The Omani Constitution: A Critical Analysis

A thesis submitted to The University of Manchester for the degree of

MPhil

in the Faculty of Humanities

2011

Basmah Al-Kiyumi

School of Law
# List of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Abstract</strong></td>
<td>4</td>
</tr>
<tr>
<td><strong>Declaration</strong></td>
<td>5</td>
</tr>
<tr>
<td><strong>Copyright Statement</strong></td>
<td>6</td>
</tr>
<tr>
<td><strong>Dedication</strong></td>
<td>7</td>
</tr>
<tr>
<td><strong>Acknowledgment</strong></td>
<td>8</td>
</tr>
<tr>
<td><strong>Chapter 1: Introduction</strong></td>
<td>9</td>
</tr>
<tr>
<td>1.1 Introduction</td>
<td>9</td>
</tr>
<tr>
<td>1.2 Academic Writings on the Omani Constitution</td>
<td>9</td>
</tr>
<tr>
<td>1.3 Research Question</td>
<td>11</td>
</tr>
<tr>
<td>1.4 Sources of the Study</td>
<td>12</td>
</tr>
<tr>
<td>1.5 The Organisation of the Thesis</td>
<td>13</td>
</tr>
<tr>
<td><strong>Chapter 2: Oman as a Strong State: Theoretical Framework</strong></td>
<td>16</td>
</tr>
<tr>
<td>2.1 Introduction</td>
<td>16</td>
</tr>
<tr>
<td>2.2 Theoretical Basis</td>
<td>18</td>
</tr>
<tr>
<td>2.3 Oman: A Strong State?</td>
<td>21</td>
</tr>
<tr>
<td>2.4 Societal Dislocation: Humpty Dumpty’s Fall</td>
<td>22</td>
</tr>
<tr>
<td>2.5 The Creation of a Strong State: Putting Humpty Dumpty Together</td>
<td>25</td>
</tr>
<tr>
<td>Again</td>
<td>25</td>
</tr>
<tr>
<td>2.6 The Second Stage in Building a Strong State</td>
<td>30</td>
</tr>
<tr>
<td>2.7 Development and the creation of a strong state</td>
<td>34</td>
</tr>
<tr>
<td>2.8 The Strong State and the Constitution</td>
<td>39</td>
</tr>
<tr>
<td>2.9 Conclusion</td>
<td>42</td>
</tr>
<tr>
<td>**Chapter 3: The Constitution of Tariq: Oman’s First Draft Constitution</td>
<td>43</td>
</tr>
<tr>
<td>3.1 Introduction</td>
<td>43</td>
</tr>
<tr>
<td>3.2 Overview of Tariq’s Background</td>
<td>44</td>
</tr>
<tr>
<td>3.3 Tariq’s Efforts to Establish Constitutional Rule in Oman</td>
<td>47</td>
</tr>
<tr>
<td>3.4 Why did Tariq’s Bid for a Constitution Fail?</td>
<td>53</td>
</tr>
<tr>
<td>3.5 1967 Draft Constitution</td>
<td>57</td>
</tr>
<tr>
<td>3.6 Conclusion</td>
<td>67</td>
</tr>
<tr>
<td><strong>Chapter 4: Introducing the Constitution: Timing and Purposes</strong></td>
<td>68</td>
</tr>
<tr>
<td>4.1 Introduction</td>
<td>68</td>
</tr>
<tr>
<td>4.2 Why Not 1970?</td>
<td>70</td>
</tr>
<tr>
<td>4.3 Why in 1996?</td>
<td>81</td>
</tr>
<tr>
<td>4.4 Conclusion</td>
<td>93</td>
</tr>
<tr>
<td>**Appendix 1 to Chapter 4: The Process of Making the Omani Constitution</td>
<td>95</td>
</tr>
</tbody>
</table>
Abstract

According to Migdal a strong state is one that is highly capable of penetrating society, regulating social relationships, extracting resources, and appropriating or using these resources in determined ways. By applying this definition to Oman, Manea concludes that Oman, under the rule of Sultan Qaboos, provides a good example of strong state.

This thesis attempts to understand how the strength of the Omani state had shaped the country’s constitutional experience. It argues that because Oman is a strong state, its constitutional experience was determined to a large extent by the regime rather than by the society.

To verify this argument, the thesis examines important decisions and critical junctures that shaped the country’s constitutional experience, and the reasons behind them. These decisions and junctures include: (i) the failure of Oman’s first experience with the idea of a formal constitution, namely the attempt of Sayyid Tariq bin Taimour in 1967, (ii) the refusal of Sultan Qaboos to introduce a constitution in 1970, and (iii) the introduction of the Basic Law in 1996.

It also examines the constitutional text to understand how the state had influenced its content. It concludes that the content of the constitution displays clearly the strength of the state and its ability to penetrate society and impose its new rules and values. In fact, the Basic Law is in itself a tool for this penetration and a manifestation of its depth. It shows the ability of the state to unilaterally define the political and legal landscape and impose “rules of the game” successfully on its people. The thesis therefore concludes that the state, represented by the Sultan, has to a large extent, dictated the constitutional experience of the country excluding the society almost completely from the process.
Declaration

No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.
Copyright Statement

i. The author of this thesis (including any appendices and/or schedules to this thesis) owns certain copyright or related rights in it (the "Copyright") and s/he has given The University of Manchester certain rights to use such Copyright, including for administrative purposes.

ii. Copies of this thesis, either in full or in extracts and whether in hard or electronic copy, may be made only in accordance with the Copyright, Designs and Patents Act 1988 (as amended) and regulations issued under it or, where appropriate, in accordance with licensing agreements which the University has from time to time. This page must form part of any such copies made.

iii. The ownership of certain Copyright, patents, designs, trade marks and other intellectual property (the "Intellectual Property") and any reproductions of copyright works in the thesis, for example graphs and tables ("Reproductions"), which may be described in this thesis, may not be owned by the author and may be owned by third parties. Such Intellectual Property and Reproductions cannot and must not be made available for use without the prior written permission of the owner(s) of the relevant Intellectual Property and/or Reproductions.

iv. Further information on the conditions under which disclosure, publication and commercialization of this thesis, the Copyright and any Intellectual Property and/or Reproductions described in it may take place is available in the University IP Policy (see http://www.campus.manchester.ac.uk/medialibrary/policies/intellectual-property.pdf), in any relevant Thesis restriction declarations deposited in the University Library, The University Library’s regulations (seehttp://www.manchester.ac.uk/library/aboutus/regulations) and in The University’s policy on presentation of Theses.
Dedication

To the late Sayyid Tariq bin Taimour Al Said…

Your efforts did not go in vain …
Acknowledgment

I would like to thank all those who made completing this thesis possible.

In particular, I would like to express my deep gratitude to Dr. Lindsay Stirton whom I was fortunate to have as my supervisor. Our thought-provoking discussions, and his critical comments and encouragement throughout this work were invaluable.

I wish to acknowledge, with deep thanks, the help I received from Dr. Hussain Al Salmi who provided me with valuable resources that greatly informed my research.

My sincere appreciation goes to my friend Sarah Haworth for her support and reassurance during difficult times.

I would also like to thank my family, and my mother in particular, for their indispensable emotional support during this journey; with special thanks to my little nieces Hanaa, Lubna, Daniya and Lamiya, without whom this thesis would have been completed a lot earlier.

The greatest debt, however, I owe to my husband Tariq Al Sabahi; without his love and support this thesis may have never been completed.
Chapter 1: Introduction

1.1 Introduction

Oman has been ruled by the Al Said dynasty, an absolute monarchy, since 1744 without any formal constitution until the inception of the current sultan, Sultan Qaboos bin Said Al Said, in 1970.

As part of a program of political and social modernization, in 1975, the State Administrative Apparatus Law was issued to serve as the main referential text providing a framework for all regulations, laws and legal principles. However, it was extremely limited in its scope and never acquired any constitutional status.

In November 1996, the Sultan issued Royal decree 101/96 promulgating Oman’s first constitutional document, the Basic Law which sets out the structure of the government, succession process, and the main principles guiding state policy. It also provides guarantees for fundamental rights and freedoms, and the independence of the judiciary. However its impact on the political and legal functioning of Oman is debatable.

1.2 Academic writings on the Omani Constitution

Unlike some other Arab and Muslim Countries, Oman has received very little academic attention by the academic research community, and the lack of academic freedom within the country has made it very hard for Omani researchers to tackle politically sensitive issues.

Hence the Basic Law has not been subjected to a thorough legal analysis, although a few attempts have been made to address it from a political perspective.

---

This situation could be attributed mainly to the relatively recent introduction of the Basic Law in 1996 and the newly emergent legal academia in the country. However there are a number of studies that deserve to be mentioned here.

From the field of constitutional law, two books have been published in Arabic. The first is ‘An Explanatory Account of the Omani Basic Law ’ by Dr. Salim Al Shukaili,(2006) while the second is ‘The General Principles of the Basic Law and System of Government’ by Dr. Kamal Salah Raheem (2006). Both of these books were published as textbooks providing legal interpretation and basic explanation of the constitutional provisions, but no critical analysis of their significance is offered.

In their book, ‘Oman under Qaboos: from Coup to Constitution’, Allen and Rigsbee(2002) briefly discuss the significance of the constitution in limiting the government and protecting human rights arguing that the Basic Law leaves much to be desired in this regard. They also offer valuable critique on the succession procedure in the constitution.

Nikolaus A. Siegfried’s Legislation and Legitimation in Oman: the Basic Law (2000), fills an important gap in the literature and offers a critical account of the constitution by looking at it within its political context. He investigates the political impact and the innovative potential of the Basic Law against the background of Omani and regional history and European and Islamic constitutional thought, focusing on the issues of authority and legitimation. Through examining the constitutional provisions and comparing them with other Gulf constitutions, he concludes that the Omani constitution has no significant political impact and is merely symbolic in character. It did not help to substantiate democracy or establish an effective civil society.

However, Siegfried’s account of the Basic Law focuses on the political significance rather than the legal implications of the document. It also lacks the historical perspective necessary to appreciate the context within which the Basic Law was introduced.

---

1.3 Research Question

According to Migdal a strong state is one that is highly capable of penetrating society, regulating social relationships, extracting resources, and appropriating or using these resources in determined ways. By applying this definition to Oman, Manea concludes that Oman, under the rule of Sultan Qaboos, provides a good example of a strong state.

This thesis attempts to understand how the strength of the Omani state had shaped the country's constitutional experience. It argues that because Oman is a strong state, its constitutional experience was determined to a large extent by the regime rather than by the society.

To verify this argument, the thesis examines important decisions and critical junctures that shaped the country’s constitutional experience, and the reasons behind them. These decisions and junctures include: (i) the failure of Oman’s first experience with the idea of a formal constitution, namely the attempt of Sayyid Tariq bin Taimour in 1967, (ii) the refusal of Sultan Qaboos to introduce a constitution in 1970 (iii) the introduction of the Basic Law in 1996.

It also examines the constitutional text to understand how the state had influenced its content.

The present research is distinctive from previous literature in its attempt to explain the Omani constitution from a constitutional, historical and socio-political perspective. First, it presents a historical and analytical account of Oman’s constitutional experience in the second half of the twentieth century, placing the current constitution in its historical and political context. Secondly, it attempts to explain Oman’s constitutional experience using Migdal’s theoretical framework of strong societies and weak states. It proposes that the nature and extent of constitutional experiences in developing countries can be determined to a large degree by the power distribution between state and society. This proposal can therefore be applied in general.
Thirdly, although its principal emphasis is on the 1996 constitution, it is the first piece of academic research on the 1967 proposed constitution advocated by Qaboos's Uncle and former Omani prime minister, Sayyid Tariq bin Taimour Al Said. Some of the archival sources used in this research have not been used or analyzed before.

Fourthly, it provides an immanent critique of the provisions of the Basic Law, and applies Sartori’s classification of constitutions to the Basic Law, presenting, therefore, a different evaluative account of the Omani constitution.

Finally and most importantly, this work represents the first piece of archival research into Oman’s constitutional experience, uncovering some very important documents from the 1960s and 1970s related to regime change in Oman and early attempts to introduce constitutional government.

1.4 Sources of the Study

The biggest challenge faced by the researcher in completing this study is data collection for two main reasons: Firstly, there is very little academic writing about this topic. Secondly, in Oman this issue is generally perceived as politically sensitive. For this reason after conducting few interviews, this method of data collection was abandoned as participants were reluctant to talk openly.

Therefore, the main sources informing this research were laws, statutes, court cases in addition to archival documents, in the British National Archives, which include diplomatic reports written by British Diplomats in Oman to the Foreign and Commonwealth Office in London. These archival resources contain a wealth of information which helps to place the Omani constitution within its historical context.

Other secondary sources were used including books, newspapers, journals, websites and official governmental publications. In determining the opinions of the Sultan, the researcher
consulted a number of interviews the Sultan has given to international media before and after the introduction of the constitution.

In addition to the above sources, the author's personal knowledge as a practising lawyer, of the Omani constitution and political system also informed this study.

1.5 The Organisation of the Thesis

The thesis is divided into seven chapters, including this introduction and the conclusions chapter. Chapter two offers a discussion of the Omani state and society in view of Migdal’s theory of strong societies and weak states. It adopts Manea analysis of the Omani state under Qaboos (1970 until date) as a strong state controlling a weak society. The chapter starts by providing a brief account of Migdal’s theory and an overview of Manea’s analysis. It moves then to discuss the implication that this analysis has in explaining the Omani constitutional experience under the strong Omani state, arguing that in the context of a strong state and a weak society, constitutional choices depend to a large extent on the choices made by the state rather than by the people.

The rest of the chapters follow this argument; providing supporting evidence for it from Oman’s modern constitutional experience.

Chapter three aims at filling a gap in the study of Oman’s constitutional experience in the 20th century, in addition to providing a historical background to the current Omani constitution by looking at Tariq bin Taimour al-Said’s unsuccessful efforts to establish constitutional rule in Oman.

The chapter discusses Tariq bin Taimour Al Said’s introduction of the first draft constitution in Oman’s modern history in 1967, and his pursuit of this goal during his premiership. His efforts were met with failure because Tariq could not convince Qaboos of the merits of the idea or gain
his trust. Qaboos also believed that introducing a constitution in 1970 would be detrimental for various reasons. Chapter three explores the basis of this belief.

Chapter four investigates the reasons and the motives behind adopting the constitution in 1996 and not in 1970 when Qaboos came to power and started building the modern Omani state. It will show that, although the official position explains the delay solely on the grounds of education and levels of political awareness in the country in 1970, there were other pressing issues; the boiling political situation at that time, the wish to avoid empowering certain traditional players, the tradition of absolute monarchy and rejection of any kind of power-sharing arrangement have definitely contributed to the delay; in addition to the tribal nature of the society which made it more willing to accept the lack of a formal written basis for government.

In 1996, however, the presence of a number of factors has played a part in making the introduction of a constitution unavoidable. In the first half of the 1990s, the regime was facing a crisis of legitimacy to which the constitution seemed an appropriate response; in addition to the question of succession, an issue in itself since Sultan Qaboos was only briefly married and failed to produce an heir, a situation further exacerbated after a failed coup and a near death accident involving the Sultan. International pressure and economic necessity were also among the main reasons for the introduction of the Basic Law.

Appendix 1 to chapter four describes the constitution making process in terms of the origin of the document, the arena of deliberations and the level of public participation. It shows how the public were completely excluded, and the extent to which the process was closed, non-transparent and non-democratic; and how this had impacted on the content of the constitution itself.

In order to provide a deeper understanding of the Basic Law, chapter five provides an over-all examination of its text. The first part discusses the main sources of ideological influence such as Islam, Arab nationalism and western constitutionalism. The second part of the chapter explains the main characteristics of the constitution in terms of flexibility, adaptation and the status of its
provisions in relation to national laws and international treaties. Finally the third part explores three of the prominent issues in the Basic Law: the economy, the sovereign strong state, the internationalist trend.

Appendix 1 to chapter 5 examines how the succession issue is dealt with in the Basic Law.

Chapter six attempts to provide an immanent critique to the Basic Law by evaluating the constitutional provisions against their self-imposed standards and values. It shows how the Basic Law fails to provide meaningful restraints on the regime and its exercise of power to the extent that it cannot be said to provide for a constitutional rule. Instead, its value is more as a codification of the system of government; it preserves the status quo without attempting to change it.
Chapter 2: Oman as a Strong State:

Theoretical Framework

2.1 Introduction

Up until 1970, Oman was an isolated, primitive country with a very basic system of government. The whole country had three schools for boys only, and one hospital run by an American doctor. Said bin Taimour\(^4\), the previous Sultan, opposed any form of modernization and insisted on keeping the country and its people isolated to protect their traditional way of life from external influences. The capital city Muscat was surrounded by a wall that was closed after sundown and no foreigner was allowed to enter or leave the city without the personal permission of the Sultan. The country had no infrastructure and people were subject to various restrictions affecting every aspect of their life; for instance, they were not allowed to use “modern” inventions like radios and eyeglasses.

