, n.d.
- al-Ghazālī, Abū Ḥāmid Muḥammad. *Iḥyā’ ‘Ulūm al-Dīn*. Bayrūt: Dār al-Ma‘rifah, n.d.
- , *al-Wajīz fī Fiqh al-Imām al-Shāfi‘ī*. Bayrūt: Dār al-Arqām, 1997.
- al-Hājirī, Iyās ibn Samīr. *Ta’rīkh al-Intirnit fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭānīyah Athnā’ al-Nashr, 1425.
- al-Ḥalībah, Nabīlah Zayd Sa‘d. *al-Ta‘āmul al-Mashrū‘ lil-Mar’ah ma‘a al-Rajul al-Ajnabī fī Daw’ al-Sunnah*. al-Riyāḍ: Maktabat al-Rushd, 1428.
- al-Ḥanbalī, al-Qāḍī Abū Ya‘lá. *al-Aḥkām al-Sulṭānīyah*. Bayrūt: Dār al-Kutub al-‘Ilmīyah, 1403.
- al-Ḥanbalī, Ibn Rajab. "al-Ḥadīth al-‘Ishrūn." *Jāmi‘ al-‘Ulūm wa-al-Ḥikmah fī Sharḥ Khamsīn Ḥadīthan min Jawāmi‘ al-Kalim*. al-Rīyāḍ: Mu'assasat al-Amīrah al-‘Anūd, 1426.
- al-Ḥarbī, Sālim ibn Shadīd. *al-Ḥisbah fī Fikr al-Shaykh Muḥammad ibn ‘Abd al-Waḥhāb*. al-Rīyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, 1407/1987.
- al-Ḥārithī, ‘Abd al-Muḥsin. "Qaṣr al-Fatāwá ‘alá Ā‘dā’ Hay’at Kibār ‘Ulamā’." *Ukāẓ* 3344 (8/13/2010).
- al-Ḥiṣān, ‘Abd al-Razzāq. *al-Ḥisbah*. Baghdād, 1946, n.p.
- al-Ḥasanī, Sayyid ‘Abd al-Ḥayy. *Tahdhīb al-Akhlāq*. London: UK Islamic Academy, 2003.
- "al-Ḥisbah." *Dā‘irat al-Ma‘ārif al-Islāmīyah*, vol. 7. Transl. Muḥammad Thābit al-Fandī, et al. Ṭihrān: Intasharāt Jīhān, n.d.
- al-Ḥumayd, ‘Abd al-‘Azīz. "al-Khiṭāb al-‘Āmm." Paper presented at Mu’tamar Khayr Ummah, Markaz Ma‘ārid al-Rīyāḍ, 22/12/2010.
- al-Ḥuṣayn, Ṣāliḥ ibn ‘Abd al-Raḥmān. *al-Tasāmuḥ wa-al-‘Udwānīyah bayna al-Islām*

wa-al-Gharb. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnā' al-Nashr, 1429.

al-Ḥuzaymī, Nāṣir. *Jarīdat al-Rīyāḍ* (10/6/2003; 18/6/2003; 9/5/2004; 6/9/2004).

Ibn 'Abd al-Wahhāb, 'Abd Allāh ibn Muḥammad. *al-Hadīyah al-Sanīyah wa-al-Tuḥfah al-Wahhābīyah al-Najdīyah*, Sulaymān ibn Saḥmān, ed. Makkah, 1973, n.p.

Ibn 'Abd al-Wahhāb, 'Abd al-Raḥmān ibn Ḥasan ibn Muḥammad. *Majmū'at al-Rasā'il wa-al-Masā'il al-Najdīyah*. al-Rīyāḍ: Dār al-'Āṣimah lil-Nashr wa-al-Tawzī', 1928-30.

Ibn 'Abd al-Wahhāb, Muḥammad. *Kitāb al-Tawḥīd alladhī huwa Ḥaqq Allāh 'alā al-'Abīd*. al-Rīyāḍ: 'Ālam al-Kutub lil-Ṭibā'ah wa-al-Nashr wa-al-Tawzī', 2002.

-----, "al-Risālah al-'Āshirah." Nāṣir al-Dīn al-Asad, ed., *Tārīkh Najd*, pp. 309-12. Bayrūt, 1985, n.p.

-----, "al-Mas'alah al-Thālithah." *Tārīkh Najd*, pp. 405-7. Bayrūt, 1985, n.p.

-----, "al-Risālah al-Sādisah wa-al-'Ishrūn." *Tārīkh Najd*, pp. 360-93. Bayrūt, 1985, n.p.

-----, *Sīrat al-Imām al-Shaykh Muḥammad ibn 'Abd al-Wahhāb*, Amīn Sa'īd, ed. Bayrūt: Sharikat al-Tawzī' al-'Arabīyah, 1384.

-----, *Majmū'at al-Fatāwā wa-al-Rasā'il wa-al-Ajwibah*. al-Qāhirah: Dār al-Wahī, 1400.

-----, *al-Kalimāt al-Nāfi'ah fī al-Mukaffirāt al-Wāqi'ah*. al-Qāhirah: al-Maṭba'ah al-Salafīyah, 1393.

-----, "Risālah Ukhrā fī Kalimāt al-Tawḥīd." *Majmū'at al-Rasā'il wa-al-Masā'il al-Najdīyah*, vol. 4, pp. 36-40. al-Qāhirah, 1346-49, n.p.

Ibn al-'Arabī, Abū Bakr. *Aḥkām al-Qur'ān*. al-Qāhirah: Maṭba'at al-Sa'ādah, 1331.

Ibn al-Athīr, Aḥmad ibn Ismā'īl Najm al-Dīn. *Jawhar al-Kanz*. al-Iskandarīyah: Munsha'at al-Ma'ārif, 2000.

Ibn Badrān al-Dimashqī al-Ḥanbalī. *al-Madkhal ilā Madhhab al-Imām Aḥmad ibn Ḥanbal*. Bayrūt: Mu'assasat al-Risālah, 1401/1981.

Ibn Bayyah, 'Abd Allāh ibn Shaykh al-Maḥfūz. *Ḥiwār 'an Bu'd Hawl Ḥuqūq al-Insān fī al-Islām*. al-Rīyāḍ: al-'Ubaykān, 2009.

Ibn Bāz, 'Abd al-'Azīz. *Wujūb al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*. al-

- Rīyād: Dār al-Waṭan lil-Nashr, n.d.
- , *al-Fatāwá lil-Imām al-‘Allāmah al-Muḥaddith al-Fiqhīyah*. al-Rīyād: Dār al-Dā‘ī lil-Nashr wa-al-Tawzī‘, 1428.
- Ibn Bishr al-Najdī, ‘Uthmān. *‘Unwān al-Majd fī Ta’rīkh Najd*. al-Rīyād: Maktabat al-Rīyād al-Ḥadīthah, n.d.
- Ibn Fāris al-Qazwīnī, Aḥmad. *Mu‘jum Maqāyīs al-Lughah*. Bayrūt: Dār al-Fikr, 2009.
- Ibn Ḥajar al-‘Asqalānī, Aḥmad ibn ‘Alī. *Fath al-Bārī bi-Sharḥ Ṣaḥīḥ al-Bukhārī*. al-Rīyād: Dār al-Iftā’ al-Sa‘ūdīyah, n.d.
- , *Al-Iṣābah fī Tamyīz al-Ṣaḥābah*. Bayrūt: Dār al-Jīl, 1992.
- , *Bulūgh al-Marām min Adillat al-Aḥkām*. al-Qāhirah: Dār al-Fikr, n.d.
- Ibn Ḥanbal, Aḥmad ibn Muḥammad. *Musnad al-Imām al-Ḥafīẓ Abī ‘Abd Allāh Aḥmad ibn Ḥanbal*, vol. 2. al-Rīyād: Bayt al-Afkār al-Dawliyah, 1998.
- Ibn Ḥazm, Abū Muḥammad ‘Alī ibn Aḥmad ibn Sa‘īd. *Jamharat Ansāb al-‘Arab*. al-Qāhirah: Dār al-Ma‘ārif, 1962.
- Ḥudayrī, Nājī ibn Ḥasan ibn Ṣāliḥ. *al-Ḥisbah al-Nazarīyah wa-al-‘Amaliyah ‘inda Shaykh al-Islām Ibn Taymīyah*. al-Rīyād: Dār al-Faḍīlah, 2005/1425.
- Ibn Ḥumayd, Ṣāliḥ ibn ‘Abd Allāh wa ‘Abd al-Raḥmān ibn Mullūh. "Ḥayā'," *Mawsū‘at Naḍrat al-Nā‘īm fī Mukārim Akhlāq al-Rasūl al-Karīm*, vol. 5, pp. 1795-1814. Jiddah: Dār al-Wasīlah, 2010/1431.
- , "al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar," *Mawsū‘at Naḍrat al-Nā‘īm fī Mukārim Akhlāq al-Rasūl al-Karīm*, vol. 3, pp. 525-39. Jiddah: Dār al-Wasīlah, 2010/1431.
- , "Ta‘āmal al-Muslim ma‘ Mawāqif al-Ibtilā’," *Mawsū‘at Naḍrat al-Nā‘īm fī Makārim Akhlāq al-Rasūl al-Karīm*, vol. 1, p. 35-50. Jiddah: Dār al-Wasīlah, 2010/1431.
- Ibn al-Jawzī, Abū al-Faraj. *al-Shifā’ fī Mawā’iz al-Mulūk wa-al-Khulafā’*, ed., F. A. Aḥmad. al-Iskandarīyah, 1978, n.p.
- Ibn Kathīr, Ismā‘īl ibn ‘Umar. *Tafsīr Ibn Kathīr*, vol. 5. al-Rīyād: Dār al-Furqān lil-Nashr wa-al-Tawzī‘, 2000.
- Ibn Khaldūn. *al-Muqaddimah*. Bayrūt: al-Maktabah al-‘Asrīyah, 1995.
- Ibn Manẓūr al-Ifriqī. *Lisān al-‘Arab al-Muḥīṭ*. Bayrūt: Dār Lisān al-‘Arab, n.d.

Ibn Muflih al-Maqdisi al-Hanbali, Muhammad. *Kitāb al-Furū*, vol. 6. Bayrūt: 'Ālam al-Kutub, 1985.