However, in 23 July 1970, a whole new stage of Oman’s history begun when Qaboos overthrew his father and assumed power over the country.

In his first speech after the coup, he promised the people of Oman that he will: “proceed forthwith in the process of creating a modern government. My first act will be the immediate abolition of all the unnecessary restrictions on your lives and activities.”\(^5\)

\(^4\)Ruled Oman from 1932 to 1970.

Since his first day, the Sultan proceeded with his plans to create a modern, unified and a strong state.

Migdal uses the concept of strong societies and weak states to analyse states of presistant underdevelopment. A strong State according to Migdal is one that is capable of achieving the kinds of changes in society that “their leaders have sought through state planning, policies and actions. Capabilities include the capacities to penetrate society, regulate social relationships, extract resources.”

Therefore, to determine the strength of the Omani State within this framework, Manea asks the following question: Has Sultan Qaboos succeeded in using the state’s agencies to get his people to do what he wanted? She rightfully answers: Yes.

Qaboos’s reign has been characterized by his absolute and very personal rule. He followed on his father’s footsteps by ruling as an absolute monarch without any formal limitations on his power and with all the authority concentrated in his hand.

His regime was able to penetrate society, regulate social relations and extract and appropriate resources, to build a unified state in accordance with his vision.

Manea’s conclusion can help explaining the Omani constitutional experience under Qaboos. We can reasonably argue that in the context of a strong state and a weak society, constitutional choices depend to a large extent on the choices made by the state rather than by the people. In certain cases, these choices depend on the leaders’ personal whims rather than on any articulation of interests in society.

__________________________


7 Manea, Regional Politics in the Gulf, p 87.

8 ibid.
This chapter will discuss the Omani state and society in view of Migdal’s theory of strong societies and weak states. It will start by giving an account of the theory, and a summary of Manea analysis of the Omani state. It will move then to discuss the implication that this analysis will have in explaining the Omani constitutional experience under Qaboos’s rule.

2.2 Theoretical Basis

Migdal presents a theory that looks at the interactive relationship between the central state and the society and the struggle for social control between them. Both the state and other organizations in the society (families, tribes, domestic enterprises etc.) will struggle over social control; i.e. the actual ability to make the operative rules of the game for people in the society.

For states, social control entails more than penetration of its agencies into society or the mere extraction of resources. “It includes the ability to appropriate resources for particular purposes and to regulate people’s daily behavior. With controlled and selective disbursement of state resources, officials have the possibility of offering the main components, especially the major myths and symbols, for people’s strategies of survival. Only then does the state have the prerequisites for effective regulation and the possibility of extensively mobilizing the population.”

In Migdal’s view, the ability of the state to mobilize its population means effectively skimming surplus from society and gaining tremendous strength in facing external threats; while internally, state personnel will be autonomous from other social groups indetermining their own preferences for what the rules of the society should be.

---

10Ibid 32.
society (the police and armed forces) to ensure that other groups play in accordance with the state rules and do not stand in their way.\textsuperscript{11}

However, as Migdal's illustrates, because of environment of conflict between the state and other social groups, it is not guaranteed that state leaders will achieve the predominance that they struggle for.\textsuperscript{12} The challenge for them is whether they will be able to displace or harness other actors which make rules against the wishes and goals of the state.\textsuperscript{13}

Migdal argues that in many Third World countries, the state leaders’ drive for predominance – their quest for undisputed social control- has stalled because of tenacious and resilient organizations within their societies.\textsuperscript{14} Therefore, depending on the outcome of this struggle over social control, states may be described as weak or strong.

A strong state is one that is highly capable of penetrating society, regulating social relationships, extracting resources, and appropriating or using these resources in determined ways. A weak state, on the other hand, is on the low end of the spectrum in terms of these capabilities.\textsuperscript{15}

According to Migdal, strong states have been a rarity.\textsuperscript{16} He identifies two crucial conditions behind the emergence of strong states; the first is a massive societal dislocation, which severely weakens social control and breaks down its old patterns. This has occurred as the world economy intensely and deeply penetrated society.\textsuperscript{17} “The sudden, eruptive changes in the late nineteenth and early twentieth century had momentous and long-term effects on social organization and social control. Such catastrophic changes prime a society for a major

\textsuperscript{11}Ibid.
\textsuperscript{12}Migdal, Strong societies and weak states, p 31.
\textsuperscript{13}Ibid.
\textsuperscript{14}Migdal, Strong societies and weak states, p 32.
\textsuperscript{15}Ibid., p 4-5
\textsuperscript{16}Ibid, p269.
\textsuperscript{17}Manea, Regional Politics in the Gulf, p 88.
institutional transformation. This fluid and indeterminate state …affords a favorable ground for the swift transformation of social institutions- for the emergence of radically different social forms. Society is now in a plastic state, like half-melted wax out of which anything can be moulded". 18

The second condition is the consolidation of social control in the hands of strong and capable leadership.19

Migdal also identifies other factors that would provide incentives for the consolidation of social control. These are:

- Military threat: the existence of a military threat from an external party or from other communal groups from the country itself, provides a strong incentive for state leaders to mobilize the population and consolidate their power to face this enemy which could threaten their very own existence. This serious threat induces the state to take unusual risks, and justifies the cost of confronting other social groups, to achieve predominance. 20

- The basis for an independent Bureaucracy: the existence of a skillful state bureaucrats, independent of existing bases of social control, who may be relied upon to implement state policies and plans21.

- Skillful leadership: competent leadership capable of seizing the moment to build a strong state22.

- World historical timing: the social dislocation is more likely to lead to the establishment of a strong state, if it occurred in a world historical moment favorable to the consolidation of social control like for instance the period between the end of World

---

21 Migdal, *Strong societies and weak states*, pp. 275
22 Ibid., p 275.
Power II and the beginnings of détente around 1970. In this period, the U.N was actively
promoting the state as the sole voice of the people.\textsuperscript{23}

For countries under the direct influence of an outside hegemonic power, it is important
that this power supports, or at least does not stand against, the channeling of resources
towards indigenous organizations that are capable of extending social control in the
society.\textsuperscript{24}

The existence of these factors facilitates the emergence of a strong state capable of dictating
the rules that governs the details of people's lives and defines the boundaries of the political and
social landscape.

\textbf{2.3 Oman: A strong State?}

By analyzing the Omani case within this theoretical framework Manea concluded that Oman
does indeed fit Migdal's model of a strong state. She argues that intense and deep penetration
of the world economy has had a substantial impact on patterns of social control. The ban of
slave trade and the separation between mainland Oman and its African colonized territories had
severe consequences on the local economy, as well as the devastating political and social
impact of civil war between Muscat and the interior leading to a separation between the two.\textsuperscript{25}

Consolidation of social control started then under Sultan Qaboos's father who unified the Omani
territory under his control, and continued under Qaboos who was able to penetrate social
relations and channel the newly found oil resources through his massive development efforts
towards achieving predominance in the society, leading to the formation of a strong, unified
Omani state.

\textsuperscript{23} Ibid., p 271-272.
\textsuperscript{24} Ibid., p173.
\textsuperscript{25} Manea, \textit{Regional Politics in the Gulf}, p.89.
Therefore, according to Manea three crucial factors have led to the emergence of Oman as a strong state. First: the country’s history, including the impact of the world economy and civil wars. Second: state formation as Sultan Said established control over Omani territory. Thirdly: leadership, where Sultan Qaboos took advantage of the situation and reestablished social control through his authority and the development programme he carried out, creating a strong state.

2.4 Societal Dislocation: Humpty Dumpty’s fall

During the first few decades of Al Said reign, particularly Said bin Sultan’s rule (1807-1956), Oman grew as a regional maritime power, and commerce with the rest of the world flourished. Their maritime empire expanded in the Indian Ocean to include parts of East Africa like Zanzibar and Mombasa, and reached to the Indian subcontinent. The income generated in East Africa through slave, ivory and arms trade has played a vital role in supporting Oman’s economy.26

However, this prosperity did not continue for long, because in early nineteenth century Britain imposed a ban on slave trade from the Omani occupied territory in East Africa. Oman was pressurized to sign a number of treaties with England banning the trade in slaves in 1822, 1839, 1845 and 1873.27 This ban seriously undermined the financial recourses of the country as trade in slaves and guns formed a major part of the economy of the Omani empire.28

To make matters worse, a succession crisis arose after the death of Said bin Sultan between two of his sons over the rule of Oman and its territories in East Africa, mainly rich Zanzibar. The

---

26 Manea, Regional Politics in the Gulf, p.90.
27 Ibid.
British interfered as arbitrators separating the African domains from Oman and creating two separate sultanates. In return, the rich Sultanate of Zanzibar was ordered to pay Oman a yearly subsidy. However, when Zanzibar defaulted in this payment, it was first pressured to pay with arrears but later the British Government of India took over this payment, leading to the financial dependency of Oman on the British pound. This reduced the Al Said rulers from being in control of a significant maritime power to the status of client state.

From the British point of view, Oman was particularly important to its supremacy in the Indian Ocean, in the face of European imperial rivals, France in particular. However, Muscat could not be declared as a British protectorate because of the 1862 declaration issued by France and Britain to maintain Muscat’s independence. Nevertheless, to protect its interest, Britain entered into several agreements with Oman. In 1891, a non-alienation of territory agreement was signed whereby the Sultan bound himself, his heirs and successors “never to cede, sell to mortgage or otherwise give for occupation, save to the British government, the dominions of Muscat and Oman or any of their dependencies.” In 1902, the Sultan signed another agreement preventing him from granting concessions for the coal-fields to any country or company without the prior permission of the British government. More importantly, in 1923 Oman entered into a further agreement to “not exploit any petroleum which may be found anywhere within (its) territories without consulting the Political Agent at Muscat and without the approval of the High Government of India.”

In return for their submission, the British provided their financial and military support to Al Said family, to help it to maintain control over the country. The Omani Sultans were heavily dependent on this support, particularly with no nationally organized armed forces.

29 Ibid, p.38-39
31 Oman and the World: the Emergence of an Independent Foreign Policy. p. 125
32 Ibid.
33 Ibid.
“Only with British help could the Sultan remain in control, and his growing dependence on outsiders caused his relations with the Ibadhi population to deteriorate. Whereas other gulf rulers used the British to protect them from their more powerful neighbours, the Sultan needed the British to protect him from his subjects.”34

By the end of the 19th century, Oman’s economy had seriously deteriorated, and many people migrated to East Africa. Between the 1850s and the 1870s, the population of Muscat fell from 55,000 to 8,00035. Furthermore, the British has pressurized Sultan Faisal to ban arms trading which was an important source of revenue for the Ibadhi tribes in the interior.

The growing dissatisfaction amongst people in the interior of Oman led to various calls for the revival of the Ibadhi imamate: the Omani traditional theocratic system of government, which enjoyed the support of major Omani tribes.

A series of military confrontations started, when the Ibadhi tribes reestablished the Imamate in 1913. The Sultans, supported by the British controlled Muscat and the coast, while the Imamate supported by many of Oman’s most prominent tribes controlled the interior; this split was officially recognized by both parties in Al Seeb treaty (signed in 1920 and arbitrated by the British), which marked the start of a cohabitation period that did not last very long. Conflict broke out again in 1954 and was exacerbated by the discovery of oil in commercial quantities in the interior.

34 Manea, Regional Politics in the Gulf, p 25.
35 Manea, Regional Politics in the Gulf, p.90.
2.5 The Creation of a Strong State: Putting Humpty Dumpty Together Again

Up until this point, as Manea argues, Oman presented a perfect fit for Migdal’s description of a fragmented society where old patterns of social control have broke down as the country was bankrupt and divided. “Omani society was thus in a fluid and indeterminate state and was ready for a swift transformation of its social institutions.”36

The transformation of Oman from a weak into a strong state was accomplished in two stages. The first started in Sultan Said’s reign, while the second was initiated by Sultan Qaboos in 1970; in both cases the British were heavily involved.

Said’s contribution to the establishment of a strong state can be summarized in three main ways:

Firstly, he managed to stabilize the economic situation in the country. Following the abdication of Sultan Taimour, Said took over in 1932 to find that he had inherited from his father a divided state with enormous debts. The harsh effects of the worldwide recession were evident in the remarkable fall in revenues from customs duties and the taxes imposed on produce arriving in Muscat from the interior. The state suffered from a period of drought and incurred financial debts to the British government and to the Indian merchant communities in Muscat. His first task was to balance the budget, taking drastic measures to stabilize the economy and repay Oman’s debts by reducing expenditure, and seeking additional and alternative income. In addition to reducing allowances paid to members of the royal family, certain taxes were increased and new customs posts were established in major cities like Sur and Sohar, extending the collection branches beyond the capital. Eventually his efforts met with success; Said was able to stabilize the economic situation and to institute a certain stability and order. However, his financial resources were still extremely limited

36 Manea, *Regional Politics in the Gulf*, p.91.
Secondly, Said embarked on an overhaul of the Sultanate’s administration which included abolishing the British-dominated council of ministers and replacing it with three offices; finance which was controlled by Said himself, justice and internal affairs which had a broad authority overlooking the courts and the governors, in addition to managing the relationship between the central state and both the Imamate and the traditional tribes. Later a ministry of foreign affairs was also established. Therefore, during the first decade of his rule Said managed to lay the foundation for a government apparatus that eventually deepened and broadened the range of the government’s role in the society.

Thirdly and most importantly was Said’s success in reasserting his control over the entire country. Although he was able to institute a certain stability and order, Said understood that his ability to maintain it was limited, and that if he wanted to build up and fortify his independent position he must subordinate the interior of the country which was under the control of the Imamate. At the same time, despite being eventually able to pay off Oman’s debts and maintain a balanced budget, the country’s income was still very limited. With such income, the Sultan could not embark on any serious or sustainable development plans, nor could he assert independence vis-à-vis British client-state status. Expected revenues from oil were, therefore, Said’s biggest chance of accomplishing this goal. The problem with this was that oil was found, in promising quantities mainly in the interior, forcing Said to cooperate with the ruling Imam who strongly opposed oil exploration in any area under his control, and banned Christians from entering his territory. When negotiations failed with the Imam, Said decided that the removal of the Imam and reunifying Muscat with the interior was the best way to ensure unrestricted access to oil reserves.

37 Ibid.
38 Ibid.
In this respect, Said’s interests coincided with those of the British.

Following the discovery of oil in the Gulf region, British companies were seeking to dominate this new market and were competing fiercely with American companies. They also wanted exact delineations of, and secure access to, their concession areas, and therefore turned to British officials for assistance.\(^{39}\)

The role of the British in bringing about the change in Oman should not therefore be underestimated.

As Migdal argues, the reconstitution of social control and distribution of that control in colonized societies depends to a large degree on the actions of the colonial power and its interests. Out of pure self-interest colonial powers attempt to manipulate the indigenous rulers and makers of the new social control; their actions greatly affect which indigenous figures are able to reconstitute social control in the wake of the catastrophic changes, and who would have the resources and authority to offer effective components for strategies of survival to the population. The new form of social control stemmed from a convergence of disparate interests of colonizers and some of the colonized.

Although Oman was not a formal colony it could be described as a veiled semi-protectorate.\(^{40}\)

In that respect, it again provides evidence supporting Migdal's argument. The British wanted secure and sustainable access to oil reserves for their own economic interests, while Said wanted to consolidate his control over Oman’s territory and benefit from oil revenues to realize financial independency from the British. Therefore, the Imamate had to go.

With the support of the British, Sultan Said crushed the Imamate forces in 1959 and regained control over the interior of Oman, establishing himself as the sole ruler of the united country.

---

\(^{39}\)Ibid.

However, other than this achievement, Manea argues that Said was not able to fulfill Migdal’s criteria for a strong state; he could not penetrate the society and reestablish social control.

In the 1960s his isolation increased, as he hid himself in his palace in Salalah- the capital of Dhofar- and had no contact with the Omani people. He “was connected to the outside world only by radio telephone which he shared with a selected few.”

As Eickelman argues, “Sultan Said’s “absolute” monarchy was a minimalist state in the sense that it exercised firm control over only a narrow spectrum of concerns... Except for a small military presence and a small network of individuals personally commissioned by the Sultan to write confidential reports on local events, the scope of governmental activities remained what it was prior to 1955. Reliance upon tribal shaikhs provided an inexpensive means of governing the interior, but at the cost of maintaining an administrative system with neither the capacity nor the resources to undertake development projects of any sort or to assess local needs in any significant way.”