----- . *al-Ādāb al-Shar'īyah*. Bayrūt: Dār al-Kutub al-'Ilmiyah, 1996.

Ibn Qayyim al-Jawziyah, Muhammad ibn Abi Bakr. "al-Ma'āsi Tudhhib al-Ḥayā' aw Tuḍā' ifuhu," *al-Jawāb al-Kāfi li-man Sa'ala 'an al-Dawā' al-Shāfi*. al-Qāhirah: Dār al-Tawzī' wa-al-Nashr al-Islāmiyah, n.d.

----- . *Ighāthat al-Laḥfān min Maṣāyid al-Shayṭān*. al-Ri'yāḍ: Maktabat al-Ma'ārif, n.d.

----- . *al-Ṭuruq al-Hukmiyah fī al-Siyāsah al-Shar'īyah aw al-Firāsah al-Marḍīyah fī Ahkām al-Siyāsah al-Shar'īyah*. Muhammad al-Fiqhī, ed. al-Qāhirah: Maṭba'at al-Sunnah al-Muḥammadiyah, 1337.

----- . *Sharḥ al-Shurūṭ al-'Umarīyah*. Dimashq: Maṭba'at Jāmi'at Dimashq, 1961.

----- . *al-Ṭibb al-Nabawī*. al-Ri'yāḍ: Dār al-'Aqīdah lil-Turāth, 2001.

----- . *Kitāb Miftāḥ Dār al-Sa'ādah li-Ibn al-Qayyim*. Bayrūt: Dār al-Kutub al-'Ilmiyah, 1974.

----- . *Madārij al-Sālikīn*. Bayrūt: Dār al-Jīl, 1991.

----- . *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*. al-Qāhirah: Maktabat al-Tijāriyah al-Kubrā, 1955.

Ibn Rajab, 'Abd al-Rahmān. *Jāmi' al-'Ulūm wa-al-Ḥikmah fī Sharḥ Khamsīn Ḥadīthan min Jawāmi' al-Kalim*. al-Ri'yāḍ: Mu'assasat al-Amīrah al-'Anūd, 1426.

Ibn Taymiyah, Aḥmad ibn 'Abd al-Ḥalīm. *al-Ḥisbah fī al-Islām*. al-Ri'yāḍ: Ri'āsat Idārat al-Buḥūth al-'Ilmiyah wa-al-Iftā' wa-al-Da'wah wa-al-Irshād, 1403.

----- . *Amrād al-Qulūb wa Shifā'uhā*. al-Qāhirah: al-Maṭba'ah al-Salafiyyah, 1399.

----- . *al-Siyāsah al-Shar'īyah*. Muhammad Mubārak, ed. Bayrūt: Dār al-Kutub al-'Arabīyah, 1966.

----- . *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*. Bayrūt: Dār al-Kitāb al-Jadīd, 1396.

----- . *Majmū' Fatāwā Shaykh al-Islām Ibn Taymiyah*. al-Qāhirah: Idārat al-Masāḥah al-'Askariyyah, 1404.

- , *al-‘Aqīdah al-Wāsiṭīyah*. Dimashq: Dār al-Thaqāfah, 1965.
- , *Kitāb al-Imān*. Bayrūt: al-Maktab al-Islāmī, 1988.
- , *al-Imān al-Awsaṭ*. Bayrūt: Risālah, 2004.
- Ibn al-Ukhūwwah, Muḥammad ibn Muḥammad. *Ma‘ālim al-Qurbah fī Aḥkām al-Hisbah*. al-Qāhirah: al-Hay'ah al-Miṣrīyah al-‘Āmmah lil-Kitāb, 1976.
- Ibn Zafīr, Sa‘d ibn Muḥammad ibn ‘Alī. "al-Ikhtisāṣāt al-Janā‘īyah li-Hay'at al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar fī Zill al-Anḏimah al-Sa‘ūdīyah." *Majallat al-Buḥūth al-Amnīyah* 16/36 (2007): 17-76.
- Ibrāhīm, Sa‘īd Muḥammad. *Ta’rīkh al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah*. al-Rīyāḍ: Maktabat al-Rīyāḍ al-Ḥadīthah, 1393/1973.
- al-‘Id, Sulaymān Qāsim. *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar: al-Ḥath ‘alā Fī’luhu wa-al-Taḥdhīr min Tarkuhu*. al-Rīyāḍ: Dār al-Waṭan lil-Nashr, 1421/2000.
- Ilāhī, Faḍl. *al-Hisbah: Ta’rīfuḥā wa Mashrū‘iyatuhā wa Ḥukmuḥā*. al-Rīyāḍ: Idārat Tarjumān al-Islām, 1410/1990.
- , *Shubuhāt Ḥawl al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar*. al-Rīyāḍ: Idārat Tarjumān al-Islām, 1414.
- ‘Ilyān, Shawkat Muḥammad. *Dawr al-Hisbah fī Ḥimāyat al-Maṣāliḥ*. al-Rīyāḍ: Maṭba‘at al-Narjis al-Tijārīyah, 1421/2000.
- al-‘Imār, Ḥāmid ibn Nāṣir. *Ḥaqīqat al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar wa Arkānuhu wa Majālātuhu*. al-Rīyāḍ: Dār Ishbīlīyā lil-Nashr wa-al-Tawzī‘, 1420/1999.
- “Inṭilāq Fa‘āliyyāt Nadwat Asbāb wa ‘Ilāj wa Wāqi‘ al-Ibtizāz,” *Risālat al-Jāmi‘ah al-Malik Sa‘ūd* (12/3/2011).
- al-Iṣfahānī, al-Rāghib. *al-Mufradāt fī Gharīb al-Qur‘ān*. Bayrūt: Dār al-Ma‘rifah, n.d.
- al-Jalālayn, Imāmāy. *Tafsīr al-Jalālayn*. ‘Abd al-Karīm al-Rafā‘ī, ed. Dimashq: Dār Iḥyā’ ‘Ulūm al-Dīn, n.d.
- Jāmi‘at al-Malik Sa‘ūd, "Tawqī‘ Kursī al-Malik ‘Abd Allāh ibn ‘Abd al-‘Azīz lil-Hisbah wa Taṭbīqātuhā al-Mu‘āṣirah." 25/07/1430: www.ksu.edu.sa, accessed 18/7/2009.
- al-Jamī‘iyah al-Waṭanīyah li-Ḥuqūq al-Insān. *al-Taqrīr al-Awwal ‘an Aḥwāl Ḥuqūq al-Insān fī al-Mamlakah al-‘Arabīyah al-Sa‘ūdīyah*. al-Rīyāḍ: 1427/2006.

- al-Jaṣṣāṣ, Aḥmad ibn 'Alī. *Kitāb Aḥkām al-Qur'ān*. Bayrūt: Dār al-Kitāb al-'Arabī, 1978).
- Jawzī, 'Abd al-Raḥmān 'Alī. *Aḥkām al-Nisā'*, 'Abd al-Qādir ibn 'Abd al-Qādir, ed. Dimashq: Dār al-Wathā'iq, 1427.
- al-Jibrīn, 'Abd Allāh. *al-Kanz al-Thamīn lil-Shaykh 'Abd Allāh al-Jibrīn*, vol. 1. al-Rīyāḍ: 1413, n.p.
- al-Juraysī, Khālīd ibn 'Abd al-Raḥmān. *al-Fatāwā al-Dhahabīyah fī al-Ruqyā al-Shar'īyah*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 2001.
- al-Juhanī, Mānī' ibn Ḥammād. "Akhḷāq," *al-Mawsū'ah al-Muyassarah fī al-Adyān wa-al-Madhāhib wa-al-Aḥzāb al-Mu'āṣirah*, vol. 2, pp. 948-9. al-Rīyāḍ: Dār al-Nadwah al-'Ālamīyah lil-Ṭibā'ah wa-al-Nashr wa-al-Tawzī', 1424/2003.
- , "al-Khawārij," *al-Mawsū'ah al-Muyassarah fī al-Adyān wa-al-Madhāhib wa-al-Aḥzāb al-Mu'āṣirah*, vol. 2, pp. 1653-4. al-Rīyāḍ: Dār al-Nadwah al-'Ālamīyah lil-Ṭibā'ah wa-al-Nashr wa-al-Tawzī', 1424/2003.
- Khalīfah, Muṣṭafā ibn 'Abd Allāh Ḥājī. *Kitāb Kashf al-Zunūn*, vol. 1. Bayrūt: Dār al-Ṣādir, 2000.
- al-Khalīfī, 'Abd al-Raḥmān ibn Sulaymān. "Juhūd al-Imām 'Abd al-'Azīz ibn Muḥammad ibn Sa'ūd fī al-Da'wah wa al-Iḥtisāb." M.A. dissertation. Jāmi'at al-Imām Muḥammad ibn Sa'ūd al-Islāmīyah, 1419.
- Khallāf, 'Abd al-Wahhāb. *al-Siyāsah al-Shar'īyah*. al-Qāhirah: al-Maṭba'ah al-Salafīyah, 1350/1931.
- Khāshuqjī, Jamāl Aḥmad. "al-Shaykh al-Shithrī wa Qanāt al-Majd: Limā al-Tashwīsh wa Naḥnu fī Khayr min Dīninā wa Dunyānā?" *Jarīdat al-Waṭan*. (9/29/2009).
- al-Khazindār, Maḥmūd Muḥammad. *Hāthihī Akhlāqunā*. al-Rīyāḍ: Dār Ṭaybah, 2007.
- Ma'had Ta'lim al-Lughah al-'Arabīyah. *Silsilat Ta'lim al-Lughah al-'Arabīyah: al-Mustawā al-Thālith: al-Tawḥīd*. al-Rīyāḍ: Jāmi'at al-Imām Muḥammad ibn Sa'ūd al-Islāmīyah, 1413/1992.
- , *Silsilat Ta'lim al-Lughah al-'Arabīyah: al-Mustawā al-Rābi': al-Da'wah*. al-Rīyāḍ: Jāmi'at al-Imām Muḥammad ibn Sa'ūd al-Islāmīyah, 1413/1992.
- al-Mānī', Muḥammad ibn 'Abd Allāh. *Tawḥīd al-Mamlakah al-'Arabīyah al-Sa'ūdīyah*. al-Dammām: Sharikat Maṭābi' al-Muṭawwa', 1402/1982.

- al-Maqdisī, Muḥammad ibn Muflīḥ. *al-Ādāb al-Sharʿīyah wa al-Minah al-Marʿīyah*. al-Rīyāḍ: Dār al-Iftāʾ al-Saʿūdīyah, n.d.
- al-Maqrī, Aḥmad ibn Muḥammad al-Fayūmī. "Ḥasab," *al-Miṣbāḥ al-Munīr*, p. 52. Bayrūt: Maktabat Lubnān, 1987.
- al-Masʿarī, Muḥammad. *al-Adillah al-Qaṭʿīyah ʿalā ʿAdam Sharʿīyat al-Dawlah al-Saʿūdīyah*. London: Dār al-Sharīʿah, 1995.
- al-Masʿūd, ʿAbd al-ʿAzīz ibn Aḥmad. "al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar wa Atharahumā fī Ḥifẓ al-Ummah." Ph.D. Dissertation. al-Jāmiʿah al-Islāmīyah, 1412.
- , *Ṣifāt al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar*. al-Rīyāḍ: Dār al-Waṭan, 1414.
- al-Māwardī, ʿAlī ibn Muḥammad. *al-Aḥkām al-Sulṭānīyah wa-al-Wilāyāt al-Dīnīyah*. Bayrūt: al-Maktab al-Islāmī, 1416/1996.
- al-Miṣrī, Muḥammad ʿAbd al-Hādī. *Ḥaqīqat al-Īmān ʿinda Ahl al-Sunnah wa-al-Jamāʿah*. al-Qāhirah: Dār al-Furqān, 1991.
- Mujāhid ibn Jabr. *Jāmiʿ al-Bayān fī Tafsīr al-Qurʾān*. Bayrūt: al-Manshūrāt al-ʿIlmīyah, 1977.
- Murād, Maḥmūd ibn Riḍā, ed. *Masāʾil al-Marʿah*. al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah, 1423.
- al-Murshid, ʿAbd al-ʿAzīz ibn Muḥammad. *Nizām al-Ḥisbah fī al-Islām*. al-Rīyāḍ: Maṭbaʿat al-Madīnah, n.d.
- Muṣīlī, ʿAbd Allāh Maḥmūd ibn Mawdūd. *al-Ikhtiyār li-Taʿlīl al-Mukhtār*. al-Qāhirah: Muṣṭafā Bābī al-Ḥalabī, 1951.
- al-Nawawī, Abū Zakarīyah Yaḥyā ibn Sharaf. *Mukhtārāt min Rīyāḍ al-Ṣāliḥīn*, Ṣafī al-Raḥmān Mubārakpurī, ed. al-Rīyāḍ: Dār al-Salām, 2006.
- , *Sharḥ Ṣaḥīḥ Muslim*. Bayrūt: Dār al-Fikr, n.d.
- al-Qalqashandī. *Ṣubḥ al-Aʿshā*, transl. O. Spies. Stuttgart, 1936, n.p.
- al-Qarnī, ʿAlī ibn Ḥasan. *al-Ḥisbah fī al-Māḍī wa-al-Ḥāḍir bayna Thabāt al-Aḥdāf wa al-Uslūb*. al-Rīyāḍ: Maktabat al-Rushd, 1415/1994.
- al-Qāsim, Khālīd ibn ʿAbd Allāh. *al-Ḥurrīyah al-Dīnīyah bayna al-Muslimīn wa Ahl al-Kitāb Taʿṣīl al-Maṭhūm wa Radd al-Shubuhāt* (al-Rīyāḍ: Maktabat al-Malik Fahd al-Waṭanīyah Athnāʾ al-Nashr, 1430)

- al-Qāsimī, Jamāl al-Dīn. *Maw'izat al-Mu'minin min Ihyā' 'Ulūm al-Dīn*. Bayrūt: Dār al-Nafā'is, 1987.
- al-Qurṭubī, Abū 'Abd Allāh. *al-Jāmi' li-Aḥkām al-Qur'ān*. al-Qāhirah: al-Hay'ah al-Miṣrīyah lil-Kitāb, 1977.
- , *al-Isti'āb fī Ma'rifat al-Aṣḥāb*. al-Qāhirah: Maktabat Nahḍat Miṣr, n.d.
- al-Qushayrī, Muslim ibn al-Ḥujjāj. *Ṣaḥīḥ Muslim bi-Sharḥ al-Nawawī*, vols. 2, 3. Bayrūt: Dār al-Ihyā' al-Turāth al-'Arabī, n.d.
- Rābiṭat al-'Ālam al-Islāmī. "Taṣḍar Rābiṭat al-'Ālam al-Islāmī Fatwā 'an al-Nikāḥ al-Misyār" (10/4/2006): www.themwl.org, accessed 22/1/2011.
- "Ra'īs Hay'at al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar bi-Makkah: al-Ikhtilāf Mashrū' wa Adillatuhu Ṣarīḥah." *al-'Arabīyah* (9/12/2010): www.alarabiya.net, accessed 25/3/2010.
- al-Rāzī, Fakhr al-Dīn. *Mafātīḥ al-Ghayb*. al-Qāhirah: al-Maṭba'ah al-Bahīyah al-Miṣrīyah, 1934-38.
- al-Sabt, Khālīd ibn 'Uthmān. *al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar*. al-Rīyāḍ: al-Muntadā al-Islāmī wa Majallat al-Bayān, 1995.
- al-Ṣan'ānī, Muḥammad ibn Ismā'īl. *Subul al-Salām: Sharḥ Bulūgh al-Marām*, vol. 4. al-Qāhirah: Maktabat al-Tijārīyah al-Kubrā, 1950.
- Āl al-Sa'ūd, 'Abd al-'Azīz ibn 'Abd al-Raḥmān al-Fayṣal. "al-Amr bi-al-Ma'rūf wa-al-Nahy 'an al-Munkar." *Mukhtārāt min al-Khuṭab al-Malikīyah*, vol. 1, pp. 28-31. al-Rīyāḍ: Dārat al-Malik 'Abd al-'Azīz, 1419/1999.
- al-Ṣāwī, Aḥmad ibn Muḥammad. *Hāshiat al-Ṣāwī 'alā Tafsīr al-Jalālayn*. Bayrūt: Dār al-Fikr, 2001.
- al-Ṣayfī, 'Abd al-Fattāḥ Muṣṭafā. *Niẓām al-Ḥisbah fī al-Islām*. al-Rīyāḍ: 1396, n.p.
- al-Shahrī, Ḥāmid. "Waḥdah li-Ḥuqūq al-Insān fī Hay'at al-Amr bi-al-Ma'rūf." *Jarīdat al-Waṭan al-Sa'ūdīyah*. (4/10/2009).
- al-Shatrī, Muḥammad ibn Nāṣir. *al-Da'wah fī 'Ahd al-Malik 'Abd al-'Azīz*. al-Rīyāḍ: n.p., 1417.
- al-Shawkānī, Muḥammad. *Fatḥ al-Qadīr*. al-Qāhirah, 1964, n.p.
- , *Sharḥ Fatḥ al-Qadīr*. al-Qāhirah: Sharikat Muṣṭafā al-Bābī al-Ḥalabī, 1349.
- Āl al-Shaykh, 'Abd al-Raḥmān ibn 'Abd al-Laṭīf. *Mashāḥīr 'Ulamā' Najd*. al-Rīyāḍ: Dār al-Yamāmah, 1394.

Al al-Shaykh, ‘Abd al-‘Azīz ibn Muḥammad ibn Ibrāhīm. *al-Amr bi-al-Ma‘rūf wa-al-Nahy ‘an al-Munkar bayna al-Māḍī wa-al-Ḥāḍir*. al-Riyāḍ: Jāmi‘at al-Imām Muḥammad ibn Sa‘ūd al-Islāmīyah, n.d.

al-Shayzarī, Jalāl al-Dīn ‘Abd al-Raḥmān ibn Nāṣr. *Nihāyat al-Rutbah fī Ṭalab al-Hisbah*. Bayrūt: Dār al-Thaqāfah, 1401.

-----, *al-Nahj al-Maslūk fī Siyāsāt al-Mulūk*. Jerusalem: Jewish and National University Library, Yahuda Collection, n.d., microfiche, 457.

al-Shīrāzī, Abū Ishāq Ibrāhīm. *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi‘ī*. Bayrūt: Dār al-Kutub al-‘Ilmiyah, 1995.

al-Shunībī, Khālīd ibn Muḥammad. *Huqūq al-Insān fī al-Yahūdīyah wa-al-Masīḥīyah wa-al-Islām Muqāranah bi-al-Qānūn al-Dawī*. al-Riyāḍ: Maktabat al-Malik Fahd al-Waṭaniyah Athnā’ al-Nashr, 1430.

al-Subkī, Tāj al-Dīn ‘Abd al-Wahhāb ibn ‘Alī. *Ṭabaqāt al-Shāfi‘īyah al-Kubrā*, vol. 12. al-Qāhirah: 1964, n.p.

al-Sudays, ‘Abd al-Raḥmān. "Fatāwā al-Faḍā‘īyāt—al-Ḍawābiṭ wa-al-Ṭumūḥāt." Sermon delivered at the Grand Mosque, Mecca, 3/9/1431: www.alsudays.com, accessed 22/1/2011.

Surūr Zayn al-‘Abidīn, Muḥammad. *Azmat Akhlāq*. Birmingham: Dār al-Arqām, 1999.

-----, *al-‘Ulamā’ wa Amānat al-Kalimah*. Birmingham: Dār al-Arqām, 1998.

al-Suyūṭī, Jalāl al-Dīn. *Ta’rīkh al-Khulafā’*. al-Qāhirah: Maktabat al-Tijārīyah al-Kubrā, 1378.

al-Ṭabarī, Abū al-Qāsim Hibat Allāh. *Sharḥ Uṣūl I’ tiqād Ahl al-Sunnah wa-al-Jamā‘ah*. al-Riyāḍ: Dār Taybah, 1423/2003.

al-Ṭabarī, Muḥammad ibn Jarīr. *Ta’rīkh al-Umam wa-al-Mulūk*, vol. 2. al-Qāhirah: Maṭba‘at al-Istiḳāmah, 1939.