Despite the income from oil, Said did not take any serious steps towards the development of the country. He opposed any form of modernization and insisted on keeping the country and its people isolated to protect their traditional way of life from external influences. The capital city Muscat was surrounded by a wall that was closed after sundown and no foreigner was allowed to enter or leave the city without the personal permission of the Sultan. The country had very basic infrastructure and people were subject to various unreasonable restrictions; for instance, they were not allowed to use “modern” inventions like radios and eyeglasses.

Due to such rigid policies, Sultan Said was not popular and faced a number of assassination attempts and national uprises leading him to retreat to his palace in Dhofar, and to rule the rest

---

42Manea, *Regional Politics in the Gulf*, p 95.
of the country through his advisors for more than a decade. However, his rule was sustained by the support of the British and the loyal tribes and governors.

By the mid 1960s the British started to perceive Said as a liability and indeed a threat to their interests. They were frustrated by his failure to control the country and secure his rule, besides his reluctance to modernize and develop the country was causing a great anger and dissatisfaction among people endangering the rule of Al Said dynasty on which the British rely to achieve their goals in the region.

The situation became more serious and in need for an urgent solution when the British announced their decision to withdraw from the Persian Gulf in 1968. Before completing the pull out in 1971, the British wanted to ensure that their interests would remain protected.

These interests are:

- To prevent the Sultanate from disintegrating and falling under communist control or left-wing Arab nationalism with the result that stability in the Persian Gulf is threatened before British withdrawal or that extensive oil and commercial British interests are lost after the withdrawal. This was particularly important in view of the communist rebellion in Dhofar at the time.
- To maintain strategic British military positions in Oman which were essential for their Far Eastern commitments.
- To maintain the flow of high quality oil from Oman; and
- To maintain and increase British exports, both goods and services.44

The British wanted to guard this interest with minimum direct interference and military involvement in Oman. Said was clearly unable to provide what the British expected. They saw

him as complex and “largely unresponsive to British advice”. Unless he was given “a serious jolt, he will always do too little, too late, and in some fields be unwilling to move at all.”

The British therefore, decided that a controlled change was better than an uncontrolled change which may bring about an unsympathetic regime.

Qaboos, his only son, seemed a good candidate to replace his father, with his ambition and determination to open up his country.

Qaboos was born in November 1940 in Dhofar and educated privately in his father’s palace until the age of 16. He later left to England for his education and graduated a few years later from the Royal Military Academy Sandhurst. After graduation, he served in a British Infantry regiment and was stationed in Germany for a year. Upon British recommendation, Qaboos embarked on a world tour accompanied by a British advisor before finally returning to Oman.

When he returned, Qaboos was kept isolated in his father’s palace in Salalah; his movement and communication were extremely restricted, as his father had anticipated the possibility of a coup attempt.

2.6 The Second Stage in Building a Strong State

In 23 July 1970, Qaboos overthrew his father, with the assistance of the British, and assumed power over the country.

In his first speech after the coup, he promised the people of Oman that he would: “proceed forthwith in the process of creating a modern government”. Stating that his first act would be the immediate abolition of all the unnecessary restrictions on people’s lives and activities.

---

45Ibid.
46Manea, *Regional Politics in the Gulf*, p 96.
One of Qaboos’s first acts was to change the name of the country from the Sultanate of Oman and Muscat, to the Sultanate of Oman to confirm the geographical and political unity of the State and end the historical division between the interior and the coast.

He immediately proceeded to establish an interim advisory council chaired by the Defense Secretary, and a number of British advisors as members. His uncle Tariq bin Taimour was invited to return from exile to assume the role of a Prime Minister, and to lay the foundation for modern government. In August 1970, four ministries were set up: Education, Health, Interior and Justice. 48

Other educated Omanis in exile were also invited to take part in the creation of the new state, restrictions on movement within the state were removed, political prisoners were released, and an ambitious development plan was announced to build schools, hospitals and roads around the country. 49

However, when Qaboos assumed power, he was facing two important challenges to his rule; the Marxist rebellion in Dhofar, and the urgent need to implement far-reaching development plans to deal with people’s resentment and dissatisfaction with the state. 50 In his efforts to deal with these challenges, Qaboos managed to create a strong state that is capable of shaping the society’s thoughts and behavior.

The Rebellion in Dhofar

49 Beckett and Pimlott, Armed forces & modern counter-insurgency, p 31.
50 Southern province located near the borders with Yemen in isolation, separated from the rest of the country by hundreds of kilometres of empty desert. A remarkable percentage of the Country’s oil wealth is located in the South, however, Dhofaries have complained about their share of development plans compared to the north and Muscat in particular. This sense of injustice has in the past fuelled the Dhofar rebellion and calls for separation.
In the early 1960s, discontent with the policies of Sultan Said among Dhofaries grew leading to the establishment of a nationalist military movement for the separation of Dhofar. By late 1960s, what started as a local nationalistic rebellion turned into an ideologically charged Marxist insurgency, aspiring to liberate the Arabian Gulf and establish a socialist state. It attracted members from all over the Gulf region and managed to establish strong links with the USSR, China, Cuba, and other Arab communist and socialist movements.

This rebellion in the middle of the Cold War, therefore, created a threat not only to Al Said reign, but also to other Arab regimes, and most importantly to the interests of the Western camp which could not afford to lose the strategically important, oil-rich Gulf to the Eastern bloc.

To defeat the rebellion on the military front, Qaboos sought to internationalize the issue by portraying it as part of the struggle against communism, and highlighting the risk it poses to the region’s Islamic and Arab identity and to security of oil supply. With this argument, he managed to convince many regional powers like Iran, Saudi Arabia, Jordan and UAE to provide their military and financial support. In addition to Britain, whose help in this matter was indispensable.

In addition to his military campaign, Qaboos ‘found ways to end Dhofar’s isolation by connecting it to the centre at Muscat, and also instil a sense of national identity among its population.’ He achieved these through three main ways:

First, he offered the rebels generous opportunities to switch sides and join his force. He pardoned all of those who were willing to join him, retrained them and used them as a paramilitary force in tribal areas of Dhofar.

Secondly, to address the main cause of the Dhofar uprising, Qaboos launched a massive development campaign to improve life in the province, providing for the construction of roads,

---

51 This is particularly important because Oman controls the strait of Hormuz through which most of the region’s oil passes.
52 Manea, Regional Politics in the Gulf, p 96.
airports, schools, hospitals in addition to power and water supply. Between 1971 and 1975, 25% of the nation’s development budget was directed towards Dhofar alone.53

Thirdly, he managed to establish an administrative network in Dhofar. Ministries opened branches in the area to provide their services and run local affairs, employing tribal leaders as government representatives to strengthen the allegiance between the state and the tribal element in Dhofar society. The state did not only succeed in defeating the military insurgency in Dhofar in 1976, but was also able to penetrate the society by offering people alternative strategies of survival using state-led development, which was exclusively under the control of the state. As Peterson argues, 'most Dhofaries were won over by the obvious commitment of the new regime to development and a better life'.54

The same tool was also used in Massandam in the North, which is a territorial exclave separated from the rest of the country by the United Arab Emirates; but strategically very important to the Sultanate because of Hormuz strait through which most of the Gulf's oil exports pass.

Until recently, Massandam's political ties with Emirates were stronger than their links to the Sultanate. This became apparent in the 1978 border dispute with Ras Al Khaima, and since then more efforts were put by the central government in establishing physical connections with Massandam like ferry links and telephone lines. In addition to establishing a committee for the development of Massandam to ensure that this region receives its share of economic and social projects.55

53Ibid.
2.7 Development and the creation of a strong state

When Qaboos assumed power in 1970, the country was severely underdeveloped, and lacked nearly all infrastructure including roads, schools, hospitals, and electricity outside the capital Muscat. The government agencies existing at the time were minimal and could not perform as needed.  

Among the first priorities, therefore, was to establish government bodies that are capable of implementing development plans and meeting people's urgent needs. Ministries for social services, such as education, health and public works were set up, while oil revenues were used to finance building essential infrastructure around the country.

In terms of infrastructure, the achievements of the state are remarkable. From 3 schools in 1970, the number of schools reached 1,283 by 2008 accommodating more than 623,300 students, and from 1 hospital in 1970, 58 major hospitals and tens of health centres are scattered around the country. In 1970 only 10 km of asphalted roads existed, while in 2008 this reached more than 23,200 km.

In 1975, the State Administrative Apparatus Law was issued to serve as the main referential text providing a framework for all regulations, laws and legal principles, and to define the responsibilities of the government. The state also proceeded to establish a modern court system and to issue essential laws to regulate the activities of the state and the society like the Penal Code, Nationality Law, Banking Law and Companies Law.

56 Peterson, “Three and a half decades of change and development” Middle East Policy, p 128-130.
57 Ibid.
In terms of economic performance, the state managed to achieve remarkable growth; the per capita income increased nearly tenfold within the first decade from $360 in 1970 to 3,140 in 1980, then to $ 7,000 in 1991, and to $19000 in 2008. Foreign investment also increased remarkably in the oil and gas sector, as well as in trade and tourism. Through the expansion of government agencies, the state became the biggest employer in the country.

Overall the country managed to achieve an impressive level of development. In 2010, the “Human Development Report ranked Oman as the country with the fastest increase in Human Development Index globally over the past 40 years.”

All these significant measures of development, seriously altered people’s old ways of life, and provided them with alternative, more appealing, strategies of survival.

With oil rent, the government has been able to provide people with goods, services and economic incentives lessening the dependence of people on their tribal affiliation for security and survival. The central state presented new opportunities for people and ensured direct contact between them and the government through building schools, clinics, agricultural extension units, municipalities, and governmental agencies throughout the country even in rural areas, eroding the role of sheiks and tribal leaders. ‘The state materially and symbolically occupied all the territory.’

The establishment of a welfare state meant that the government now assumes two new functions: ‘to serve as a caretaker for the population and to foster a direct relationship between

---

60 Manea, “Regional Politics in the Gulf”, p 96.
61 Voluntary labour turnover in the Omani Public Sector.
64 Ibid.
the state and the individual. This has played a significant role in cementing the centre-periphery relationship—and in undermining the importance of tribes in modern Oman.

The regime in effect, has managed to de-autonomise the traditional solidarity groups from the state, freeing itself from their constraints while ‘rendering them fully dependent on a political game that the regime controls and whose rules the regime establishes’.

In fact, to counter community groups and tribal coalition in towns, the government policy was to appoint a governor (wali) for each governate (wilayat) from a different region and tribal affiliation.

In more explicit moves, the Sultan officially abolished the slavery system, and in 1970 placed the most powerful tribal figure, Ahmad Al Harthi, under house arrest for making unfavorable comments about the new regime and removed him from his position of political influence, therefore confirming the Sultan’s paramount authority over any tribal structure.

However, the newly formed modern state was not completely hostile towards the tribal system. On the contrary, it tried to exploit the country’s tribal heritage to build its own legitimacy and secure its rule. In general, the Sultan respected tribal traditions and customs and acknowledges tribal hierarchy. In the yearly tours that he makes across the country, his meetings with people and his financial handouts would always reflect this hierarchy.

He also relied on the support of major tribes to ascertain his authority, and in return allowed them, as with merchant families, to take advantage of the oil rent and the booming economic activity in the seventies. Many posts in the government are granted on a tribal basis to ensure loyalty. This particularly applies to high ranks in the military and security services.

Moreover, as Riphenberg argues, many features of the Omani governmental practices are deeply embodied in the tribal traditions like the idea of the “majlis”, an informal, public meeting.

---

65 Manea, *Regional Politics in the Gulf*, p101
66 Ibid.
67 Ibid.
between the Sultan and his people to discuss various issues and to hear their grievances. This practice is evident in the Sultan’s yearly tours across the country, and in the establishment of a consultative council in the 1980s, which was compromised of tribal and community notables whose duty was to provide advice to the Sultan.\textsuperscript{69}

Through this incorporation of the tribal system into the modern state, the regime managed to pacify a possible enemy to the central state, rely on its support to facilitate the state’s control over the territory, and exploit its deep roots in Oman’s history and social composition to strengthen the legitimacy of the regime.

In its effort to consolidate social control, the state also formed an alliance with another influential social group: the old, powerful merchant families. In return for their support, these merchant families have benefited the most from the oil rent through public service contracts to build the country’s infrastructure, and through representing foreign investments as the Omani partner or “\textit{kafil}”, as the law required any foreign investor to be associated with an Omani partner carrying the business under its name in return for regular payment.\textsuperscript{70} In effect, the government has opened many channels for these merchants to benefit from oil rent. It is even believed that a number of businessmen were awarded a percentage of the oil revenue to give them a greater incentive in maintaining the state’s stability.\textsuperscript{71}

Additionally, many members of these families have assumed prominent political posts in the government over the years in addition to their continuing role as major businessmen. The previous Minister of Commerce and Industry, Maqbool bin Sultan (serving from 1991 to 2011), comes from a historically prominent merchant family. His father was the first president of Oman’s Consultative Council, and currently 35 of his cousins preside over Oman’s biggest commercial holdings.\textsuperscript{72} Many Omani, have attributed Maqbool’s failure in resolving the inflation

\textsuperscript{71}Ibid.
problem in 2008 to the conflict of interest between his role as a Minister and his commercial interests as a businessman. Said Al Shanfari, Minister of Oil and Gas from 1979 to 1996, is another example of this confusion between political and commercial roles.⁷³

The dependence on external income generated by oil exports also made the state free to a large extent from depending on its citizens particularly in the first decade of Qaboos’s reign. It managed to utilize the oil rent to fund its unprecedented development plans, and provide citizens with relatively high standards of goods and services without taxation,⁷⁴ and without much reliance on Omanis. In fact the state relied heavily on foreign expertise and work force in managing the country’s oil resources and generating the required income.⁷⁵ This meant less need on the part of the state to enter into negotiations and compromises with other social actors, which reasserts its autonomy and reinforces its strength.

Therefore, in the conclusion of Manea, ‘Oman has become a strong state through its own process of development; the regime succeeded in both penetrating society and regulating social relationships. Its citizens now follow the rules and regulations set by the government rather than those of the local sheik or their clan.’⁷⁶

The state penetration of society can be seen in many examples in which the state succeeded in altering old patterns of behavior and imposing its own vision. A good example is changing the names of many towns and villages in Oman which the state felt were not very appropriate.

Another example is in relation to the traditional size of the family. The 1993 censes showed that fertility rate among Omanis were among the highest in the world reaching about 7 children per woman. This was seen as a major cause undermining womens’ health, in addition to the fact that it put more pressure on government services and seriously affected the demographic of the country. A campaign was launched to raise awareness about this issue, and the Sultan himself

⁷³ Ibid.
⁷⁴ Valeri, Oman: Politics and Society in the Qaboos State, p 90.
⁷⁵ Even in the present day, the management of Oman’s major oil and Gas companies remain in the hand of foreigners.
⁷⁶ Manea, Regional Politics in the Gulf, p101.
spoke about it. In 2009, it was shown that the rate dropped to about 5 children per women.\textsuperscript{77} Another example is improving the status of women through encouraging their education and employment in different sectors including the army and the police; in addition to the appointment of women in senior positions in the cabinet despite resistance from the conservative society. In general, Omani women enjoy considerably more rights compared to other neighboring countries.\textsuperscript{78}

All these examples clearly show how the Omani state was able to influence the society and reshape social relations to a large extent.

Clearly, Qaboos was able establish a system that is capable of penetrating society and exercising social control. With controlled and selective disbursement of state resources, the Omani state was able to offer the main components for people’s strategies of survival eliminating any real competition from other social actors; fulfilling, therefore, Migdal’s conditions of a strong state.

### 2.8 The Strong State and The Constitution

In this chapter we have seen how the Omani state has emerged under Qaboos as a strong state with high level of social control. In effect, the state provides people with the main component of their strategies of survival and dictates the rules of the game.

The question that would arise here is: how does the strength of the state impact on constitutionalism? In other words: how would the country’s constitutional experience look like in a strong state?


\textsuperscript{78}Other examples include setting a maximum limit for the dowry paid in marriages and a maximum for number of days to which a funeral can extend!
To answer this question, I argue that in strong states that enjoy high level of social control, like Oman, the constitutional experience would be almost entirely shaped by the state’s desires and interests. The state can refuse to draft a constitution if it conflicts with its interests at the time, because it is strong enough to neutralize public demands for one. In strong states, leaders are autonomous from domestic forces, which allows them to ‘act upon their own preferences, making decisions that reshape, ignore, or circumvent the preferences of even the strongest social actors.’\textsuperscript{79} They do not have to compromise a great deal, and they can afford to ignore people’s preferences; because the state is confident in its ability to suppress challenges from social actors. Particularly while maintaining its monopoly over the principal means of coercion in the society, like standing armies, police forces and other security and intelligence agencies.\textsuperscript{80} On the other hand, it is very costly for the people to challenge the desires of the state because they are heavily dependent on it for their survival.