-----, *Jāmi‘ al-Bayān ‘an Ta’wīl al-Qur‘ān*. al-Qāhirah: Dār al-Ma‘ārifah, 1955.

al-Ṭabarsī, Raḍī al-Dīn ibn Ḥasan. *Makārim al-Akhlāq*. Bayrūt: Mu’assasat al-Khurasān lil-Maṭbū‘ah, 1427/2006.

al-Turayfī, ‘Adl. *Jarīdat al-Rīyāḍ* (10, 13/3/2004).

al-Turkī, Mājīd ibn ‘Abd al-‘Azīz. "al-Shu‘ūn al-Islāmīyah fī al-Mamlakah: Risālah Ḥaḍārīyah." *al-Ḥaras al-Waṭanī* 79 (1420/1999): 78-80.

- al-ʿUmarī, ʿAbd al-ʿAzīz. "al-Iḥtisāb wa al-Raqābah al-Idāriyah fī Taṭbīqātihā al-Taʾrīkhīyah." Paper delivered at Majlis ʿAbd al-ʿAzīz al-ʿUmarī, al-Rīyāḍ, 17/12/2009.
- al-ʿUmarī, Ibn Faḍl Allāh. *Masālik al-Absār*, transl. Abdur Rashid. Aligarh, 1944, n.p.
- al-ʿUṭaybī, Saʿd ibn Maṭar. *Fiqh al-Mutaghayyirāt fī ʿAlāʾiq al-Dawlah al-Islāmīyah bi-Ghayr al-Muslimīn*, 2 vols. al-Rīyāḍ: Dār al-Faḍīlah, 1430.
- , "al-Iḥtisāb wa al-Raqābah al-Idāriyah fī Taṭbīqātihā al-Taʾrīkhīyah." Paper delivered at Majlis ʿAbd al-ʿAzīz al-ʿUmarī, al-Rīyāḍ, 17/12/2009.
- al-ʿUṭaymīn, Muḥammad ibn Ṣāliḥ. "Risālah fī Wujūb al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar." *Majmūʿ Fatāwā wa Rasāʾil Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-ʿUṭaymīn*, vol. 27, p. 502-4. al-Rīyāḍ: Dār al-Thurayyā lil-Nashr wa-al-Tawzīʿ, 1430/2009.
- , "Naṣīḥah fī al-Amr bi-al-Maʿrūf wa-al-Nahy ʿan al-Munkar," *Majmūʿ Fatāwā wa Rasāʾil Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-ʿUṭaymīn*, vol. 27, p. 510. al-Rīyāḍ: Dār al-Thurayyā lil-Nashr wa-al-Tawzīʿ, 1430/2009.
- , *al-Majmūʿ al-Thamīn min Fatāwā Faḍīlat al-Shaykh Muḥammad ibn Ṣāliḥ al-ʿUṭaymīn*, vol. 2. al-Rīyāḍ: Dār al-Waṭan, 1410.
- Yāljin, Miqdād. *ʿIlm al-Akhlāq al-Islāmīyah*. al-Rīyāḍ: Dār ʿĀlam al-Kutub, 2003.
- al-Zamakhsharī, Maḥmūd ibn ʿUmar. *Asās al-Balāghah*. ʿAbd al-Raḥmān al-Maḥmūd, ed. Bayrūt: Dār al-Maʿrifah, 1402.
- al-Zāmil, ʿAbd Allāh. *Aṣḍaḍ al-Bunūd fī Taʾrīkh ʿAbd al-ʿAzīz Āl al-Saʿūd*. Bayrūt: Muʾassasat al-Tijārīyah lil-Ṭibāʿah, 1972.

English and Other Language Sources

- Abdelsalam, Ahmed. "The Practice of Violence in Hisba Theories." *Iranian Studies* 38 (2005): 547-54.
- Abdul Ghafour, P. K. "Dialogue Among Civilizations: New York Declaration to Commend Saudi Initiative." *Arab News*. (11/11/2008).
- Abou-El-Haj, Rifaʿat ʿAli. *Formation of the Modern State: The Ottoman Empire, Sixteenth to Eighteenth Centuries*. Syracuse: Syracuse University Press, 2005.
- Abu Khalil, Asad. "Saudi Arabia." *The Greenwood Encyclopedia of Women's Issues Worldwide*, vol. 4, pp. 337-54. Westport: Greenwood Press, 2003.

- Abu-Lughod, Lila, ed. *Remaking Women: Feminism and Modernity in the Middle East*. Princeton: Princeton University Press, 1998.
- . *Violded Sentiments: Honor and Poetry in a Bedouin Society*. Berkeley: University of California Press, 1986.
- Adamu, Fatima L. "Gender, Hisba and the Enforcement of Morality in Northern Nigeria." *Africa* 78 (2008): 136-152.
- Ahmad, Yusuf Al-Hajj. *Islamic Medicine: The Key to a Better Life*. Riyadh: Darussalam, 2010.
- Ahmed, Leila. "Western Ethnocentrism and Perceptions of the Harem." *Feminist Studies* 8 (1982): 521-42.
- Akeel, Maha. "Women's Issues: Baby Steps and Individual Successes." *Arab News*. (4/1/2007).
- Aldridge, Alan. *Religion in the Contemporary World*. Cambridge: Polity Press, 1992.
- Almond, Ian. "Nietzsche's Peace with Islam." *GLL* 56 (2003): 0016-8777.
- Amnesty International. "Saudi Arabia: A Justice System without Justice" (10/5/2000): www.amnesty.org, accessed 25/10/2009.
- Anderson, J. N. D. *Law Reform and the Muslim World*. London: Athlone Press, 1976.
- Anscombe, G. E. M. "Modern Moral Philosophy." *Philosophy* 33 (1958): 1-19.
- Apter, David. *The Politics of Modernization*. Cambridge, MA: Harvard University Press, 1965.
- Argue, Donald H. and Leonard A. Leo, "The Saudi's Dubious Interfaith Agenda at the UN." *Christian Science Monitor*. (13/11/2008).
- Aristotle. *The Organon and Other Works*, transl. W. D. Ross: <http://archive.org>, accessed 21/5/2012.
- Asad, Talal. *Formations of the Secular*. Stanford: Stanford University Press, 2003.
- . *The Kababish Arabs: Power, Authority, and Consent in a Nomadic Tribe*. London: C. Hurst & Co., 1970.
- al-ʿAwdah, Salmān. "Standing United Against Terrorism and al-Qaeda" (9/21/2009): <http://en.islamtoday.net>, accessed 22 January 2011.
- . "The Bombings in Riyadh and What is Required of Us" (1/1/2003):

<http://en.islamtoday.net>, accessed 22 January 2011.

-----, "Islam and Freedom." (1/1/2002): <http://en.islamtoday.net>, accessed 25/3/2010.

Ayad, Amira. *Healing Body and Soul: Your Guide to Holistic Wellbeing Following Islamic Teachings*. Riyadh: International Islamic Publishing House, 2008.

al-Azmeh, Aziz. *Islams and Modernities*. New York: Verso, 1993.

-----, "Utopia and Islamic Political Thought," I. R. Netton, ed., *Arabia and the Gulf: Traditional Society to Modern States*, ch. 6. London: Croom Helm, 1986.

Bashraheel, Laura. "Haia 'Sees Red' Again." *Arab News*. (14/2/2010).

-----, "Under the Spell." *Arab News*. (10/9/2009).

Bayındır, Abūlaziz. *İslam muhakeme huku: Osmanlı dervi uygulaması*. Istanbul: İslami İlimler Araştırma Vakfı, 1986.

Bayitch, S. A. "Codification in Modern Times," A. N. Yiannopoulos, ed., *Civil Law in the Modern World*, pp. 161-91. Kingsport: Louisiana State University Press, 1965.

Bazmee Ansari, A. S. "Ḥisbah: The Indian Subcontinent." *EF*², vol. 3, p. 485. Leiden: Brill, 1971.

Beblawi, Hazem. "The Rentier State in the Arab World." G. Luciani, ed., *The Arab State*, pp. 85-98. London: Routledge, 1990.

Benedict, R. *The Chrysanthemum and the Sword: Patterns of Japanese Culture*. London: Secker & Warburg, 1947.

Berlière, Jean-Marc. "L'Institution policière sous la Troisième République, 1875-1914." Thèse pour le doctorat, Université de Bourgogne, 1991.

Berman, Harold. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press, 1983.

Bichr, Farès. "'İrd." *EF*², vol. 4, p. 77. Leiden: E. J. Brill, 1978.

Bin Laden, Osama. *Messages to the World: Statements of Osama Bin Laden*, Bruce Lawrence, transl. and ed. London: Verso, 2005.

Binder, Leonard. "al-Ghazālī's Theory of Islamic Government." *MW* 65 (1955): 229-41.

Bligh, Alexander. "Saudi Religious Elite (Ulama) as Participants in the Political System of the Kingdom." *IJMES* 17/1 (1985): 37-50.

- Boberg, Dirk. *Ägypten, Nağd und der Ḥiğāz*. Bern: P. Lang, 1991.
- Bollnow, Otto F. *Die Ehrfurcht*. Frankfurt: Klostermann, 1958.
- Bosworth, C. E. "Mutatawwi'a." *EI*, 2nd ed., vol. 7, pp. 776-7. Leiden: Brill, 1993.
- , "Saldjūkids." *EF*, vol. 8, p. 936. Leiden: E. J. Brill, 1995.
- Bouknani, Salah. "Le mohtassib et la protection du consommateur." *Revue Franco Maghrébine de Droit* 3 (1995): 89-142.
- Bruce, Steve. "Pluralism and Religious Vitality," Steve Bruce, ed., *Religion and Modernization: Sociologists and Historians Debate the Secularization Thesis*, Ch. 7. New York: Oxford University Press, 1992.
- Buchan, James. "Secular and Religious Opposition in Saudi Arabia," Tim Niblock, ed., *State, Society and Economy in Saudi Arabia*, Ch. 6. New York: Palgrave Macmillan, 1982.
- Buckley, R. P. "The Muhtasib." *Arabica* 39, 1 (1992): 59-117.
- , *The Book of the Islamic Market Inspector*. New York: Oxford University Press, 1999.
- Burckhardt, J. L. *Notes on the Bedouins and Wahábys*. London: A. J. Valpy, 1830.
- Cahen, C., Mantran, R.; Lambton, A. K. S.; Bazmee Ansari, A. S. "Ḥisba." C. E. Bosworth, et al., eds., *EI*, 2nd ed., vol. 3, pp. 484-93. Leiden: Brill, 1960.
- Casanova, José. "Religion, European Secular Identities and European Integration," K. Michalski, ed., *The New Europe*. New York: Central European University Press, 2006.
- Chalmeta, Pedro. *El "señor del zoco" en España*. Madrid: Instituto Hispano-Arabe de Cultura, 1973.
- Chatty, Dawn. *From Camel to Truck: The Bedouin in the Modern World*. New York: Vantage Press, 1986.
- Chatty, Dawn and William Young. "Bedouin." *Encyclopedia of World Cultures*, vol. 9, pp. 42-6. New York: MacMillan, 1995.
- Cole, Donald. *Nomads of the Nomads: The Al Murrah of the Empty Quarter*. Chicago: Aldine Publishing Co., 1975.
- Commings, David. *The Wahhabi Mission and Saudi Arabia*. New York: I. B. Tauris, 2009.

- Cook, Michael, *Commanding Right and Forbidding Wrong in Islamic Thought*. Cambridge: Cambridge University Press, 2000.
- Coulson, Noel J. *Commercial Law in the Gulf States: The Islamic Legal Tradition*. London: Graham & Trotman, 1984.
- , *A History of Islamic Law*. Edinburgh: Edinburgh University Press, 1964.
- , "Law and Religion in Contemporary Islam." *HLJ* 29 (1978): 1447-57.
- , "The State and the Individual in Islamic Law." *ICLQ* 6 (1956): 49-60.
- Crisp, Roger. "Virtue Ethics." E. Craig, ed., *Routledge Encyclopedia of Philosophy*. www.rep.routledge.com, accessed Jan. 9, 2010.
- Crone, Patricia. "Appendix 3: the Muḥtasib." *Roman, Provincial and Islamic Law*, pp. 107-8. New York: Cambridge University Press, 1987.
- Davidson, Arnold. "Foucault, the History of Ethics, and Ancient Thought," G. Gutting, ed. *Cambridge Companion to Foucault*. New York: Cambridge University Press, 1994.
- Dekmejian, Hrair. "The Rise of Political Islam in Saudi Arabia." *MEJ* 48/4 (1994): 627-43.
- de Bellefonds, Y. Linant. "Ḳānūn: Law." *EF*². Brill Online, 2012: <http://referenceworks.brillonline.com>, accessed 22/5/2012.
- de La Mare, Nicolas. *Traité de la Police*. Amsterdam: Aux dépens de la Compagnie, 1729.
- de Pina-Cabral, J. "The Mediterranean as a Category of Regional Comparison: a Critical View." *CA* 30 (1989): 399-406.
- , "The Primary Social Unit in Mediterranean and Atlantic Europe." *JMS* 2 (1992): 24-40.
- Denny, Fredrick M. "Umma," *EQ*, 2nd ed., vol. 10, p. 859. Leiden: Brill, 2000.
- , "Ethical Dimensions of Islamic Ritual Law," Edwin B. Firmage, et al., eds., *Religion and Law: Biblical-Judaic and Islamic Perspectives*, pp. 199-210. Winona Lake, IN: Eisenbrauns, 1990.
- Devlin, Patrick. *The Enforcement of Morals*. London: Oxford University Press, 1968.
- Dodds, E. R. *The Greeks and the Irrational*. Berkeley: University of California Press, 1951.
- d'Ohsson, Ignatius M. *Tableau général de l'empire othoman*. Paris: De l'imprimerie de

- monsieur Firman Didot, 1788-1824.
- Doumato, Eleanor. "Gender, Monarchy and National Identity in Saudi Arabia." *British Journal of Middle Eastern Studies* 19/1 (1992): 31-47.
- Durkheim, Émile Durkheim. *Les formes élémentaires de la vie religieuse*. Paris: Presses Universitaires de France, 1912.
- Dumm, Thomas. *Foucault and the Politics of Freedom*. Lanham, MD: Rowman & Littlefield, 2002.
- Efendi, Ebussuud and Mehmet Ertuğrul Düzdäg. *Şeyhülislam Ebussuud Efendi Fetvaları*. Istanbul: Enderun Kitabevi, 1983.
- Eisenstadt, Shmuel. *Comparative Civilizations and Multiple Modernities*. Boston: Brill, 2003.
- Ende, W. "Wahhābiyya." *EI*, 2nd ed., vol. 11, pp. 45-47. Leiden: Brill, 2002.
- "Enhancing a Culture of Human Rights." *Arab News*. (27/7/2007).
- Ergene, Boğaç. *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)*. Leiden: Brill, 2003.
- Fandy, Mamoun. *Saudi Arabia and the Politics of Dissent*. New York: St. Martin's Press, 1999.
- al-Fardan, Omaima. "Censor Plays Key Role in Preserving Culture." *Arab News*. (30/1/2010).
- Fares, B. "'İrd," *EF*, vol. 4, p. 77. Leiden: Brill, 1978.
- Faubion, James. "Towards an Anthropology of Ethics: Foucault and the Pedagogies of Autopoiesis." *Representations* 74 (2001): 83-104.
- Feldman, Noah. *The Fall and Rise of the Islamic State*. Princeton: Princeton University Press, 2008.
- Fernandez, J. W. "Consciousness and Class in Southern Spain." *AE* 10 (1983): 165-213.
- Floor, Willem "The office of muhtasib in Iran." *Iranian Studies* 18, 1 (1985): 53-74.
- , "The Marketplace in Qajar Persia: The Office of Dārūgha-yi Bāzār and Muhtasib." *Die Welt des Islams* 13 (1971): 212-229.
- Foster, B. R. "Agoranomos and Muhtasib." *JESHO* 13/2 (1970): 128-144.

- Foucault, Michel. *Discipline and Punish*. Transl. Alan Sheridan. New York: Vintage Books, 1995.
- . *The History of Sexuality*, transl. R. Hurley, 3 vols. New York: Vintage Books, 1986.
- . *Ethics: Subjectivity and Truth*. New York: New Press, 1997.
- . L. H. Martin, H. Gutman and P. Hutton, eds., *Technologies of the Self: A Seminar with Michel Foucault*. Amherst: University of Massachusetts Press, 1988.
- . "Governmentality," Graham Burchell, et al., eds., *The Foucault Effect*, pp. 87-104. Chicago: University of Chicago Press, 1991.
- . *Security, Territory, Population: Lectures at the Collège de France, 1977-78*. New York: Palgrave Macmillan, 2007.
- . *Politics, Philosophy, Culture: Interviews and Other Writings*, L. D. Kritzman, transl. New York: Routledge, 1988.
- Gardet, L. and J. Jormier, "Islām," *EF*, vol. 4, p. 171. Leiden: Brill, 1978.
- George, Robert P. *Making Men Moral: Civil Liberties and Public Morality*. New York: Oxford University Press, 1993.
- Gerber, Haim. *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective*. Albany: State University of New York Press, 1994.
- al-Ghazālī, Abū Ḥāmid. *al-Munkidh min al-Dalāl*. Transl. W. M. Watt, *The Faith and Practice of al-Ghazālī*. London: G. Allen and Unwin, 1953.
- Gibb, H. A. R. and Harold Bowen, *Islamic Society and the West*. New York: Oxford University Press, 1950-57.
- Ginio, Eyal. "The Administration of Criminal Justice in Ottoman Selanik (Salonica) During the Eighteenth Century." *Turcica* 30 (1998): 185-210.
- Glassen, E. *Der mittlere Weg: Studien zur Religionspolitik und Religiosität der späteren Abbasiden-Zeit*. Wiesbaden: Steiner, 1981.
- Glick, Thomas F. "New Perspectives on the Ḥisba and Its Hispanic Derivatives." *al-Qanṭara* 13, 2 (1992): 475-489.
- . "Muhtasib and Mustasaf: A Case Study of Institutional Diffusion." *Viator* 2 (1971): 59-81.
- Goddard, V. A., J. Llobera, C. Shore. "Introduction: The Anthropology of Europe."

- V. A. Goddard, et al., eds. *The Anthropology of Europe: Identity and Boundaries in Conflict*, p. 1-40. Oxford: Berg, 1994.
- Goitein, S. D. *A Mediterranean Society*. Berkeley: University of California Press, 1971.
- Goldziher, Ignaz. "Review: Aḥmed ibn Ḥanbal and the Mihna." *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 52 (1898): 158.
- Griffel, F. *Apostasy und Toleranz im Islam*. Leiden: Brill, 2000.
- , "Apostasy," *EF*³. Brill Online 2009: <http://brillonline.nl>, accessed 7/11/2009.
- Habermas, Jürgen. "Tendencies towards Juridification," *The Theory of Communicative Action*, vol. 2, pp. 356-403. Boston: Beacon Press, 1984.
- Habib, John S. *Ibn Saud's Warriors of Islam: The Ikhwan of Najd and Their Role in the Creation of the Sa'udi Kingdom, 1910-1930*. Leiden: Brill, 1978.
- Hallaq, Wael B., "Can the Sharī'a Be Restored?" Yvonne Y. Haddad and Barbara F. Stowasser, eds., *Islamic Law and the Challenges of Modernity*, pp. 21-53. Walnut Creek: Altamira Press, 2004. pp. 21-53.
- , "The Sharī'a and the Fashioning of the Moral Subject: An Essay on the Technologies of the Self." Unpublished ms. forthcoming as *The Impossible State: Islam, Politics and Modernity's Moral Predicament*, pt. 2, ch. 5. New York: Columbia University Press, 2012.
- , "Groundwork of the Moral Law: A New Look at the Qur'ān and the Genesis of the Sharī'a." *ILS* 16 (2009): 239-79.
- , "The Quest for Origins or Doctrine? Islamic Legal Studies as Colonialist Discourse." *UCLA JINEL* 2 (2002-03): 1-31.
- , "Was the Gate of Ijtihad Closed?" *IJMES* 3 (1984): 3-41.
- , "Juristic Authority vs. State Power: The Legal Crisis of Modern Islam." *JLR* 19, 2 (2003-04): 101-116.
- , *Sharī'a: Theory, Practice, Transformation*. Cambridge: Cambridge University Press, 2009.
- Hamdani, Abbas. "The Muhtasib as Guardian of Public Morality in the Medieval City." *Digest of Middle Eastern Studies* (2008): 92-104.
- Harris, Nathan. "Shaming and the Stigmatization of Offenders," *The New Oxford Companion to Law*, Peter Cane and Joanne Conaghan, eds. Oxford Reference Online 2011: www.oxfordreferenceonline.com, accessed 16/6/2011.