However, if the circumstances change and the need for a constitution arises, the state may engage with the society in drafting a constitution or may simply impose one without any form of public participation in the constitution-writing process. And even in that case, the constitution would be tailored to suit the state interests and purposes, going no further than needed, because the state is under no pressure to accommodate people’s preferences.

Therefore, unless the state desires so, constitutional change will not be possible until the state social control starts to weaken and the power starts to shift from the state to the society. In which case the state may find itself in a need to re-negotiate the rules of game with the society in order for it to survive.

In other words, strong states have a top-down approach to constitutionalism; the process is managed and determined by the state, with very little input from the society. If the state’s social

\textsuperscript{79} Migdal \textit{Strong societies and weak states}, p18-19.
\textsuperscript{80} Migdal \textit{Strong societies and weak states}, p18.
control is undermined, the society will be more able to influence any decisions made in that respect.

As the rest of this thesis will show, the Omani constitutional provides clear evidence in support of the above conclusion. In the beginning of his rule, Qaboos refused to draft a constitution for the country, because he felt it would be a mistake. The timing for him was not suitable, therefore no constitution was drafted for 26 years of his rule.

When the circumstances changed and the state felt the need to further legitimize its rule, both internally and externally, a constitution was drafted in 1996. In fact it was imposed on the society without any form of public participation in the drafting process, or even a pre-announcement that a constitution was being drafted.

Even then, the state tried to underplay the importance of the document by refusing to call it a constitution, so that it manages people’s expectations.

As chapter 6 will demonstrate, the content of the constitution does not live up to the values of constitutionalism; it is nothing more than an articulation of the current political arrangement set in accordance with the state’s preference.

However, when the level of social control exercised by the state was seriously challenged in the Arab Spring in 2011 and the Omani youth took to the streets demanding change, the state found itself in a position where it needs to reconsider moving a further step on the path towards establishing constitutional rule. The Sultan ordered that the constitution be amended to allow for more public participation in the decision-making process.

Hence, while the Omani state was enjoying a tremendous concentration of social control, it took a very top-down approach to constitutionalism. Only when this social control started to show
signs of weakness, the society was able to make the state compromise. This will be further explored in the following chapters.

2.9 Conclusion

When analyzing the Omani state under Qaboos using Migdal’s theory of strong societies and weak states, Oman appears to be a strong state with high capabilities to penetrate society, regulate social relationships, extract resources, and appropriate those resources in a determined way. 81

We have seen how the older pattern of social control disintegrated as a result of the economic difficulties in the nineteenth and early twentieth century, and the civil war between the Sultanate and the Imamate.

With assistance of the British, Said seized the moment in mid 1950s to unite the whole country, starting therefore the first stage of the creation of a strong state.

When Qaboos came to power, he continued what his father has started by defeating the Dhofar rebellion and ending all sorts of military challenges to the central state. He used oil rent to launch large-scale development plans, which have undermined old social actors and provided people with new strategies of survival, making them dependent on the state.

Oman has emerged under Qaboos as a strong state with remarkable concentration of social control in the hand of the state. This level of strength has impacted on Oman’s constitutional experience by allowing the state to almost exclusively shape it in accordance with its interests and desires, as the rest of thesis will aim to show.

Chapter 3: The Constitution of Tariq: Oman’s First Draft Constitution

3.1 Introduction

In 1967, Tariq bin Taimour, Sultan Said’s brother who was in exile at the time, introduced a draft constitution with the aim of establishing a constitutional monarchy in Oman. After Qaboos assumed power in 1970, Tariq was appointed as a Prime Minister and continued working towards his constitutional plans.

However, despite being the first attempt to create a modern constitutional rule in Oman, Tariq’s efforts have never been studied in depth. This chapter therefore aims at filling a gap in the study of Oman’s constitutional experience in the 20th century, in addition to providing a historical background to the current Omani constitution.

This chapter will therefore discuss Tariq’s attempt in 1967 and his continued efforts during his term as a Prime Minister (1970-1971). It will start by describing Tariq’s personal background and the reasons that led him to leave Oman and oppose his brother, the former Sultan.

The second part will provide an account of his efforts to establish a constitutional rule in Oman, by introducing the first draft constitution in Oman’s modern history in 1967, and his pursuit of this goal during his premiership.

The third part will attempt to explain the reasons why Tariq’s bid for a constitution has failed. I will propose that this is because he and Sultan Qaboos could not trust each other or establish a working relationship through which the idea may be taken forward. The British advisors surrounding the Sultan have contributed in widening the gap between the two men. In essence,
Qaboos viewed Tariq’s attempt as a threat to his rule. Furthermore, independent of Tariq, Qaboos felt that introducing a constitution in 1970 would be a big mistake. This last point will be explored in depth in the next chapter.

Finally, the chapter will end with a discussion of Tariq’s draft constitution.

3.2 Overview of Tariq’s Background

Sayyid Tariq bin Taimour was born in 1922 in Istanbul to a Turkish mother. He attended school and college in Turkey, and spent three years in Germany with an uncle before being brought to Oman for the first time in 1937. At first, he was unfamiliar with the traditional ways of the Sultanate and was uneasy with the level of authority that his brother enjoyed. It was said, for instance, that he was not comfortable with walking backwards out of his brother’s presence, which was a traditional custom.

After serving briefly in Oman Infantry, Tariq was sent to India to be trained in military and public administration. In addition to Arabic, he spoke fluent English, German and Turkish.

Upon his return, it was expected that Tariq would assume a significant political position in a country that seriously lacked people of his education and abilities. He was described as “by far the most intelligent and able member of the royal family”.

However, in October 1945, Tariq was appointed as head of Muscat/Mutrah Municipality, a minor job with insignificant responsibilities. This minor appointment came as part of Sultan Said’s policy to keep his family at arm’s length and isolate potential contenders to the throne.

---

83 The title held by members of the royal family.
84 Allen and Rigsbee, From Coup to Constitution, p10.
86 Allen and Rigsbee, From Coup to Constitution, p 32.
87 Peterson, Oman in the twentieth century, p 83.
Said, however, was reported to be particularly, suspicious of Tariq, who enjoyed excellent external links, and jealous of his charisma and abilities.\textsuperscript{88} Tariq was also named as Heir Apparent in a meeting between Said, Tariq and their father Taimour in Japan in 1937, but he later forfeited this position when Qaboos was born in 1940.

In 1957, when the war between the Sultan and the Imamate forces broke out in the Interior, Tariq played an important role in suppressing the rebels and destroying their major towns\textsuperscript{89}. However, when the war came to an end he refused to allow the Sultan's forces to call the surrendered rebels for interrogation or punishment.\textsuperscript{90}

His participation in the controversial war against the Imamate has impacted on his popularity amongst the Omani tribes in two conflicting ways. First, he managed to create a base of support for himself among the tribes which were anti-Imamate and participated in the war under his command, in addition to the younger generations, while, on the other hand, he was perceived negatively by the Imamate sympathizers.

At the end of the war, Tariq was appointed as inspector General of Walis\textsuperscript{91}, which some perceived as a further attempt by the Sultan to keep his brother away from Muscat\textsuperscript{92}, but in fact allowed him to establish links with tribal leaders throughout the country contributing to his popularity in the Interior and in other regions as well, compared to his brother the Sultan.

Almost predictably, with his heightened sense of personal security, the Sultan perceived his brother's success and popularity as a serious threat to his authority. This was reinforced by growing discontent among the British with Said's archaic government, which led them to discuss the option of removing Said and replacing him with a suitable Sultan. Tariq, who has established

\textsuperscript{88}Allen and Rigsbee, \textit{From Coup to Constitution}, pp. 10-11.


\textsuperscript{90}Ibid, p 139.

\textsuperscript{91}Uzi Rabi. \textit{The Emergence of States in a Tribal Society}. (Portland, Ore: Sussex University Press, 2006), p 137

\textsuperscript{92}Allen and Rigsbee, \textit{From Coup to Constitution}, p16.
himself as a successful political figure, enjoying significant support from the royal family and the people, was a possible alternative. Besides, he was the only candidate who was accustomed to both European and Arab culture and politics, even though he did sometimes oppose direct British intervention.93

All these factors resulted in Said limiting the authority of his brother and leaving him eventually without employment. Furthermore, his stipend as a member of the royal family was reduced and later completely stopped. The Sultan finally succeeded in his attempt to neutralize Tariq who, as a result of this hostile attitude and the need to secure suitable education to his two eldest sons, decided to leave the country in 1962 without the Sultan’s permission, and expressed his intention to stay in voluntary exile as long as Said remained Sultan94.

At first, Tariq went to Abu Dhabi as he enjoyed good relationship with the ruling family there. He remained silent until 1966, when he announced his public opposition to Said’s regime and his intention to fight against it. He also declared his intention to draft a liberal constitution for Oman that would put an end to the tyrannical regime and protect people’s rights and liberties. As a result of these activities, Tariq was declared persona non grata by the ruler of Abu Dhabi, and had to leave this time to Germany where he worked as a Middle Eastern representative for a German industrial company and married a German lady.

In his activities, from 1966 to 1970, Tariq tried to establish relations with the Imamate supporters who were in exile at the time as well as with the Dhofar rebellion. Although he managed to establish a working relationship with the Dhofaries in mid 1960, association with him was later rejected by the new Marxist leadership of the Dhofar insurgency because he was a member of the traditional ruling family.95 On the other hand, Tariq managed to establish an allegiance with Talib Al Hinai, the Imam’s brother who was in exile in Egypt. His declaration of his intention to

93Rabi, The Emergence of States in a Tribal Society, pp.136-137.
95Peterson, Oman's Insurgencies: The Sultanate's Struggle for Supremacy, p. 233.
fight the Sultan increased his popularity among the exiled Omani community. Therefore, Tariq was becoming a threat to Said's fragile rule.

### 3.3 Tariq's efforts to establish constitutional rule in Oman

On 20 November 1966, the Sunday Times published an interview with Sayyid Tariq, in which he declared his opposition to his brother stating that the “Sultan must go.” Tariq also announced that he was "drafting a programme for a constitutional monarchy in Muscat and Oman which will safeguard many of the country's traditional institutions while encouraging rapid development of local resources and the introduction of new political freedom." In the interview, Tariq explained the reason behind his decision to break his silence and take such a strong position, stating that there was no longer any prospect of Sultan Said changing his system of governance. According to Tariq the Sultan seemed determined to continue his rule with total disregard to fundamental rights and freedoms.

It is also important to note that, in the interview, he was eager to reassure the British and Shell Oil Company, which was preparing to start oil export within few months, of his intentions and willingness to cooperate.

In early October 1967, Tariq sent pamphlets containing his proposed constitution to prominent figures in major towns throughout the country including Muscat, Sohar, Al Buraymi and Al Sharqiyah. News of the proposed constitution spread provoking discussion at all levels. However, as Peterson argues, many Omanis neither declared their support nor rejected the idea.

---

96 Uzi Rabi, *The Emergence of States in a Tribal Society*, p.198.
98 Ibid.
99 In fact, Tariq approached Shell at that time asking for financial support to his plans. TNA: PRO FCO 8/568, p 43.
but preferred to wait and see how the conflict between the two brothers would unfold. But “so far as anyone was inclined to go was to welcome the idea of a written constitution.”

In response to the constitution, Sultan Said dismissed the idea saying, “whoever had written the constitution had not known Omanis. Anyone had known them would have paid far more attention to their religious sensitivity and, for example taken the elementary step of starting with the words (In the name of Allah the merciful etc.).”

As for the opposition forces, the Imamate issued a pamphlet attacking Tariq. This is understandable because theoretically, at least, his proposed constitutional monarchy did not fit well with the traditional Imamate dogma; besides he fought against the Imamate in 1950s.

On the other hand, the radical Marxist insurgency in Dhofar could not have accepted nor trusted such proposal from a member of the royal family, in addition to their ideological opposition to monarchies. His proposal therefore could not win the outright support of any particular group.

In early 1970, British Intelligent Officer, Major Malcolm Dennison met with Tariq and told him to hold off on his plans because Qaboos was planning to take over with the support of the British.

The reason behind this move is, as explained earlier, Tariq was posing a serious threat to Said’s regime in Oman. His relations and potential made him too important for the British to ignore in their plan to change the regime in Muscat. Therefore, it was vital, for the British, to neutralize Tariq and take advantage of his capabilities to facilitate the plan and stabilize the new regime afterwards.

---

101 Ibid.
102 Ibid.
103 TNA: PRO FCO 8/568, from British Consulate General Muscat to British Residency in Bahrain, 22 November 1967, pp. 48-49.
104 Ibid.
In the beginning, Tariq expressed his concern about the fact that Qaboos was an unknown figure, even to the royal family, let alone to his people, but he, nevertheless, accepted the possibility of working with him. He put to Dennison a number of conditions for his return, among which were that there should be a written constitution, and that Qaboos should become a constitutional monarch, with the Prime Minister holding the powers of a chief executive; the same principles upon which his proposed constitution was based.

Tariq was told that Qaboos agreed to these constitutional arrangements, however, some observers argue that Tariq was invited without Qaboos’s knowledge or permission. In any event, when the coup eventually happened he returned to Oman and was appointed as the country’s first Prime Minister.

Beasent states that a constitution was drafted by a group of lawyers. However, it is not clear whether a new constitution was drafted or if he is simply referring to Tariq’s original proposal, because there is no record of any other draft constitution proposed at that time.

In their first meeting after the coup, Qaboos informed his uncle that national defense, oil policies and concessions, as well as financial matters should remain under the Sultan’s control. Their meeting was described as brief, very polite, and did not involve much discussion about their respective roles and how to establish a mechanism of cooperation between the two of them. Tariq did not, therefore, have clear and well-defined responsibilities, nor did he have an open and effective method of communication with the Sultan. This lack of mutual understanding and effective communication resulted in many complications and conflicts during his term.

After his first interview with the Sultan, Tariq left for a brief visit to Germany to arrange his personal affairs before officially assuming his responsibilities. During his absence, the Interim

---

105 Peterson, Oman's Insurgencies: The Sultanate's Struggle for Supremacy, p 234.
107 Allen and Rigsbee, From Coup to Constitution, p35.
Advisory Council, composed mainly of senior British officers, took several major decisions, which the Sultan ratified, and appointed a British officer as a Secretary of Financial Affairs, without informing the Prime Minister or consulting with him. Their intention was to present him, upon his return, with *faits accomplis*.\(^{109}\)

Tariq was frustrated by the level of British intervention which he perceived as an attempt to undermine his position. However, he proceeded to form his first cabinet, while continuing to “speak about his aims to achieve a democratic, constitutional, de-tribalised, internationalized, Arab and outward looking Sultanate.”\(^{110}\) He believed that without a formal framework for the administration of the country’s affairs, there cannot be an efficient government; the Sultan should not remain as an absolute monarch, in the same way that his father had done, without a strong central government backed by a constitution.\(^{111}\) He was also concerned about the question of succession and what would happen to Oman’s stability if the Sultan died without having a well-established system independent of him.\(^{112}\)

In fact, in his early days as a Prime Minister, Tariq commissioned an Australian consultant named John Townsend, of the Whitehead Consulting Group in London, to produce a study of the political system of Oman. Tariq was hoping that the results would support his viewpoint that a gradual move towards a constitutional monarchy was the best option. However, Townsend’s report backed the Sultan.\(^{113}\) Tariq rejected the report’s conclusion in relation to the constitution, saying that he believed it was added at the request by the Sultan.\(^{114}\)

His choices of cabinet members demonstrated his vision for the country and his attempt to break with the past. It was composed of highly educated Omani technocrats and members of

---

109 Ibid.
111 TNA: PRO FCO 8/1845, from British Embassy Muscat to Middle East Department in Foreign and Commonwealth Office, 25 September 1972, p 71.
112 TNA: PRO FCO 8/1671, from British Embassy Muscat to Middle East Department in Foreign and Commonwealth Office pp. 114-115.
113 Peterson, *Oman in the twentieth century*, p 209.
114 TNA: PRO FCO 8/1671, pp. 114-115.
the opposition to the previous Sultan. While Qaboos attempted to preserve the status quo by appointing British officers and traditional tribal allies. A number of development programmes were launched, and five Ministries were established: Health, Education, Economy, Justice, and Information and Social Affairs.

Tariq’s most significant accomplishment, however, was in breaking the isolation surrounding the country, and establishing Oman on the international scene as a modern nation state. He fought for his country to be accepted in the United Nations and the Arab League, despite resistance from some Arab countries, which saw Oman as a British colony and refused to accept it as a fully-fledged independent country. He also managed in a very short time to establish diplomatic relations between Oman and several countries, including the U.S, Iran and Germany among others.

On the other hand, attempts to isolate him and undermine his authority by the Sultan’s expatriate advisors continued while his relation with the Sultan did not improve. Tariq felt that he was not able to carry his job the way he envisaged it. The situation was worsened in November 1971, when Oman’s representative in the U.N received conflicting instruction from the Sultan and the Prime Minister on how to vote on the China-Taiwan issue. In response to this, Tariq resigned as the Foreign Affairs’ Minister.