- Harrison, Paul W. "Al Riadh, The Capital of Nejd." *MW* 8 (1918): 412-19.
- Hart, H. L. A. *Law, Liberty and Morality*. Stanford: Stanford University Press, 1963.
- Hasan, Noorhaidi. "Ambivalent Doctrines and Conflicts in the Salafi Movement in Indonesia," Roel Meijer, ed., *Global Salafism: Islam's New Religious Movement*, ch. 7. New York: Columbia University Press, 2009.
- Hawari, Walaa. "No to Temporary Marriages." *Arab News* (23 June 2009).
- Haykel, Bernard. "On the Nature of Salafi Thought and Action," Roel Meijer, ed., *Global Salafism: Islam's New Religious Movement*, ch. 1. New York: Columbia University Press, 2009.
- Hegghammer, Thomas and Stéphane Lacroix "Rejectionist Islamism in Saudi Arabia: The Story of Juhayman al-'Utaybī Revisited." *IJMES* 39 (2007): 103-22.
- Hertzfeld, M. "Honor and Shame: Problems in the Comparative Analysis of Moral Systems." *Man* 15 (1980): 339-51.
- , "The Horns of the Mediterranean Dilemma." *AE* 11 (1984) 439-54.
- , *Anthropology Through the looking Glass: Critical Ethnography in the Margins of Europe*. Cambridge: Cambridge University Press, 1987.
- Heyd, Uriel. *Studies in Old Ottoman Criminal Law*. Oxford: Oxford University Press, 1973.
- Hirschkind, Charles and Saba Mahmood. "Feminism, the Taliban, and Politics of Counter-Insurgency." *Anthropological Quarterly* 75/2 (2002): 339-354.
- Hobbes, Thomas Hobbes. *Leviathan*. Oxford: Oxford University Press, 1998.
- Hodgson, Marshall G. S. "The Expansion of Islam in the Middle Periods." *The Venture of Islam*, vol. 2. Chicago: University of Chicago Press, 1974.
- Holden, David and Richard Johns. *The House of Saud*. London: Sidgwick and Jackson, 1981.
- Holt, P. M. "Mamlūks," *EF*², vol. 6, p. 321. Leiden: E. J. Brill, 1991.
- Human Rights Watch. *World Report 2008*. New York: Human Rights Watch, 2008.
- Humaidan, Muhammad. "NSHR Calls for a National Human Rights Strategy." *Arab News* (8/4/2009).
- Humphreys, R. S. "Ta'rikh: Historical Writing in the Arab World." *EF*², Brill

- Online, 2009: www.paulyonline.brill.nl, accessed Oct. 25, 2009.
- Hunt, Alan and Gary Wickham. *Foucault and Law: Toward a Sociology of Law as Governance*. London: Pluto Press, 1994.
- Hunter, Shireen T. Hunter, ed. *Islam and Human Rights: Advancing a U.S.-Muslim Dialogue*. Washington: Center for Strategic and International Studies, 2005.
- Hussain, Lubna. "Thank You, Ma'am. Have a Nice Day." *Arab News*. (1/5/2005).
- Ibn Baṭṭūṭah. *The Travels of Ibn Baṭṭūṭah, 1325-1354*, H. A. R. Gibb and C. F. Beckingham, transl. and eds. London: Hakluyt Society, 1929.
- Ibn Faḍl Allāh al-ʿUmārī, Aḥmad. *Masālik al-Aḥṣār*, Abdur Rashid, transl. Aligarh: 1944, n.p.
- Ibrahim, Muhammad. "SR500bn Social Spending Package Outlined," *Arab News* (19/3/2011).
- Imber, Colin. *Ebu's-Su'ud: The Islamic Legal Tradition*. Edinburgh: Edinburgh University Press, 1997.
- İnalçik, Halil. "Ḳānūn: Financial and Public Administration." *EF*². Brill Online, 2012: <http://referenceworks.brillonline.com>, accessed 22/5/2012.
- "Initiatives and Actions to Combat Terrorism." *The Diplomat* 22 (March 2010): 30-33.
- International Crisis Group. "Can Saudi Arabia Reform Itself?" *International Crisis Group Middle East Report* 28 (14 July 2004): 13-15
- İpşirli, Mehmet. "XVI. Asrının ikinci yarısında kürek cezası ile ilgili hükümler." *Tarih Enstitüsü Dergisi* 12 (1982): 204-48.
- Izutsu, Toshihiko. *Ethico-Religious Concepts in the Qur'ān*. Montreal: McGill University Press, 1966.
- Izzi Dien, Mawil. *Ḥisba and the Legal Ethics of Islam*. Durham: British Society for Middle Eastern Studies, 1994.
- , "Ta'zīr." *EF*², vol. 10, p. 405. Leiden: Brill, 2000.
- Jansen, J. J. G. *The Neglected Duty*. New York: Macmillan, 1986.
- al-Jarbou, Ayoub M. "The Role of Traditionalists and Modernists on the Development of the Saudi Legal System." *ALQ* 21 (2007): 191-229.
- Johnson, A. C. and L. C. West. *Byzantine Egypt: Economic Studies*. Princeton: Princeton University Press, 1955.

- Juergensmeyer, Mark. *Terrorism and the Mind of God*. Berkeley: University of California Press, 2003.
- al-Kalaf, Moodhy. "Third National Dialogue Forum: Diary of a Woman." *Arab News*. (25/6/2004).
- Kamali, Muhammad H. *Principles of Islamic Jurisprudence*. Kuala Lumpur: Pelanduk Publications, 1989.
- Kandiyoti, Deniz. "End of Empire: Islam, Nationalism, and Women in Turkey." Deniz Kandiyoti, ed., *Women, Islam and the State*, pp. 22-47. Philadelphia: Temple University Press, 1991.
- , ed. *Gendering the Middle East: Emerging Perspectives*. New York: Syracuse University Press, 1996.
- Kar, Mehrangiz. "The Invasion of the Private Sphere in Iran." *Social Research* 70 (2003): 829-36.
- Kavidar, Mohsen. "An Introduction to the Public and Private Debate in a Sharia System." *Social Research* 70 (2003): pp. 659-80.
- Kechichian, Joseph A. "Islamic Revivalism and Change in Saudi Arabia: Juhayman al-'Utaybi's 'Letters to the Saudi People.'" *MW* 70 (1990): pp. 1-16.
- , "The Role of the Ulama in the Politics of an Islamic State: The Case of Saudi Arabia." *IJMES* 18 (1986): pp. 53-71.
- Kepel, Gilles. *The War for Muslim Minds*. Cambridge: Belknap Press, 2004.
- Khan, Ghazanfar Ali. "Terrorist Outfits Reigned In, Says Prince Naif." *Arab News*. (18/6/2009).
- , "Barber Facing Death for Slandering the Prophet Freed." *Arab News*. (5/6/2008).
- , "'Haia Members' Rough-up Book Fair Participants," *Arab News* (2/3/2011).
- Khan, Muhammad Akram. "Al-Ḥisba and the Islamic Economy." *Public Duties in Islam: The Institution of the Ḥisba by al-Shaykh al-Imām Ibn Taymīyah*, pp. 135-148. London: Islamic Foundation, 1982.
- King Abdulaziz City for Science and Technology. *Internet Services Unit: A Brief Guide*. Riyadh: King Fahd National Library, 2003.
- Kostiner, Joseph. *The Making of Saudi Arabia 1916-1936*. New York: Oxford University Press, 1993.

- , "Transforming Dualities: Tribe and State Formation in Saudi Arabia." Philip S. Khoury and Joseph Kostiner, eds., *Tribes and State Formation in the Middle East*, p. 235. New York: I. B. Tauris, 1991.
- , "al-Su'ūdiyya, al-Mamlaka al-'Arabiyya." *EF* (Brill Online, 2005): www.paulyonline.brill.nl, accessed July 14, 2007.
- Kramer, Martin. "Tragedy in Mecca," *Orbis* 32 (1988): 231-47.
- Lacey, Robert. *Inside the Kingdom*. New York: Viking, 2009.
- Lacroix, Stephane. "Between Islamists and Liberals: Saudi Arabia's New 'Islam Liberal' Reformers." *Middle East Journal* 58/3 (2004): 345-65.
- Lambton, Ann K. S. *State and Government in Medieval Islam*. New York: Oxford University Press, 1981.
- Lane, Edward William. "Ḥayy." *Arabic-English Lexicon*, vol. 1, pp. 681-3. London: Williams and Norgate, 1863.
- Laoust, Henri. *Essai sur les doctrines sociales et politiques de Taḳī-a-dīn Aḥmad b. Taimīya*. Cairo: Imprimerie de l'Institut Français d'Archeologie Oriental, 1939.
- , "Ibn Taymiyya." *EF*, vol. 3, p. 951. Leiden: E. J. Brill, 1971.
- , *Contribution à une étude de la methodologie de Taḳī-d-Dīn Aḥmad b. Taimīya*. Caire: Imprimerie de l'Institut français d'archéologie orientale, 1939.
- Lapidus, Ira. "Islamic Revival and Modernity: The Contemporary Movements and the Historical Paradigms." *JESHO* 40/4 (1997): 444-60.
- Layish, Aharon. "'Ulamā' and Politics in Saudi Arabia," *Islam and Politics in the Modern Middle East*, M. Heper and R. Israeli, eds., pp. 29-63. New York: Croom and Helm, 1984.
- Lecerf, J., "Ḥayy." *EF*, vol. 3, p. 330. Leiden: E. J. Brill, 1979.
- Levy, Neil. "Foucault as Virtue Ethicist." *Foucault Studies* 1 (2004): 20-31.
- Levy, R. "Muḥtasib." *E. J. Brill's First Encyclopaedia of Islam, 1913-1936*, vol. 6, p. 703. New York: Brill, 1987.
- Lewis, Bernard. "'Abbāsids (Banu 'l-'Abbās)," *EF*, vol. 1, p. 15. Leiden: E. J. Brill, 1960.
- Lipset, Seymore. "Some Social Requisites of Democracy." *The American Political Science Review* 53 (1959): 69-105.

- Little, Donald P. "Religion under the Mamluks." *MW* 73 (1983): 165-181.
- Long, David E. *Culture and Customs of Saudi Arabia*. Westport, CT: Greenwood Press, 2005.
- MacDonald, D. B. "The Life of al-Ghazzālī." *JAOS* 20 (1899): 71-132.
- Madelung, Wilfred. "ʿAmr be Maʿrūf." *Encyclopaedia Iranica*, vol. 1, p. 994. London: Routledge Kegan & Paul, 1985.
- , *Religious Trends in Early Islamic Iran*. Albany: Persian Heritage Foundation, 1988.
- Mahmood, Saba. *Politics of Piety: The Islamic Revival and the Feminist Subject*. Princeton: Princeton University Press, 2005.
- Maine, Sir Henry. *Ancient Law: Its Connection with the Early History of Society, and Its Relation to Modern Ideas*. London: John Murray, 1861.
- Makdisi, George. *Ibn ʿAqīl et la résurgence de l'Islam traditionaliste au XI^e siècle*. Paris: Librairie d'Amerique et d'Orient, 1963.
- Mantran, R. "Ḥisbah: Ottoman Empire," *EF*², vol. 3, pp. 485. Leiden: Brill, 1971.
- Marar, Amr Daoud. "The Duality of the Saudi Legal System and Its Implications for Securitizations." *ALQ* 20 (2006): 389-399.
- Marçais, G. "Considérations sur la ville musulmane et le muhtasib." *Recueils de la Société Jean Bodin*, 6 (1954).
- Marty, Martin E. "Religion and the State: United States." Maryanne C. Horowitz, ed., *New Dictionary of the History of Ideas*, vol. 5., pp. 2084-87. Detroit: Charles Scribner's Sons, 2005.
- Massignon, Louis. "Mutannabî devant le siècle ismaélien de l'Islam." *Ecrits Mémorables*, vol. 2. Paris: Robert-Laffont, 2009.
- McCarthy, R. J. *Freedom and Fulfillment: An Annotated Translation of al-Ghazālī's al-Munqidh min al-Ḍalāl*. Boston: Twayne, 1980.
- McLachlan, Kieth. "Saudi Arabia: Political and Social Evolution." I. R. Netton, ed., *Arabia and the Gulf: From Traditional Society to Modern States*, pp. 91-106. London: Croom Helm, 1986.
- Meijer, Roel. "Introduction," Roel Meijer, ed., *Global Salafism: Islam's New Religious Movement*, pp. 1-32. New York: Columbia University Press, 2009.
- , "Commanding Right and Forbidding Wrong as a Principle of Social Action: The Case of the Egyptian al-Jamaʿa al-Islamiyya," Roel Meijer, ed., *Global*

- Salafism*, ch. 8. New York: Columbia University Press, 2009.
- Merad, A. "Islāh: The Arab World." *EF*, vol. 4, pp. 144-63. Leiden: Brill, 1978.
- Middleton, John. "Magic: Theories of Magic." *Encyclopedia of Religion*, vol. 8, p. 5569. Detroit: MacMillan Reference, 2005.
- Miṣrī, Ibn Naqīb. 'Umdat al-Sālik, transl. and ed. N. H. M. Keller, *The Reliance of the Traveller*. Evanston, IL: Sunna Books, 1991.
- Mitchell, Jon P. "Honour and Shame." *Encyclopedia of Social and Cultural Anthropology*, pp. 280-1. New York: Routledge, 1996.
- Moss Helms, Christine. *The Cohesion of Saudi Arabia: Evolution of Political Identity*. London: Croom Helm, 1981.
- Mottahedeh, Roy and Kristen Stilt. "Public and Private as Viewed Through the Works of the Muhtasib." *Social Research* 70 (2003): 735-55.
- Mumcu, Ahmet. *Osman devletinde siyaseten katl*. Ankara: Ankara Üniversitesi, Hukuk Fakültesi, 1963.
- Murad, Mahmoud R. *The Manual of Women's Issues*. Riyadh: King Fahd National Library, 2002.
- Nagamia, H. F. *Islamic Medicine: History and Current Practice*. www.iiim.org/islamed3.html, accessed 16/5/2007.
- el-Nahal, H. *The Judicial Administration of Ottoman Egypt in the Seventeenth Century*. Chicago: Bibliotheca Islamica, 1979.
- al-Nawawī, Abū Zakarīyah Yaḥyā ibn Sharaf. *The Forty Ḥadīth of al-Imām an-Nawawī*, transl. Umm Muḥammad. Jeddah: Abul-Qasim, 1999.
- Nietzsche, Friedrich. *On the Genealogy of Morals*. Transl. Walter Kaufmann. New York: Vintage Books, 1989.
- , "Die Fröliche Wissenschaft." *Gesamtausgabe*, vol. 5, sect. 2, p. 84. Berlin: 1973, n.p.
- Office of the Coordinator for Counterterrorism. "Saudi Arabia." *Country Reports on Terrorism 2009*, pp. 140-43. Washington, DC: U. S. Department of State, 2010.
- Olsson, Susanne. "Apostasy in Egypt: Contemporary Cases of Ḥisbah." *Muslim World* 98 (2008): 95-115.
- O'Sullivan, Declan. "Hisba Law and Freedom of Expression in Islam: Two Case Studies of Prosecution in Contemporary Egypt." *JMS* 14, 1 (2004): 213-235.

- Palgrave, W. G. *Personal Narrative of a Year's Journey through Central and Eastern Arabia, 1862-1863*. London: Darf Publishers, 1985.
- Parsons, Talcott. *Talcott Parsons on Institutions and Social Evolution: Selected Writings*, L. H. Mayhew, ed. Chicago: University of Chicago Press, 1982.
- Patai, Raphael. *Golden River to Golden Road: Society, Culture, and Change in the Middle East*. Philadelphia: University of Pennsylvania Press, 1969.
- Peirce, Leslie. *Morality Tales: Law and Gender in the Ottoman Court of Aintab*. Berkeley: University of California Press, 2003.
- Peristiany, J. G., ed., *Honour and Shame: The Values of the Mediterranean*. London: Weidenfeld and Nicolson, 1965.
- Peskes, Esther. *Muḥammad b. 'Abdalwahhāb (1703-92) im Widerstreit* (Beiruter: In Kommission bei Franz Steiner, 1993)
- Peskes, Esther, and W. Ende. "Wahhābiyya." P. Bearman, et al., eds., *EF*, vol. 11, pp. 40-43. Leiden: E. J. Brill, 2000.
- Peters, Rudolph. *Crime and Punishment in Islamic Law*. New York: Cambridge University Press, 2005.
- Philips, Bilal. *A Commentary on Ibn Taymiyyah's Essay on the Heart*. Kuala Lumpur: Dakwah Corner Bookstore, 2008.
- Piscatori, James. "The Roles of Islam in Saudi Arabia's Political Development." John L. Esposito, ed., *Islam and Development: Religion and Socio-political Change*, pp. 123-38. Syracuse: Syracuse University Press, 1980.
- Pitt-Rivers, J. A. "Introduction." *Mediterranean Countrymen*, pp. 9-25. Paris: Mouton, 1963.
- "Police, n." Oxford Dictionary of English. Oxford Reference Online, 2010. www.oxfordreferenceonline.com, accessed 5/27/2012.
- "Prince Naif Encourages the Haia to be Prudent and Gentle." *Arab News*. (18/6/2010).
- al-Qalqashandī, Aḥmad. *An Arab Account of India in the 14th Century: Being a Translation of the Chapters on India from al-Qalqashandī's Ṣubḥ al-A'ṣhā*, Otto Spies, transl. Stuttgart: Verlag von W. Kohlhammer, 1936.
- Qusti, Raid. "NSHR Cites a Plethora of Rights Violations." *Arab News*. (23/5/2007).
- al-Rasheed, Madawi. *Contesting the Saudi State: Islamic Voices from a New Generation*. New York: Cambridge University Press, 2007.

-----, "Saudi Arabia's Islamist Opposition." *Current History* 95/597 (1996): 16-22.

-----, *A History of Saudi Arabia*. Cambridge: Cambridge University Press, 2002.

-----, "Introduction: An Assessment of Saudi Political, Religious and Media Expansion," M. Al-Rasheed, ed., *Kingdom without Borders: Saudi Political, Religious and Media Frontiers*, pp. 1-38. London: Hurst and Company, 2008.

Raven, Wim. "Reward and Punishment." *EQ*. Brill Online, 2009:
www.paulyonline.brill.nl, accessed Oct. 25, 2009.

Rawls, John. *A Theory of Justice*. Cambridge: Belknap Press, 1971.

"Religious Police Reportedly Thwart Girls' Rescue in Fire." *Chicago Tribune*.
(March 18, 2002): 6.

Repp, Richard. "Qānūn and Shari'a in the Ottoman Context," A. Al-Azmeh, ed.,
Islamic Law: Social and Historical Contexts, pp. 124-46. London: Routledge,
1988.

Richards, D. A. J. *Sex, Drugs, Death and the Law*. Totowa, NJ: Rowman and
Littlefield, 1982.

Rosenthal, F. "Ḥurriyya." *EI*, 2nd ed., vol. 3, p. 589. Leiden: Brill, 1979.

Rostow, W. W. *The Stages of Economic Growth*. Cambridge: Cambridge University
Press, 1960.

al-Rubaysh, Ibrāhīm. "The Mask Falls." English transcript of audio broadcast,
available from www.neildoyle.com, accessed 14/2/2011.