It was reported that the Sultan was pleased to receive the resignation as he had been “wondering how he could winkle Tariq out of his office”. He gave Oldman instructions to corner Tariq and force him to resign from his position as a Prime Minister as well, but cancelled them later. It was clear that the relationship ship between the two men was deteriorating. Other Ministers tried to mediate between the two, particularly Asim Al Jamali, the Minister of Health,

---

115 Allen and Rigsbee, *From Coup to Constitution*, p 35.
116 Ibid.
117 TNA: PRO FCO 8/1671, Priority FCO Telegram no. 377 from Muscat on 11 November 1971, p 85.
118 Ibid.
who was close to Tariq, but with no success.\textsuperscript{119} The crux, it was believed, was whether Tariq would change “his strongly held constitutional views.”\textsuperscript{120}

People like Al Jamali felt that Tariq was wrong headed in pursuing his constitutional aims so zealously, which gave the Sultan a stronger hand.\textsuperscript{121} The British also believed that if Tariq was to continue in his position, he needed to accept that Qaboos “is not to be turned into a nice little constitutional monarch.”\textsuperscript{122}

Tariq felt that Qaboos had taken a decision to rule in his own way. He believed that people now recognized that Qaboos was “an autocrat, though more generous and benevolent than his father”.\textsuperscript{123}

By the end of 1971 the situation reached the point of no return. Tariq left the Country on 21 December to celebrate Christmas with his family in Germany, leaving behind him a letter of resignation. In that letter Tariq referred to his difference with the Sultan on the question of the constitution as the main reason for his resignation.\textsuperscript{124}

The resignation of the Prime Minister was kept secret for few months, but later announced. Qaboos assumed the responsibilities of his uncle’s vacant position since then, refusing to appoint any other Prime Minister. And the question of the constitution was, therefore, closed.

Tariq reconciled with the Sultan and returned to Oman in 1975 to be appointed as an advisor to the Sultan, and later as a Chairman of Oman’s National Bank, but he maintained a low profile until his death in 1981.

\textsuperscript{119}Ibid.
\textsuperscript{120} TNA: PRO FCO 8/1671, Priority FCO Telegram no. 380 from Muscat on 14 November 1971 p 104.
\textsuperscript{121} TNA: PRO FCO 8/1671, pp. 108-112.
\textsuperscript{122}Ibid
\textsuperscript{123} TNA: PRO FCO 8/1671,Priority FCO Telegram no. 358 from Muscat on 28 October 1971, p 78.
3.4 Why did Tariq’s bid for a constitution fail?

In answering this question, we can reasonably ignore the 1967 attempt because it was more of a political manifesto and a plan for the future rather than a real possibility. He was not in a position of power, and so there was no question of his proposed constitution being adopted.

However, his efforts during his premiership (1970-1971) were a serious attempt that could have succeeded, but it did not because Tariq was not able to get the Sultan on his side.

There was clearly a power struggle, as well as ideological and generational differences, between Tariq on one hand, and the Sultan surrounded by his expatriate advisors on the other.

*Foreign influence:*

Qaboos was surrounded by British advisors whom Tariq did not trust. Many of them had their own personal agendas which did not always coincide with the country’s best interest. They were described by a fellow British officer, residing in Oman at the time, as being prone to ‘sycophancy in their dealings with the new Sultan of a quite an appalling degree.’¹²⁵ Many of those advisors were trying to maintain the status quo for their own benefit.¹²⁶ Because of Qaboos’s lack of experience at the time and his feeling that he owed his throne to those people, they retained a high level of control over the Sultanate’s affairs and decision-making. Many of the decisions taken by the Interim Advisory Council proved to be disastrous to the country, because they were taken by people who lacked sufficient expertise and local knowledge, in addition to self-interest which was behind a number of proposals.¹²⁷

---

¹²⁵ Beasant, *The True Life Drama & Intrigue of An Arab State*, p 143.
¹²⁶ Of course not all advisors were purely driven by self-interest; among them were people of high integrity who were trying to take the best decisions they can in the circumstances.
They also refused to cooperate with the Prime Minister on many issues leaving him frustrated by the lack of crucial information about the state of the government’s finances. He was not even furnished with a secretariat to assist him and facilitate his work.\textsuperscript{128}

They perceived Tariq, with his aspirations to a constitutional monarchy and determination to alter the status quo, as a threat to their interests. They knew that if Qaboos trusted and cooperated with his uncle, it could put an end to their control of the country and its affairs and resources. Therefore, a whispering campaign was started against Tariq, raising doubts about his abilities and commitment, to undermine the Sultan’s trust in his Prime Minister.\textsuperscript{129}

Out of self-interest, the Sultan’s expatriate advisors played a crucial part in thwarting Tariq’s plans and preventing him from carrying his duties as a Prime Minister effectively. He, practically, was forced to resign.

-\textit{Ideology}?

Tariq was an experienced man with a great knowledge of different political systems, and, it is evident from his actions and statements, that he was committed to break away from the traditional ways of government which have proven to be futile, and indeed disastrous in many respects, towards establishing a constitutional monarchy. There is no doubt that he wanted Al Said rule to continue, but to be limited by a written constitution that would prevent tyrannical rule. He clearly saw, a constitutional monarchy as a reasonable compromise between the traditional institutions and people’s aspiration for change.

The unity of the Omani State was evidently in his mind, particularly when he took practical steps, during his premiership, towards moving the Capital city from Muscat to Nizwa in order to avoid the historical division between the interior of Oman and Muscat.

\textsuperscript{128}Beasant, \textit{The True Life Drama & Intrigue of An Arab State}, p 143.
\textsuperscript{129} Ibid.
Furthermore, personal freedoms and fundamental rights were a feature of his political rhetoric, and formed an important component of his proposed constitution. Besides, he was extremely conscious of the British role in Oman and their interests. He did cooperate with them in many occasions, but remained highly suspicious of their intentions and was eager to limit their interference in Omani affairs.

Qaboos, on the other hand, was still young, very inexperienced and feeling indebted to the British for their support. In the beginning, he repeated his father’s mistakes of failing to trust Omanis with defense and with the finances of the country; he preferred to rely on expatriate advisors in these matters. In the first few years, oil revenues had to be transferred to the Sultan’s personal account and then he would provide the government with its budget.\footnote{Townsend, *Oman: the Making of a Modern State*, p 80.}

Furthermore, the young Sultan was, still is, unwilling to share his authority with other actors. All the major policy areas were excluded from the Prime Minister’s influence, and even knowledge. Since their first meeting, it was obvious that the Sultan will not give up any of what he perceives as his legitimate powers; he wanted to remain the ultimate ruler. His vision for Oman and his rule, revolved very much around him being a benevolent autocrat assisted by a cabinet and a number of personal advisors, instead of being a limited sovereign bound by a constitution and forced into negotiating his authority with a powerful Prime Minister and, potentially, House of Representatives. Therefore, Tariq’s proposals for a written constitution and a constitutional rule were far from appealing to the Sultan; in fact, they were threatening. He saw him more as a competitor rather than a partner in the political development of the country. His fears were matched by those of his expatriate advisors.

Both Tariq and Qaboos, entered into these arrangements, with totally different perceptions and expectations. Thus, they were bound to fail, and Tariq’s early departure was inevitable.

Townsend also argues that their personalities have contributed to this failure. They both mistrusted each other. “Qaboos thought Tariq was after his job, and Tariq thought Qaboos was
after his head.” 131 They also failed to establish open and frank communication between themselves. Their meetings were very brief, formal and surprisingly rare.132 Tariq was not willing to settle for a powerless or a mere representational figure, and Qaboos was not ready to share.

Furthermore, it is highly unlikely the Tariq’s appointment, in the first place, was Qaboos’s idea. As discussed earlier, many believe that Qaboos had no prior knowledge of the deal struck between Tariq and Dennison.

-Economic and social factors:

In addition to the British support, the Sultan was controlling a great, newly discovered wealth that enabled him to buy legitimacy and loyalty of tribal leaders and merchant families. With the oil revenues he was able to embark on his plans to develop the economy and infrastructure of the state. He was able to present to Omani people his version of the modern Omani state which, although did not guarantee political participation and human rights, it provided hospitals, schools and electricity. Basic things, that Omanis until then, were deprived of. To most Omanis, these were the priorities, the things that really mattered then. Most of them were poor, illiterate and had no experience of a structured central government. Oman has never had a Prime Minister, a constitution, ministries, a professional civil service or even an army and a police force. The only thing in the nation’s memory was Said’s archaic, chaotic and tyrannical rule, to compare with.

What Tariq was professing, were new concepts that seemed totally incomprehensible and almost irrelevant in the Omani settings at the time. People had no idea what a constitution or a constitutional monarchy were, and were far more interested in feeding, treating and educating their children. Tariq had no real allies; even those who supported his opposition to his brother’s rule, were swept by the promises made by the oil-rich, young, and educated Sultan. He was overshadowed by the new regime and therefore had no bargaining power. To succeed, he needed the Sultan to be on his side. However, Qaboos was strongly opposed to the idea of

131 Peterson, Oman in the twentieth century: political foundations of an emerging state, p 209.
132 Ibid.
introducing a constitution in 1970 for many reasons. He was quoted, in the Washington Post in December 1970, dismissing the idea of public participation, or drafting a constitution, by stating that:

“It would be a mistake, a big mistake. Most of the people do not even know what a vote is... In these conditions to draft a constitution, to set up a parliament would be like building a huge dome without either walls or foundations. It might perhaps give a nice impression to the outside world, but it would be nothing but a big show. Look how people vote in Egypt. They are driven to the polls in army trucks. If there were a parliament now, I would have to choose its members among the sheikhs and a few others. What would be the significance of such a body?”

The Sultan felt at the time that Omani were not ready to have a constitution or participate in a parliament. Instead, the Sultan waited 11 years, to establish the Consultative Council; a representative body comprised mainly of tribal leaders and community notables, the same body that he previously rejected as being of no significance, and waited 26 years to grant Omani their first constitutional document: the Basic Law in 1996.

Qaboos’s strong opposition to introducing a constitution in 1970 will be explored in depth in the next chapter.

3.5 1967 Draft Constitution

In order for us to understand what Tariq was calling for, we turn now to the constitution he drafted and proposed in 1967.

---

The draft constitution is made of six chapters, under the following headings: (1) the State, (2) the King, (3) the Council of Ministers, (4) the State Council, (5) the National Assembly, and (6) International Relations.

The preamble clearly states that this constitution is intended to be temporary until the Omani people create their final binding constitution in accordance with their interests and aspirations. Its main purpose, therefore, is to facilitate the establishment of the united Omani state, and to provide Omanis with a basic framework within which they can operate, instead of offering a permanent constitutional arrangement for their state.

Overall, the constitution is relatively brief, consisting of no more than 36 Articles that deals with a wide range of issues.

1- Establishing a united state

The draft constitution was introduced in a time when Oman was torn by internal conflicts between the Sultan, Dhofari Marxist rebels and the Imamate supporters in exile who managed to raise the Omani Question in the United Nations. The country was dominated by the British, while many Omanis, particularly the educated, were residing outside the country due to political and economic reasons. The historical division between Oman in the Interior and Muscat on the Coast was still evident in the country’s name “the Sultanate of Muscat and Oman.”

Therefore, one of the main challenges that this constitution was trying to overcome is this sense of separation. The rhetoric used clearly demonstrates this concern. For instance, the preamble explicitly states that uniting the Omani nation is the first and foremost concern of this constitution. The first Article also asserts the unity and independence of Oman and its national territory.

Interestingly, the Country is referred to in the constitution as “the Arab Kingdom of Oman”, replacing the Sultanate system with a kingdom and removing Muscat from the name.
Article 6 established Muscat as the capital city of this Kingdom, but only temporarily until another capital city was chosen by the Council of Ministers. This provision reflects Tariq’s plan to move the capital city of the country to Nizwa, Oman’s historical capital and the Imamate’s capital as well, a plan which he later unsuccessfully embarked upon during his term as a Prime Minister.

The reason behind this provision could be an attempt to appeal to the Imamate supporters and provide them with an incentive to negotiate and build an alliance. This is even more evident in Article 5 which creates a new flag for the country made of two equal parts, one is red (the colour of the Imamate’s flag) and the second part is white (the colour of the Sultanate), symbolizing the unity of the two historic enemies under one flag. It also invites, in Article 9 all Omanis who left the country because of political or religious reasons to return without any fear of persecution with a promise to release all political prisoners.

Article 7 also grants the Omani nationality, without discrimination on the basis of ethnic origin, to all those permanently residing in Oman at the time and not officially affiliated with another country, in addition to Omanis residing outside the country who were descended from an Omani father or grandfather.

These two Articles (7 and 9) are clearly trying to appeal to the Omani community in exile, which many of them where holding the Imamate passports, by guaranteeing the Omani nationality and protection from persecution upon returning to Oman.

2- Arabic influence

The influence of Arab nationalism, which was a very popular ideology at the time in the Arab world, on the provisions of this constitution, is very obvious. It employs the same rhetoric and expressions used by this movement. This is evident, for instance, in Article 2, which refers to Oman as an inseparable part of the Arab Nation and its common heritage.

Article 3 also establishes Arabic as the national (rather than official) language of the state.
Furthermore, the constitution commits the Omani state, in Article 30, to furthering the common Arab aspirations, defending the unity of the Arab nation, and supporting the Arab League.

This influence is expected taking Tariq’s strong relations with active Arab nationalists in Beirut, Cairo and other Arab cities in which Tariq resided or visited during his years in exile. Besides, by confirming Oman’s Arabic identity and loyalty to “the Arabic dream”, Tariq was aiming to gain the support of other Arab nationalistic regimes, probably Egypt in particular, which was a strong regional power under Nasser.

3- Islamic influence

Taking into account that almost all Omanis are practicing Muslims, Islam could not have been disregarded in the creation of this constitution; particularly that Tariq was trying to strike an alliance with the Islamic Imamate. Article 3 establishes Islam as the official religion of the state, while Article 4 states that laws and legislation shall be drawn from Shari’ah law.

Furthermore, according to Article 8 it is the duty of the state to defend religion and guard moral values. As well as Islam, all other religious groups will be protected by the state, and their freedom to practice their religion will be upheld in so far as it does not conflict with Article 4.

However, taking into account Tariq’s background and ideological affiliation, it is highly unlikely that he intended, or would have allowed, the establishment of a religious state. The use of such language reflects a strategic approach, and indeed, a realistic necessity, rather than an ideological choice.

4- Characteristics of the government

The constitution introduces radical changes to the political reality of the country at the time. It aims to create a new political order that shares very little with what Oman has experienced in the past, whether under the Imamate or the Sultanate.
Limited monarch

The most important feature of the system which the constitution aspires to create is the idea of a limited monarch. Under the constitution, the powers and prerogatives of the monarch are severely limited, and his role is redefined and reduced to mainly a ceremonial one.

According to Articles 10 and 11, the monarch is the head of the State and the symbol of its unity. His duties and responsibilities are listed under Article 13, to include:

- Issuing legislation in accordance with the constitution,
- Attesting international treaties and conventions,
- Receiving foreign ambassadors and approving the appointment of Omani diplomats in other countries, who shall be chosen by the Prime Minister,
- Awarding medals and decorations,
- Representing the State in official ceremonies,
- Granting pardon in political offences in accordance with the laws of the land,
- Approving capital punishments,
- Appointing officials in his royal court,
- Appoint the Prime Minister after being elected by the National assembly, and
- Assume responsibility of the royal family and their financial stipends.

In relation to issuing laws and legislation, it is not clear whether the monarch actually has a legislative power, or if he only gives his royal assent before a piece of legislation in enacted. Obviously, the difference between the two is very significant, and yet the constitution fails to clarify this point.

Apart from this, the rest of these duties are representational and ceremonial in nature. The monarch therefore has no power to interfere in running the state or dictating its policy. Interestingly, unlike other similar regimes, the monarch does not have authority to declare war, remove the Prime Minister or dissolve the representational body.
Furthermore, Article 14 allows the National assembly to remove the monarch by a decision of at least two thirds of its members if he breaches the limits imposed on his royal powers or endangers the interests of the country. Therefore, the monarch is severely restricted and his position is dependent upon the will of the National assembly. Additionally, the royal palace is not the monarch's personal asset but is owned by the state (Article 15), while the budget of the monarch and his family is determined by the Council of Ministers (Article 18).

**Powerful Prime Minister**

The constitution provides for the election of a Prime Minister by the National assembly to perform the role of the chief executive. He is responsible for dictating state’s policy and appointing the cabinet (Articles 16, 19 and 20). He also has the power to dismiss any Minister who fails to perform his duties satisfactorily or abuses his authority (Article 20).

The Prime Minister may only be removed by the National assembly if he grievously misuses his powers or endangers the national security (Article 27 (b)).

Under these provisions, the Prime Minister enjoys significant power over the decision making process, without being threatened by the position of the monarch.

Although, to a certain extent, this is expected in a constitutional monarchy, a more cynical explanation may be that Tariq knew that, with Qaboos in the picture as an heir apparent, he may never be the Sultan, but it was more likely that he would become a Prime Minister instead. Therefore, it was in his personal interest to have a constitutional arrangement which provides for a powerful Prime Minister and a severely restricted monarch.

Furthermore, Article 19 states that the Prime Minister should appoint his cabinet every four years, but there is no provision in the constitution to limit the term of the premiership. Therefore, theoretically speaking, his term in office may be unlimited if he does not commit any breach entailing his removal by the national assembly. At the same time, his removal may not be a
feasible option when taking into account that all members of the National Assembly, at least in the beginning, are in fact appointed by the Prime Minister, as will be explained later.

5- Public representation

Another significant feature of the constitution is that it allows for public participation in the political process through establishing the State Council and the National Assembly.

The State Council

Chapter 4 of the constitution deals with the creation of the State Council and its powers. According to Article 24, the Council will be composed of 50 members, appointed by the Prime Minister from tribal leaders, religious scholars, members of the royal family, merchants, and intellectuals. The Council shall meet once every two months to discuss state affairs.

However, the constitution does not deal with the specific powers and duties of this Council, and whether any binding decisions may be reached as a result of its discussions.

Furthermore, the presence of the traditional components of the Omani society is preserved in this composition of this Council. In fact, it could be argued that this body resembles to a great degree the consultation council of the Ibadhi Imamate which was originally composed of scholars and community notables.

However, it is important to note that, under Article 22, this appointed Council assumes its responsibilities as a representative for the people only during the interim period, until a permanent constitution is created providing for public election with universal suffrage.

Although an appointed council may not be totally satisfactory in terms of achieving public participation, however, it is important to appreciate the reality of the situation. Oman clearly lacked the political and administrative structure needed to hold public elections, besides the
majority of its population are illiterate, and have no previous experience of popular democracy. Furthermore, the country was at the time facing military threats inside and outside its territory. So from a realistic point of view, holding elections before creating the right basic conditions for these elections to succeed, may lead to a disastrous outcome.

Therefore, it could be argued that the State Council was part of a more ambitious plan, possibly the first step towards creating a parliamentary system.

*The National assembly*

The National assembly is drawn from the Council of Ministers and the State Council, and has the power to remove the monarch or the Prime Minister, amend the constitution, and prepare the budget. It also decides on Oman’s membership of international organizations and the establishment of diplomatic relationships. All decisions are taken by at least two thirds.

6- Human rights

Apart from a general protection to personal freedom under Article 9, the constitution does not offer a detailed account of the rights and freedoms guaranteed under it. Instead, Article 29 declares the state’s commitment to respect the principles of the U.N Universal Declaration of Human Rights 1948.

7- Foreign presence in the constitution?

In his interview with the Sunday Times, where he announced his intention to introduce the draft constitution, Tariq was anxious to reassure the British administration that he did not intend to endanger their interests in Oman.
Tariq knew very well that British support, or at least neutrality, was vital to the success of his plans. Therefore, in his constitution, he attempted to provide further reassurance as to his intentions.

Article 34 contains an explicit undertaking to maintain the “traditional friendship” between Oman and the government of Great Britain, on the basis of equality and mutual interests.

Additionally, Article 35 confirms that Korea Muriya Islands were given as a gift to Great Britain. So, there is no intention to revoke these arrangements.

8- Problems?

As can be seen from the discussion above, the constitution proposed by Sayyed Tariq is a radical attempt to recreate the Omani State and facilitate its transition into a modern nation state governed by a constitutional monarch and well-defined institutions with separate roles and responsibilities.

It also provides a political structure and legal framework for these institutions to operate within, based on the principles of limited government, public participation and constitutional rule, in addition to expressly recognizing international standards of human rights.

However, when evaluating the significance of this constitution, it is important to recognize its interim nature which could explain the lack of details in relation to representational bodies, the election of the Prime Minister, and the legislative role. The constitution also fails to mention the judiciary, and does not address the issue of fundamental rights and freedoms adequately. Instead, it devotes four chapters out of six to create and define the main political institutions, the building blocks of the new regime. It also pays considerable attention to redefining the role of the monarch and asserting the powers of the Prime Minister.
In general, the constitution clearly reflects the issues of the day: Said’s tyrannical rule, the lack of political structure, the threats of the opposition (the Imamate particularly), the need to neutralize Britain and gain the support of other powerful regimes in the region.

The circumstances surrounding the introduction of this constitution made it more like a manifesto; a declaration of Tariq’s intentions and plans, directed towards the major actors of the Omani scene.

Tariq knew that he was not in a position of power to see his plans through, he desperately needed the support of other players, therefore in his draft constitution he aimed at achieving the following objectives:\(^{134}\):

1- The support of Al Said Family (Article 10)
2- The support of the religious conservatives (Articles 3 & 4)
3- A rapprochement with the Imamate (Articles 5, 6 & 9)
4- The support of educated Omanis (Article 24)
5- The support of other neighbouring states and Arab states as a whole (Articles 30, 32, & 33)
6- The support of (or at least neutralizing) the British (Articles 31, 34 & 35)

However, as a British commentator at that time put it, in seeking to please everyone (with the notable exception of Marxist movement in Dhofar), the constitution did not go sufficiently far in any particular direction and so ended up winning the outright support of no one\(^{135}\).

Nevertheless, it did provide a viable alternative to the status quo, and a road map towards the development of the Omani political system by introducing the constitutional option to the table, and recognizing the right of Omani people to create their own permanent constitution.

\(^{134}\) TNA: PRO FCO 8/568, from British Consulate General Muscat to British Residency in Bahrain, 22 November 1967, pp. 48-49.

\(^{135}\) Ibid.
If, in 1970, this constitution, or a similar one, was adopted and the system which the Prime Minister was working towards had been allowed to develop, this would have laid valuable foundations for Oman’s transition into a democratic state with a modern government\textsuperscript{136}.

### 3.6 Conclusion

Despite its failure, Tariq’s campaign stands as the first serious attempt to draft a constitution for Oman in its modern history.

He made a political choice to oppose his brother, Sultan Said, and go into exile, where he introduced his draft constitution representing his vision for Oman’s future after Said: a constitutional monarchy, promoting modern government and public representation.

Later when Qaboos came to power in 1970, Tariq joined him as his Prime Minister and continued to lobby for a constitutional monarchy instead of Qaboos’s absolute rule.

However, because of the way the Omani political and economic scene was organized at the time, there was no way Tariq could have succeeded in his effort without convincing Qaboos to adopt his proposal.

Tariq had no strong allies, and he could not gain public support for his proposal. Therefore, he was not in a position to exert any significant pressure on the Sultan to give up his unlimited powers and move towards constitutional rule. Without the Sultan on board, his proposal was bound to fail.

The following chapter will investigate further, the reasons behind Qaboos’s rejection of the idea of a constitution in 1970 and how his opinion has changed when the circumstances in 1990s made it a useful legitimation tool for the regime.

\textsuperscript{136}Beasant, \textit{The True Life Drama & Intrigue of An Arab State}, p 148.
Chapter 4: Introducing the Constitution:
Timing and Purposes

4.1 Introduction

Constitutions are usually born in historical moments in the nation’s life; after independence from a colonial power (India), a revolution (France), or a civil war, or in the beginning of a new reign (South Africa). They usually signal the adoption of a new ideology (former USSR republics) or assert the country’s independence and sovereignty in the face of a hostile foreign power.

However, in the case of Oman, the constitution was introduced at a seemingly random time; there was nothing particularly happening out of the ordinary. It would have been more logical if the constitution had been introduced when Qaboos assumed power after overthrowing his father to signal the beginning of a new era away from the tyranny of the past, or perhaps when Qaboos managed to defeat the Marxist rebellion in Dhofar shortly after, to reinforce the newly established national unity and stability. Introducing a constitution at that critical time would have served many purposes. It would have facilitated the Sultan’s early efforts to reconstruct a united national identity, to build a new and efficient government, and to consolidate the legitimacy of the new ruler.

However, Qaboos declined to do so and the long waited constitution was not introduced until 26 years after the biggest historical moment in Oman’s modern history had passed.

On 6th November 1996, 26 years after his accession to power, Sultan Qaboos issued royal decree 101/96 promulgating the Basic Law, Oman’s first constitutional document. Unlike other
Arab countries where constitutions were adopted as early as the nineteenth century, up until 1996, Oman had no experience with written constitutions.

This chapter aims to investigate the reasons and the motives behind adopting the constitution at that particular moment in history by addressing the following main questions: Why the Basic Law was introduced in 1996 and not in 1970 when Qaboos came to power and started building the modern Omani state? What are the factors that have triggered such a historic development? And what purposes does the introduction of the Basic Law seek to serve?

It will show that, although the ‘official story’ explains the delay solely on the grounds of education and political awareness levels in the country in 1970, there is a lot more to it than that. The boiling political situation at that time, the wish to avoid empowering certain traditional players, the Sultan’s autocratic style of governance and rejection of any kind of power-sharing arrangement have definitely contributed to the delay; in addition one has to consider the tribal nature of the society which made it more willing to accept the lack of a formal written basis for government. We will also explore any potential British interference in the matter and conclude that they were indeed unsupportive of the idea, and that this contributed to the failure to adopt a written constitution in 1970.

In 1996, however, the presence of a number of factors has played a part in making the introduction of a constitution unavoidable.

I propose that in the first half of the 1990s, the regime was facing a crisis of legitimacy to which the constitution seemed an appropriate response; in addition to the question of succession, which was becoming more serious after a failed coup and a near death accident involving the Sultan. International pressure and economic necessity were also among the main reasons for the introduction of the Basic Law.

Appendix 1 to this chapter will describe the constitution making process in terms of the origin of the document, the arena of deliberations and the level of public participation. It will illustrate the
extent to which the process was closed, non-transparent and non-democratic; and how this had impacted on the content of the constitution itself.

4.2 Why not 1970?

When Qaboos came to power in 1970 after deposing his father, a dramatic modernization process was launched creating the modern Omani state. This process, which affected every aspect of the country's life, transformed Oman from a medieval, isolated, war-torn country to a modern, prosperous state. However, in relation to the political system, Qaboos followed his father’s example by refusing to allow popular political participation, and concentrating all powers in his hand.

-People are not ready!

Despite the fact that the adoption of a constitution was put on the agenda by the Prime Minister, Qaboos declined to introduce a constitutional law. He stated that he had no objection to the idea in principle, but the timing for him was not right.137 He was quoted stating in an early interview in 1970 that drafting a constitution and establishing a parliamentary system:

"would be a mistake, a big mistake. Most of the people do not even know what a vote is... In these conditions to draft a constitution, to set up a parliament would be like building a huge dome without either walls or foundations. It might perhaps give a nice impression to the outside world, but it would be nothing but a big show. Look how people vote in Egypt. They are driven to the polls in army trucks. If there were a parliament now, I would have to choose its members among the sheikhs and a few others. What would be the significance of such a body"?138

As can be seen from his above statement, The Sultan felt that the Omani people were not ready to participate in the political process and that introducing a constitution at that critical time would

137TNA: PRO FCO 8/2454, p13.
have been nothing but a political show, with no real value to the country. Instead, he perceived the option as a potential threat to the development plan he seemed to have in mind.

There seems to be an assumption here (on the part of the Sultan) that “modernization” required almost untrammelled power on the part of the modernizers, whereas democracy or constrained rule more generally made it more easy for “traditional” elements to block reform.

He perceived the option of drafting a constitution and establishing a parliament as a step too advanced for the Omani society to cope with, hence the comparison to building a dome without walls or foundations, which will eventually fall.

Later after the adoption of the Basic Law, Qaboos justified the 26-year delay stating that it was necessary to avoid a political mess:

“I had promised on the first day of my rule to create a modern government. But I knew change had to be entered into slowly, very slowly. The level of education had to reach a certain point so that people would know what we were talking about.”

The question that would arise here is: does Qaboos's judgment in relation to people's level of education have any basis?

At that time of Qaboos's accession to power, most Omanis could not read or write and had no education beyond the basic level of religious teachings. His father had decided to ban mass public education, allowing only three elementary schools in the whole country, which he later decided to close in 1970 telling one of his British advisors that England had lost India because they had educated people.

Very few had the privilege of attending secondary school, and even fewer had a university degree. Most of the educated, politically active elites were either opposing the Sultan or in exile.

The following Developmental indicators paint a picture of the situation:\(^{141}\):

<table>
<thead>
<tr>
<th>Developmental indicator</th>
<th>1970</th>
<th>1990</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total population</td>
<td>901,000*</td>
<td>1,625,000</td>
</tr>
<tr>
<td>GDB (million Omani Rial)</td>
<td>104</td>
<td>4,493</td>
</tr>
<tr>
<td>Schools</td>
<td>3</td>
<td>779</td>
</tr>
<tr>
<td>Higher education (number of students enrolled)</td>
<td>-</td>
<td>6,888</td>
</tr>
<tr>
<td>Infant mortality (in every 1000)</td>
<td>118</td>
<td>29</td>
</tr>
<tr>
<td>Life expectancy at birth (years)</td>
<td>49.3</td>
<td>66.5</td>
</tr>
<tr>
<td>Civil service employees</td>
<td>1750</td>
<td>84,000</td>
</tr>
</tbody>
</table>

* The figure is from 1977

The figures above clearly show the remarkable difference between Oman in 1970 and Oman in the 1990s, which provides some basis for Qaboos’s justification.

However there is another side to the story. Despite the lack of formal education, the political struggle of Omanis in various parts of the country against the rule of the previous Sultan proves that the Omanis were politically aware and active at the same time.

Evidently, the Omani political scene was far from being quiet, ignorant or apathetic. In 1955, a public petition was addressed to Sultan Said bin Taimour, demanding among other things, the

establishment of a national council to draft a constitution for the country, social justice, political freedoms and freedom of expression.\textsuperscript{142}

Later, in the late 1960s Sayyed Tariq subscribed to this cause and with the support of educated Omanis, was pushing for a constitution creating a modern constitutional monarchy.

On the other hand, in the Southern province of Dhofar, a Marxist militant rebellion continued for more than a decade with the aim of establishing a Marxist state, while in northern Oman the Imamate forces managed to raise the Omani question in the U.N in their long struggle against the British dominance in Oman.

Apart from these political movements in the 20th century, Oman, unlike some other GCC countries, has a long tradition of institutionalized and structured ruling system, with well-established rules and practices that dates back hundreds of years ago, in the form of the Ibadhi Imamate, which is based on the principles of consultation and free elections for leaders - which would be akin to consensus and contract in contemporary traditions. In fact the Ibadhi Imamate may be held to be the longest democratic experience in the region.\textsuperscript{143} It has been described as moderate, constitutional, and capable of establishing democracy as a cherished concept in the Omani culture.\textsuperscript{144}

Therefore, with this rich political experience, and the then vibrant political scene, it is difficult to accept that Omanis were not capable of comprehending what a constitution is, or that they will oppose the constitution out of ignorance.

People were eager for a change and when Qaboos overthrew his father, he was embraced by the majority of Omanis as a new possibility for change and reform. Therefore, if he introduced a constitution at that time it was highly unlikely that he would be opposed. Many of his actions and

\textsuperscript{142}“Sultan Must Go,” Al Watan newspaper, 17 June 1955.

\textsuperscript{143} Ghubash, 2006.\textit{Oman: The Islamic Democratic Tradition}, p 9.

\textsuperscript{144} Ibid.
projects were far more controversial and provocative than establishing constitutional basis for his rule.

Qaboos also believed that because people were not educated enough, this will mean that the constitution will not be significant or relevant in reality and therefore, will be nothing but a political show for the outside world. This argument, however, is not conceivable enough to be used against the introduction of a constitution. Essentially, a constitution is a legal declaration of the system of government and the principles guiding state policies. A politically well-informed population is, with no doubt, more likely to utilize the document to its benefit increasing its relevance and effectiveness, however a less educated population will not undermine the importance of the constitution if the government is committed to following it. The constitution will remain relevant and effective if the regime was willing to adhere to its principles and refrain from violating it.

In fact, it could be argued that introducing a constitution at that time would have accelerated the country’s political development and raised the level of people’s political awareness by creating a national debate around the subject, informing them of their rights and entitlements as citizens, and through defining and providing an established framework for the relationship between the Omani citizenry and their regime instead of the vague and blurred boundaries existing at the time.