Sachedina, Abdulaziz. *Islam and the Challenge of Human Rights*. New York: Oxford
University Press, 2009.

al-Sadhan, Abdulrahman M. "The Modernization of Saudi Arabia's Bureaucracy."
Willard A. Beling, ed., *King Faisal and the Modernization of Saudi Arabia*, pp.
75-124. London: Croom Helm, 1980.

Sadowski, Yahya. "The New Orientalism and the Democracy Debate," J. Benin and
J. Stork, eds., *Political Islam: Essays from the Middle East Report*, pp. 14-21.
Berkeley: University of California Press, 1997.

Salomon, Noah. "The Salafi Critique of Islamism: Doctrine, Difference, and the
Problem of Political Action in Contemporary Sudan," Roel Meijer, ed., *Global
Salafism: Islam's New Religious Movement*, ch. 6. New York: Columbia
University Press, 2009.

"Saudi Arabia." *CIA World Factbook*: www.cia.gov, accessed 1/7/2010.

- Schacht, Joseph. *An Introduction to Islamic Law*. New York: Clarendon, 1982.
- , "Islamic Law in Contemporary States," in *AJCL* 8 (1959): 133-47.
- , "Review: 'Histoire de l'organisation judiciaire en pays d'Islam.'" *Orientalia* 17 (1948): 515-19.
- Scheler, Max. "Über Scham und Schamgefühle." *Schriften aus dem Nachlass: Zur Ethik und Bekenntnislehre*. Bern: Francke Verlag, 1957.
- Schubel, Vernon James. "Worship and Devotional Life: Muslim Worship," *ER*, pp. 9815-9820. New York: MacMillan, 2005.
- Schulze, Reinhard. *Islamischer Internationalismus im 20. Jahrhundert: Untersuchungen zur Geschichte der Islamischen Weltliga*. Leiden: Brill, 1990.
- Sfeir, George. "The Saudi Approach to Law Reform." *AJCL* 36 (1988): 729-59.
- Sherif, Mohamed Ahmad. *Ghazālī's Theory of Virtue*. Albany: SUNY Press, 1975.
- Simmonds, N. E. "Law and Morality." *Routledge Encyclopedia of Philosophy*, pp. 438-442. New York: Routledge, 1998.
- Singa, Radhika. *A Despotism of Law: Crime and Justice in Early Colonial India*. Delhi: Oxford University Press, 1998.
- Solaim, Soliman A. "Constitutional and Judicial Organization in Saudi Arabia." Ph.D. dissertation. Johns Hopkins University, 1970.
- Stilt, Kristen. *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*. New York: Oxford University Press, 2011.
- , "Price Setting and Hording in Mamluk Cairo," P. J. Bearman, *et al.*, eds., *The Law Applied: Contextualizing the Islamic Shari'a*, ch. 4. New York: I. B. Tauris, 2008.
- Stone, Caroline. "The Muhtasib." *Saudi Aramco World* 28/5 (1977): 22-25.
- Stone, Ferdinand F. "A Primer on Codification." *Tulane Law Review* 29 (1954-55): 303-10.
- Storch, Robert D. "The Plague of Blue Locusts: Police Reform and Popular Resistance in Northern England, 1840-1857." *International Review of Social History* 20 (1975): 61-90.
- , "The Policeman as Domestic Missionary: Urban Discipline and Popular Culture in Northern England, 1850-1880." *Journal of Social History* 9 (1976): 481-509.

- Strauss, Leo. "Natural Right and the Historical Approach." *Natural Right and History*, ch. 1. Chicago: University of Chicago Press, 1963.
- . *On Tyranny*. New York: Free Press of Glencoe, 1963.
- al-Sulami, M. D. "Scholar Denies Support to al-Ghamdi's Views." *Arab News* (10/5/2010).
- Sullivan, Winnifred F., and Robert A. Yelle. "Law and Religion." *ER*, vol. 8, pp. 5325-32. New York: MacMillan, 2005.
- Surty, Muhammad Ibrahim H. I. "The Institution of Ḥisbah and Its Impact on the Health Sciences from the Seventh to the Thirteenth Century C.E." *Islamic Quarterly* 43 (1999): 5-20.
- Taylor, Charles. *A Secular Age*. New York: Belknap Press of Harvard University Press, 2007.
- Taylor, Gabriel. *Pride, Shame, and Guilt: Emotions of Self-Assessment*. Oxford: Clarendon, 1985.
- Teubner, G. "Juridification: Concepts, Aspects, Limits, Solutions," G. Teubner, ed., *Juridification of the Social Sphere*, pp. 3-48. New York: De Gruyter, 1987.
- Tietelbaum, Joshua. *Holier than Thou: Saudi Arabia's Islamic Opposition*. Washington: Washington Institute for Near East Policy, 2000.
- Toufic, Fahd. "Siḥr." *EF*, vol. 9, p. 567. Leiden: Brill, 1997.
- Translation of the Meanings of the Noble Qur'ān in the English Language*. Transl. Muḥammad Taqī al-Dīn al-Hilālī and Muḥammad Muhsin Khan. Madinah: King Fahd Complex for the Printing of the Holy Qur'ān, 1424.
- Tuck, Richard. *Natural Rights Theories: Their Origin and Development*. Cambridge: Cambridge University Press, 1979.
- Tyan, Émile. *Histoire de l'organisation judiciaire en pays d'Islam*. Leiden: Brill, 1960.
- . "Methodologie et sources du droit en Islam (istiṣān, istiṣlāḥ, siyāsa shar'īyya)." *SI* 10 (1959): 79-109.
- . "Judicial Organization." Majid Khadduri and Herbert J. Liebesny, eds., *Law and the Middle East*, vol. 1, pp. 236-78. Washington, DC: Middle East Institute, 1955.
- Umari, Jalaluddin. *Ma'roof and Munkar: Enjoining What is Right and Forbidding What is Wrong*, transl. Syed Amin Ashraf. Riyadh: International Islamic

Publishing House, 2008.

United States Code, title 22, sect. 2656f(d). Washington, DC: US GPO, 2006.

U.S. Department of State, Bureau of Democracy, Human Rights and Labor. "Saudi Arabia." *International Religious Freedom Report 2009*. www.state.gov, accessed 26/10/2009.

Vassiliev, Aleksei. *The History of Saudi Arabia*. New York: New York University Press, 2000.

Vercellini, G. "Ḥisba: Religious Duty or Practical Job? Some Considerations on an Islamic Institution between Morals and Markets." *Annali di Ca' Foscari* 37 (1998): 67-96.

"Virtue Commission's Special Wing Fights Charlatans." *Arab News* (27/10/2007).

Voegelin, Eric. *The New Science of Politics: An Introduction*. Chicago: University of Chicago Press, 1987.

Vogel, Frank E. *Islamic Law and Legal System: Studies of Saudi Arabia*. Leiden: Brill, 2000.

-----, "The Public and the Private in Saudi Arabia: Restrictions on the Powers of Committees for Ordering the Good and Forbidding the Evil." *Social Research* 70 (2003): 749-59.

-----, "Siyasa shar'yya." *ET*², vol. 9, pp. 694-696. Leiden: E.J. Brill, 1997.

-----, "Islamic Governance in the Gulf: A Framework for Analysis, Comparison, and Prediction." *The Persian Gulf at the Millennium: Essays in Politics, Economy, Security, and Religion*, Gary Sick, et al., eds., ch. 10. New York: Macmillan, 1997.

Weigert, Gideon. "A Note on the Muhtasib and Ahl al-Dhimma." *Der Islam* 75 (1998): 331-37.

Weiss, Bernard G. *The Spirit of Islamic Law*. Athens: University of Georgia Press, 1998.

Wheeler, Brannon M. "Good and Evil." *EQ*, vol. 2, pp. 339-40. Leiden: E. J. Brill, 2003.

Wilson, John. "Saudi Arabia." *International Security and the United States: An Encyclopedia*, vol. 2, pp. 674-75. Westport, CT: Praeger Security International, 2008.

Williams, Bernard. "Morality the Peculiar Institution." *Ethics and the Limits of Philosophy*. Cambridge: Harvard University Press, 1985.

- , *Shame and Necessity*. Berkeley: University of California Press, 1995.
- Winder, R. Bayly. *Saudi Arabia in the Nineteenth Century*. New York: St. Martin's Press, 1967.
- al-Yassini, Ayman. *Religion and State in the Kingdom of Saudi Arabia*. London: Westview Press, 1985.
- Yelle, Robert A. "Law and Religion: Law, Religion, and Punishment." *Encyclopedia of Religion*, 2nd ed., vol. 8, pp. 5371-5375. New York: MacMillan, 2005.
- Walzer, R. and H. A. R. Gibb, "Akhlak," *EF*, Brill Online, 2009: www.pauonline.brill.nl, accessed Oct. 25, 2009.
- Watt, W. Montgomery. "Badw," *EF*, vol. 1, pp. 872-882. Leiden: Brill, 1978.
- , "al-Ghazālī, Abū Ḥamid Muḥammad b. Muḥammad al-Ṭūsī." *EF*, vol. 2, p. 1038. Leiden: E. J. Brill, 1965.
- Wehr, Hans. J. Milton Cowan, ed., *A Dictionary of Modern Written Arabic*. Ithaca: Spoken Language Services, 1994.
- Wikan, U. "Shame and Honour: A Contestable Pair." *Man* 19 (1984): 635-52.
- Zarabozo, Jamaal al-Din M. *"He Came to Teach You Your Religion": The Hadith of Angel Gabriel Explaining the Foundations of Islam, Imaan and Ihsaan*. Boulder, CO: al-Basheer, 1997.
- Ziadeh, Farhat J. "'Urf and Law in Islam." James Kritzech and R. Bayly Winder, eds., *The World of Islam: Studies in Honour of Philip K. Hitti*, pp. 60-7. London: Macmillan, 1959.
- Zittrain, Jonathan and Benjamin Edelman. "Documentation of Internet Filtering in Saudi Arabia." Berkman Center for Internet & Society (2002): <http://cyber.law.harvard.edu/studies/saudi>, accessed Oct. 25, 2009.
- Zubaida, Sami. *Law and Power in the Islamic World*. New York: I. B. Tauris, 2004.