Qaboos’s other reservation stems from his belief that involving people in the political process when they are not ready may be detrimental. In his statement, Qaboos seems to associate elections and parliamentary rule with introducing a constitution, while in reality this association is not inevitable. Many Arab countries at the time, including some of the neighbouring Gulf States had constitutions but not necessarily a parliament or political suffrage.
A political chaos may result from elections in societies where democratic institutions are newly established; however a constitution need not be democratic. In fact, the Arab constitutional experience is based on divorcing constitutionalism from democracy.\footnote{Nathan J. Brown, 2002. \textit{Constitutions in a Non-constitutional World: Arab Basic Laws and the Prospects for Accountable Government}, (Albany: SUNY Press), p1.}

In its basic definition, a written constitution is a codification of the rules and principles under which a country is governed; political participation and parliamentary system may be prescribed in the constitution and may be not. Therefore, linking the adoption of the constitution with introducing parliamentary elections to justify the delay is not a plausible justification.

Even when a constitution was eventually introduced 26 years later it still did not introduce elections or establish a real parliament.

A more stronger concern which Qaboos subtly expresses in his statement is the fear that a constitution and a wider political participation will mean stronger influence for the more traditional components of the Omani society, which may be a potential threat to his vision of the Omani modern state and a stick in the wheel.

Because of the composition of the Omani political scene at that time, which was dominated by tribal politics, the skill pool from which he would have to draw his partners was very narrow, and any representative body established would have to rely heavily on tribal leaders. To evidence this, even Tariq's draft constitution provided for a parliament composed of appointed tribal leaders and society notables.

Therefore, with his progressive attitude, Qaboos was hesitant to seek active political participation from traditional tribal sheikhs,\footnote{The Sultan has expressed this concern in a meeting with a British diplomat. TNA: PRO FCO 8/2454, FCO 8/2454, Letter from the British Embassy in Oman to the Right Honourable James Callaghan, MP on 12 February 1975, p 13.} who may represent an obstacle to the full
implementation of his vision. He allowed them to take ministerial positions in the cabinet to execute his orders under his full supervision, in order to secure their allegiance; but was not ready to have them in a parliament representing an independent power, which may seek to challenge his views or weaken his position. It was clear that he was committed to the creation of a modern state as demonstrated by his introducing women to the Police and Armed Forces very early on\textsuperscript{147}, a step which was very progressive for an extremely traditional and conservative society like Oman in the 1970s. A step which, had he not been an absolute ruler, may have taken years to have been accepted.

He, therefore, preferred to freely engineer the Omani state without constraints and power struggles, minimizing the channels through which his plans and ideas may be challenged by the more traditional components of the Omani society.

- **Serious Political Instability at the time**

Another issue related to timing for Qaboos was that of opposition. When Qaboos assumed power he was facing a war against his regime in Dhofar, in addition to the Imamate who was active outside Oman trying to gain strength to attack. Because of these circumstances, he may have been more reluctant to share his powers, and preferred to suppress the opposition and stabilize the country before entering into any political negotiations around a constitution. Besides, introducing a constitution at that time would have stirred a national debate allowing for conflict and further grounds to challenge to the regime. This would have contributed, therefore, to the country’s instability.

The need to rule without any limitation or constraints was particularly important to him in the critical early years of his reign because it enabled him to suppress the opposition, establish his

\textsuperscript{147}Ibid.
rule and carry out his extremely ambitious plans to overhaul the system without any the need to conform to any constitutional rules, or to seek the permission of a legislature.

- The Sultan Autocratic tendency

The Sultan’s personal and autocratic style of governance is another factor that may also contribute in explaining his reluctance to draft a constitution in the early years of his rule.

A constitution, of any nature, will limit the government by providing a framework for it to operate within, and setting a standard against which government’s actions and performance may be measured. It will, therefore, empower people and set their expectations by providing them with a point of reference and a platform to challenge the regime.

These inevitable consequences of a constitution would not set easily with Qaboos’s very personal and autocratic rule. He clearly did not want any kind of limitation on his power to be able to establish his rule, and restructure the Omani political scene according to his vision. He opposed any kind of power-sharing arrangement, even refusing to cooperate with his first Prime Minister, Tariq, and effectively forcing him to resign. No other Prime Minister was appointed after Tariq’s resignation.

During his short term as a Premier, Tariq complained constantly of Qaboos’s tendency to autocratic rule, and that he, as prime minister, was bypassed on many issues. The British had to exert a certain degree of pressure on the Sultan to involve Tariq in defense matters; Qaboos however insisted that in relation to finance and budgetary issues, he did not see what was there to be shared with the Prime Minister.

148 TNA: PRO FCO 8/2455, Diplomatic Report no. 247/75 Oman, Foreign and Commonwealth Office, pp. 35-39
149 TNA: PRO FCO 8/1671, Priority Telegram no. 376 from Muscat on 11 November 1971 to Bahrain British Residency pp. 84-85.
150 TNA: PRO FCO 8/1671, Priority Telegram no. 360 from Muscat on 31 October 1971 to Bahrain British Residency, p 79.
151 TNA: PRO FCO 8/568, Telegram from Arabian Department on 1 July 1971 entitled ‘Relations between the Sultan and Tariq,’ p 3.
He insisted on having total control over oil revenues, which were transferred to his personal account\textsuperscript{152}, utilizing them in building alliances and consolidating his control over the country’s finances and implementing his personal agenda. He also did not accept a suggestion put to him to establish a high level Council for the general co-ordination of economic affairs to assist in establishing the national economic policy\textsuperscript{153}, insisting on being the ultimate decision maker. If there was a constitution dealing with the budget or limiting the government financial discretion, he would have to enter into negotiations and compromises, instead of being able to freely dictate the country’s financial policy and how oil rents were to be used.

Qaboos has made it clear that he wants to govern through the Prime Minister\textsuperscript{154}, and that in any case, his “voice would predominate in Military, Financial, and external affairs, and he stressed, in the award of large commercial contracts.”\textsuperscript{155}

All this indicates the extent to which Qaboos was not willing to enter into any power sharing arrangement.

- \textit{No Pressure from A Tribal society}

In addition, Qaboos’s reasons against adopting a constitution, there was no pressuring public demand for one. Apart from Tariq and his supporters, Omani society was not familiar with the concept of having a modern government structure regulated by a written constitution. The majority of people were more concerned with the outcome of government policies and the direct benefits generated by them rather than the legal and theoretical basis for government.

To illustrate this, the Sultan when discussing the issue of the constitution with a British diplomat, explained that “he had spoken to many of the Shaikhs and Walis in the country and also to

\textsuperscript{152}Townsend, \textit{Oman: the Making of a Modern State}, p 80.
\textsuperscript{153} TNA: PRO FCO 8/568, p 2.
\textsuperscript{154} TNA: PRO FCO 8/1426, from British Consulate General Muscat to British Residency in Bahrain, 2 November 1970, pp. 125-126.
\textsuperscript{155} Ibid.
individual members of the government about the question of the constitution. None had wished it at this stage in the Sultanate’s development, since it was an irrelevancy.¹⁵⁶

This is understandable because the tribal nature of the society meant that people were more used to informal power structures, in which they, as tribal members, organized themselves around their tribal leader. Each group of tribes is then headed by a senior shaikh or tamimah.

Within this tribal structure, the Sultan is considered the paramount sheikh under whom all the tribes of the country organize. He would have to maintain highly visible contacts with tribal leaders, allowing them access to him to deal with their needs and grievances.

In this tribal culture, the concept of constitutional government seems alien to people; they were far more comfortable with a system that mimics their traditional setting.

Since his accession to power, Qaboos maintained this image as the paramount leader of the tribal system. Although he did cut down the power and authority of tribal leaders, he did not try to distort the tribal order. The tribal structure was incorporated into the state apparatus in a way that reinforced government authority over society.¹⁵⁷ He maintained links to traditional symbols and used them to increase his legitimacy. As Riphenberg argues, the state tried to inspire people “to consider themselves as tribal members in a political system where the hierarchy of deference and respect reaches its highest level with the Sultan.”¹⁵⁸

One of the obvious manifestations of this policy was the Sultan’s highly publicized yearly tour, in which he holds public meetings in the desert in a very basic setting with tribal leaders and community notables, trying to mimic the traditional tribal meetings.

Effectively, Qaboos was providing people with a modern system that, despite its modernity, strongly resembled their traditional, informal political structure with which they were more

¹⁵⁶Ibid.
¹⁵⁷Manea, Regional Politics in the Gulf, p 101.
¹⁵⁸Riphenberg, Oman: Political Development in a Changing World, p77.
comfortable. Therefore, they did not feel the need to move towards a more formal, constitutionalized system of governance, which they have never experienced in its modern form. Hence, there was no pressure on Qaboos to introduce such a system.

**British interference**

Taking into account the level of British involvement in Oman at the time, it is important to consider any possible role they may have played in delaying the introduction of the constitution.

As explained in chapter two, for decades the Omani policy was dictated, to a large extent, by the British, who supported and maintained Al Said rule. This unique relationship was regulated by several bilateral treaties, and was reinforced by Oman's heavy financial reliance on British subsidy. However, despite the high level of dominance and control they maintained over the country, the British did not annex Oman to their empire and were anxious to preserve Oman's apparent independence.\(^{159}\)

Following the same policy they adopted in Egypt\(^{160}\), the British deliberately maintained the apparent authority figure represented by the Sultan and Al Said family, while controlling the decision making process through their numerous advisers to ensure their views are followed. They dictated the country’s policy without accepting responsibility for incorporating it, operating outside institutional channels without being subjected to any form of accountability.

Therefore, if the British wanted to ensure that the status quo was maintained, it was vital that any formal limitation on the Sultan’s authority, in the form of a constitution or a parliament, was resisted. To that end, Sayyed Tariq’s constitutional plans, which included establishing a national assembly, a strong Prime Minister, and a weaker Sultan, could have been potentially threatening to the British interests in Oman.

\(^{159}\)Manea, *Regional Politics in the Gulf*, p101.  
In a conversation with a British diplomat, Tariq accused the British of advising the Sultan against adopting a constitution, or at least had encouraged him to follow his own inclinations against a constitution.\textsuperscript{161}

Evidence shows that the Sultan did indeed raise the question of the constitution with the British\textsuperscript{162}, but it is not clear what advice was given to him.

However, the British response to Tariq's accusations was that they did not oppose the principle of a constitution, as demonstrated by their record in other countries in which they were involved, however they may have some reservations on the timing in Oman's case. The British diplomat described the constitution as a big undertaking that Kuwait, for example, did not rush into.\textsuperscript{163}

This shows that the British were, at least, not enthused by the idea and certainly did nothing to support it. They failed to use their influential position in Oman to bring about or encourage such a change. In frustration after the government performance has deteriorated following Tariq's departure, Asim Al Jamali pointed out this, telling the British Ambassador that they alone could influence the Sultan to come out of his “fool's paradise” and create a strong government with a constitution no matter how rudimentary.\textsuperscript{164} But they did not.

\textbf{4.3 Why in 1996?}

From the discussion above, it is clear that there were a number of factors that contributed in discouraging Qaboos from introducing a constitution in 1970, among which are: his belief that Omanis were not ready, his personality and style of governance, the political instability at that

\textsuperscript{161}TNA: PRO FCO 8/1845, from British Embassy Muscat to Middle East Department in Foreign and Commonwealth Office, 25 September 1972, p 71.
\textsuperscript{162}TNA: PRO FCO 8/1426, from British Consulate General Muscat to British Residency in Bahrain, 2 November 1970, pp. 125-126.
\textsuperscript{163} TNA: PRO FCO 8/1845, p 71.
\textsuperscript{164} Ibid.
time and the social and economic factors that allowed the Sultan to take such a decision without being seriously challenged.

However, what has changed in 1996 to make the Sultan change his mind? Why was the Constitution introduced at all? And why in 1996 particularly?

The political and economic context within which the Basic Law was introduced provides a number of explanations to these two questions. However, it will be useful first to consider the official reasoning presented by the maker of the constitution.

The official story

Strangely, the Sultan did not address the nation when the Basic Law was introduced, and only dedicated to this “historical document”, as he described it, a few sentences in his long annual speech to the nation on Oman’s national day in 1996165.

Even then, he referred to the Basic Law as a continuation of his policies so far, without explaining the purposes of such a step and how it may impact on the political system or the relationship between the government and the people of the Sultanate.

It is almost as if the Sultan was trying to play down the importance of the Basic Law to manage people’s expectations.

This means that we only have two sources that might help us cast a light on the rationale behind the Basic Law and the timing of its introduction: the first is the preamble of the Basic Law, and the second is a 1997 interview with a U.S journal in which Qaboos talked about his decision to take this significant move.

The Preamble

Although the preamble is extremely brief and expressed in general terms it represents the only official statement of intent and purpose, providing useful insight into the reasons behind the adoption of the constitution.

In the preamble three main purposes are given for the issuing the Basic Law. First, it is intended to serve as a "confirmation of the principles which have guided State policy in various fields during the past period."\footnote{The period referred to here is presumably the years of Qaboos’s rule up until the introduction of the Basic Law (i.e. 1970 - 1996).}

This statement clearly highlights the desire of the establishment to maintain the status quo and rules out any intention for change. The Basic Law is intended to add a legal legitimacy to the regime and codify its unlimited powers; providing an expression of the ruler’s will without seeking to limit his prerogatives or modify the established structure. This purpose and desire is even more apparent in the actual text of the Basic Law, as will be illustrated later in the next chapter, where many Articles do very little beyond confirming and consolidating current state practices. This is confirmed by a statement made by the Minister of Information Abdul Aziz Al Rawas, who is widely thought of as one of the four who drafted the constitution, in an interview with him on 27 December 1996. He stated that the Basic Law is meant to be “a codification of the status quo” and a “defensive fence” within which there will be a great opportunity for growth and development.\footnote{“Interview with the Omani Minister of Information Abdul Aziz Al Rawas”, Asharq Al-Awsat, December 27, 1996, p 16.} In fact, when asked about the new constitution, the Minister refused to describe it as such insisting that the country’s constitution is Islam; while the Basic Law should be seen as a strong fence that would protect the Omani society from the diseases of the modern age. He rejected democracy as a foreign and imported concept and ruled any possibility for party politics on the grounds that Oman is a tribal country, and tribes are the most natural alternative.\footnote{Ibid.}
The second point in the preamble refers to the Basic Law as part of the State’s continuing effort “to create a better future characterized by further achievements for the benefit of the Country and its Citizens”. Possibly, this suggests that the Basic Law is a further stage of the Omani development plan envisaged by the regime. However, it does not explain how the Basic Law will contribute to creating a better future for the people of Oman.

The third basis for issuing the Basic Law, as stated in the preamble, is related to the international dimension and suggests that this step will “strengthen Oman’s international position and its role in establishing the foundation of peace, security, justice and co-operation between different States and Peoples”. This point will be explored in more detail below.

These three official justifications explain the purposes of the Basic Law as envisaged by the regime, while the Sultan’s interview explains the timing.

*It is Time*

In his 1997 interview with a U.S magazine a few months after the adoption of the Basic Law, Qaboos referred to the constitution as a project that he wanted to implement since he acceded to power but was put on hold because the society was not ready for such an ambitious step.

However by 1990s, the country had changed remarkably; from almost no schools in 1970, to more than 1000 in 1996, a national university and various other colleges. The majority of Omanis were now educated and participating in the development of the country. Public schools in 1996 were accommodating almost 50,000 students (around 85% of those in school age), in addition to 10,000 mature students in illiteracy centres around the country. The Sultan Qaboos University capacity in 1996 reached more than 5000 students, while more than 2800 students were sent abroad to complete their higher education.

In the interview, Qaboos pointed out his choice of timing:
“As I approached my silver jubilee, I said to myself this is the time. So I got four of my most trusted people—All Omani. I sat with them and I told them exactly what I had in mind. I gave them a year to formulate it in a legal document”.

However, it is not clear on what basis Qaboos actually relied to decide that the society is finally ready for such a move. His choice of timing seems to be based on two elements: one is internal to his rule (i.e. completing 25 years in power), while the other is relating to the development of the society, particularly in relation to education levels.

The reality and the context

In addition to the official accounts discussed above, there are a number explanations presented to explain the significance of the Basic Law and the reasons behind its adoption.

Moving to the Next Phase?

Many commentators suggest that the adoption of the Basic Law in 1996 signals the beginning of a new phase in the Omani development process. In his December 1996 interview, the Minister of Information also describes the Basic Law as the start of the stage of development. Since 1970, the government’s development efforts were focused on building the country’s infrastructure, establishing public administration, providing essential services for the people like health and education, and achieving economic growth.

However, by introducing the Basic Law in 1996, a new era has begun characterized mainly by the establishment of the rule of the law. The government embarked upon a major project to create the foundations for a modern legal system through establishing the necessary legal institutions and filling the legislative gaps. Firstly, the Basic Law was adopted in November 1996 followed by a series of laws that aimed at facilitating the development of a national legal

---

170 “Interview with the Omani Minister of Information Abdul Aziz Al Rawas”, p 16.

Furthermore, in 1999 the Sultan issued a Royal decree establishing the Judicial Supreme Council a new Ministry of Justice was established to oversee the judicial system which had undergone a substantial change. The court system was restructured creating different types and grades of courts, and limiting the use of Shari’ah courts to family matters. A new administrative court system was also established in the same year to deal with complaints against administrative decisions and procedures. Additionally, the office of Public Prosecution was created in 1999, and Oman’s first Attorney General was appointed that year.

This focus on legal advancement extended to education by opening Oman’s first law college in 1997.

All these major reforms clearly indicted that the development of Oman’s legal system was a matter of priority to the government at the time. It represented a new phase of the development process characterized by a determination to establish the rule of law and to create of a legal culture.

However, the question remains as to why the new phase was entered into in the first place, at that particular time.

Using the government’s subsequent actions to account for the introduction of the Basic Law in 1996 seems to be a circular argument that does not fully explain the rationale behind the crucial timing on which this process was started. It could be argued that the Basic Law was not merely a step in the government’s pre-determined plan to overhaul the country’s legal system, but instead was the reason that initiated this complicated and far reaching process.
To argue that the Basic Law was a mere step in the new phase of development is to seriously ignore its context and the circumstances surrounding its introduction.

*Crisis of Legitimacy*

The first half of the 1990s was characterized by great political instability in the Middle East in general and particularly the Gulf region. In August 1990, Sadam invaded Kuwait and led the whole region into one of the biggest wars it has witnessed in its modern history.

In response to Iraq’s aggression, America led a multinational force in a direct military intervention to liberate Kuwait and protect the world’s biggest oil reserves. International economic sanctions were also imposed on Iraq which was accused of developing weapons of mass destruction. As a result, the political atmosphere in the region was charged and the possibility of a second war breaking out soon was very imminent.

The situation was further exacerbated by the continuing presence of the American forces in various military bases in the region following the end of Gulf war. Despite many calls for them to leave, it was clear that the troops came to stay.

This foreign military presence provoked anger among nationalists and religious groups who perceived it as a new form of colonization. However, this anger was not only directed towards the foreign troops but also towards national rulers who were accused of failing to defend their territory without American help. They were seen as the ones who have invited America and allowed it to build military bases and expand its presence in the region to protect its oil interests and to facilitate any future attacks against Arab and Islamic countries.

New Islamic rhetoric was finding its way in the region calling for holy war against the infidels who were occupying Arabia, and the traitor rulers who support them. This new rhetoric was particularly prevailing in Saudi Arabia but was also spreading to other countries including Oman. As a result, the Royal families in the Gulf were facing growing opposition and serious crisis of legitimacy.
This anger and dissent was further fuelled by the economic aftermath of the war as oil prices were fluctuating and local economies were suffering as a result of the heavy costs of the war.

Political dissatisfaction among people was reaching unprecedented levels, while Islamists on the other hand were gaining increasing popularity particularly after defeating the Soviet forces in Afghanistan. Political Islam was gaining new grounds everyday, and representing the most serious threat to the survival of the Gulf regimes.

Bahrain, for instance, was facing dangerous levels of civil unrest caused by the Shi‘ah Islamists, supported by Iran, who were demanding political reform and the departure of foreign “mercenaries”. Saudi Arabia, on the other hand, witnessed the first serious terrorist attack by fundamentalists, which targeted a housing complex occupied by American troops. The attack resulted in several deaths among Americans and hundreds of injured victims.

Around the same time, a coup d'état took place in Qatar bringing about a change in the regime.

Oman was in the middle of a region in ferment and; therefore, it was inevitable that it would experience some degree of unrest. In May 1994, the regime faced the first serious threat to its existence since the Dhofar rebellion in 1970s when the government uncovered a plot to overthrow the regime, assassinate the Sultan and carry out a series of explosions in the capital city, Muscat. Around 200 people were arrested, several of which were prominent figures in the government and high-ranking police and army officers171, who were mainly Sunni Muslims. The suspects were linked to the famous Islamic movement of Muslim Brotherhood172 which has a prominent presence in several countries in the region. They were taken into custody and some of them were sentenced to death, but in a tactical move that secured him increased popularity, the Sultan decreed an amnesty to all of them in November 1995.

171Beasant, The True Life Drama & Intrigue of An Arab State, p 18.
This failed attempt clearly indicated that dissatisfaction with state’s policy among educated and professional Omanis was reaching a dangerous level. The regime’s golden years, during the late 70s and 80s where it enjoyed almost unanimous support, were clearly coming to an end.

From this event many questions started to emerge about the reality of the situation in Oman. People started to question the causes behind such an extreme attempt and the reality behind the apparent stability in the country. The regime and the Sultan himself were now facing a serious crisis of legitimacy.

The establishment had to act to reassert its authority and mitigate the damage caused by this attempt and the adverse publicity it caused. A year after the Royal decree of amnesty, the Omani constitution was adopted to confirm the authority of the regime and legitimize its rule.

By introducing the Basic law at that critical time, the Sultan created a new legal and constitutional basis for his reign without compromising on his authority and privileges. Far from being a pre-planned stage of development, as some may argue, the Basic law was a response to the circumstantial needs of the regime and a necessary requirement for its survival.

*Economic necessity*

Introducing the constitution at that particular time was not only necessary to ensure the political survival of the regime, but was also an economic necessity to facilitate the crucial liberalization and diversification of the country’s troubled economy to free it from its dependency on declining oil resources,

Oman’s economic growth has fluctuated with oil prices and its deteriorating financial position has attracted constant criticism from the World Bank, particularly for its failure to meet the demands of its growing population.\(^\text{173}\) The World Bank’s report in 1993 pointed out the country’s

continuous budget deficits, current expenditure trends, the lack of domestic public savings, and the decline of foreign investment.\textsuperscript{174}

In June 1996, the government held a high profile economic conference in Muscat entitled: Vision for Oman’s Economy: Oman 2020, where the country’s political and economic leaders debated future strategies that will ensure stable and sustainable economic growth, focusing mainly on liberalization, diversification, privatization and promoting foreign investment\textsuperscript{175}.

However, in order to encourage foreign investment, Oman’s legal system had to be reformed and strengthened to attract foreign investors and protect their interests. Particularly with the oil crisis of the early nineties still in mind, and the growing economic challenges facing the Sultanate, Oman could not afford to have such a serious gap in its legal and political structure with could potentially drive away most needed investors and economic development.

This reform focused on two main aspects: Firstly, amending laws directly affecting foreign investment; so foreign ownership, for instance, was allowed and the maximum percentage of foreign investment was increased from 45\% to 65\%, in addition to relaxing business regulatory measures.

Secondly, reforming the legal structure as a whole to increase its efficiency and establish confidence in the system.

In this respect, the introduction of the Basic Law was a significant step towards building constitutional government and promoting the rule of law to present Oman as a modern, politically stable country that provides a safe investment environment.

In fact, the Basic law expressly declares the Sultanate’s commitment to principles of liberal economy and to upholding private property rights and ownership.

\textsuperscript{174}Ibid.
\textsuperscript{175}Ibid.
Possibility of Succession Crisis?

Prior to adopting the Basic Law there was no established procedure for succession. This gap represented a potentially fatal threat to the stability and future of the country. As Montesquieu rightly notes, the lack of a succession process established by a fundamental law is extremely disruptive and may threaten the existence of the regime itself.¹⁷⁶

This gap was particularly problematic in Oman since Qaboos has no children and has not appointed an heir apparent to the throne. Furthermore, throughout his reign Qaboos eliminated any possible competition by alienating the Royal family and concentrating the executive power in his hand. Unlike other gulf monarchies where there is always an heir apparent and power is shared between different wings in the Royal family, members of the Omani Royal family held either merely representational posts or were assigned duties under the direct supervision of the Sultan; but none of them were allowed the opportunity to gain the necessary experience as a politician or build a popular base. Qaboos remained the dominant figure in Omani politics and there was no second powerful man in Oman or a real potential candidate to replace the Sultan upon his death.

However the criticality of the situation was not seriously felt until 1994 after the failed attempt to assassinate the Sultan, when people started to question the future of the throne after Qaboos’s death. The situation was further exacerbated in 1995 after the Sultan was involved in a serious car accident that resulted in him being injured, and his Finance Minister, Qais Al Zawawi, being killed.

The death of Al Zawawi was a serious loss to the establishment and to the Sultan himself as he played a significant role in shaping Oman’s economic strategies and was one of Qaboos’s most trusted men.

The accident and Qaboos’s near death experience highlighted the seriousness of the situation and the urgent need for a solution. The future of the country was in real jeopardy; all the accomplishment that have been achieved in the last two decades could easily be lost if a succession crisis were to break out, and the possibility of the country descending into civil war was not far-fetched.

Although the best solution in the circumstances would have been appointing an heir apparent to fill the vacuum, Qaboos insisted on maintaining the status quo as much as possible. A succession procedure was introduced in the Basic law a year later to be implemented after the Sultan’s death to assist in choosing a replacement.

*International dimension*

By mid 1990s Oman was one of a very few countries in the world with no written constitution, and was the only remaining country in the gulf region with no experience of a constitutional document, after Saudi Arabia issued its Basic Law in 1992.

Furthermore, after the first Gulf war, immense Western pressure was put on Arab regimes, particularly in the Gulf region, to democratize their systems and improve their human rights records.

In these circumstances, maintaining Oman’s constitutional gap was becoming increasingly detrimental to the regime’s image as a modern, lawful government and a respectable member of the international community.

Besides, constitutions have become so common as to be regarded as a natural accouterment of national sovereignty\(^\text{177}\). As Karl Loewenstein argues: “It is safe to say that the written constitution has become the most common and universally accepted phenomenon of the

\[^{177}\text{Brown, Constitutions in a Non-constitutional World, p 8.}\]
contemporary state organization. So deeply implanted is the conviction that even modern autocracies feel compelled to pay tribute to the democratic legitimacy inherent in the constitution.  

Therefore, the Basic Law could be seen as a step towards strengthening Oman’s position and asserting its role as part of the international community. There is no doubt that by issuing the Basic Law, the Omani state was addressing an international concern and attempting to fill in a gap that may hinder its attempts to establish itself in the international domain as a modern and progressive state; a reliable trade partner and a safe investment option.

4.4 Conclusion

In this chapter we tried to understand the reasons behind two important junctures in the constitutional experience of the Strong Omani State, namely: the refusal to introduce a constitution in 1970 when Qaboos came to power, and the unexpected introduction of the Basic Law in 1996.

We found that although the ‘official story’ explains the delay solely on the grounds of education and political awareness levels in the country in 1970, there is a lot more to it than that. The difficult political situation at that time, the wish to avoid empowering certain traditional players, the Sultan’s autocratic style of governance and rejection of any kind of power-sharing arrangement have definitely contributed to the delay. In addition to that, the tribal nature of the society made it more prepared to accept the lack of a formal written basis for government.

In 1996, however, the presence of a number of factors has played a part in making the introduction of a constitution necessary for the State’s own survival.

In the first half of the 1990s, the regime was facing a crisis of legitimacy to which the constitution seemed an appropriate response; in addition to the question of succession, which was

becoming more serious after a failed coup and a near death accident involving the Sultan. International pressure and economic necessity were also among the main reasons for the introduction of the Basic Law.

Therefore, we can reasonably conclude that in these two important junctures in the Omani constitutional experience, the State was clearly the sole player. At its own discretion, the State refused to introduce a constitution in 1970, and of its own accord introduced the Basic Law without any real public pressure to do so.

The following appendix will show how the State designed the constitution-making process in a way that reflects the above conclusion.
Appendix1 to Chapter 4: The Process of Making the Omani Constitution

How was the Basic Law made?

Unlike other countries where drafting a constitution is often a highly complicated and contentious process, the Omani constitution was promulgated suddenly without prior notice to the public. The government did not announce its plans to draft a constitution, nor did it consult with Al Shura Council or any other public representatives over its decision to adopt a constitution or in relation to its content. The general public had no knowledge of the matter until a Royal decree was announced promulgating the Basic Law.

Qaboos described the procedure by which the constitution was adopted as follows:

“\textquote{I got together four of my most trusted people- all Omanis. I sat with them and told them exactly what I had in mind. I gave them a year to formulate it in a legal document. Then we had a second review, and then a final session. I announced it on my annual “Meet the People” tour while encamped in the desert in the heart of Oman. Then I waited for the reaction, which was very good.}^{179}"

Therefore, the Basic Law was introduced as a grant from the ruler and cannot be considered as a democratic constitution because it did not originate from the people and had no popular input at all.

Does the process matter?

There is an increasing academic attention to studying the process of constitution-making and its impact on the content, quality, and enforceability of the constitution. Process has become

\footnote{179\textit{Miller, "Creating Modern Oman: An Interview with Sultan Qabus," p 4.}}
equally as important as the content of the final document in determining how legitimate and
democratic it is considered.180

Two types of constitution-making can be recognized: open and closed. The openness of the
process is determined by three important factors, which are the origin of the document, arena of
deliberation, and public participation181. The optimal open constitution-making refers to the
introduction of a new document which does not originate from an old document, deliberated
upon and adopted by a specially elected constituent assembly, followed by a popular
referendum. While closed constitutions, on the other hand, refers to the amendment of non-
democratic constitutions in political arenas that lack electoral legitimacy, and without citizen
involvement through a referendum.182 Of course constitutions in reality do not always fit one of
these two models, but can have varying levels of openness.

Origin of the document

By applying this analysis on the Omani case, the Basic Law is obviously a new document that is
not based on, or an amendment of, an old constitution. In fact it is Oman’s first constitutional
document, which means that its makers enjoyed a high level of freedom in drafting it without
being confined to existing constitutional parameters, or being compared to a previous
constitutional experience. This arguably increases the openness of the constitution-making
because it widens the scope for deliberation, as the entire institutional framework becomes
subject to political debate.183 However, it is not a decisive factor because if the arena of
deliberation is severely limited and there is no public participation in the process, the wide scope
of political debate is of no real value simply because there is no debate in the first place.

The arena of deliberation

181 Jasper de Raadt, “Contested Constitutions: Legitimacy of Constitution-making and Constitutional
182 Ibid.
183 Raadt, “Contested Constitutions”, p 324.
The second factor is the arena of deliberation. Scholars generally agree that the most desirable and enduring way of deciding upon the country’s political and institutional framework is through a specially elected constitutional assembly 184, due to its nature, composition and specific purpose.

A constitutional assembly is usually composed from a number of representatives elected by the people to represent different interest groups and political actors. They are elected for a limited period of time to perform a specific duty which is preparing a draft of the constitution. After their duty is fulfilled, the assembly is dissolved.

This method realizes a number of important goals in improving the constitution-making process; firstly, it provides a forum for public participation and deliberation allowing as many groups as possible to be represented in the process, secondly and most importantly, it avoids, to a large extent, the problem of institutional self-dealing.

If the duty of constitution-making is entrusted to an already established- institution like the legislature or the executive, it is possible that this institution will seek to strengthen its position and favour itself under the new constitution at the price of other institutions, creating, therefore, a dangerous imbalance in the distribution of power.

As empirical research has shown, constitutions made in executive-centered processes tend to significantly reduce the powers and prerogative of the legislatures while remarkably favoring the executive. 185

In the Omani case, the arena of deliberation was severely limited to the private discussions of the Sultan and his four unknown assistants. The process was, therefore, executive-centered and dominated by the direction of the Sultan. As he revealed himself, the task of the four assistants was to produce his wishes in a legal form. Al Shura Council was not consulted at all,

---

184Ibid.
and it appears from the Sultan’s explanations that even the rest of the executive, namely the Cabinet, was not consulted.

Therefore, in this respect the process of making the Omani constitution seems rather closed. As a result of this, institutional self-dealing is extremely apparent in the final product. Only one Article in the Basic Law is dedicated to the Council of Oman, which consists of Al Shura and Al Dawla Councils, compared with 18 Articles dealing with the executive.

Furthermore, the powers of the executive, headed by the Sultan, are virtually unlimited, compared with no constitutionally established and protected powers for the Councils; instead they were left to be regulated by a normal statute that was issued almost one year after adopting the Basic Law. This issue will be discussed in more detail in the next chapter.

Public participation

The Third and most important factor in determining the characteristics of the constitution making process, is the level of public participation involved in the process, which has been extensively covered in academic literature.

Public participation can take many forms and can occur at different stages of the process. For instance, public participation can be achieved by: inviting people directly or through political and civil society groups to submit their proposals and suggestion before a draft is prepared, by electing their representatives in the constitutional assembly, or by submitting the final draft for a public referendum before being ratified.

Many benefits are associated with allowing public participation in the process of constitution making. Most importantly, it is argued that involving the public in the process enhances the legitimacy of the constitution and increase public support for the newly introduced document, while reducing the potential of conflict by increasing the cost of political actors who wish to
challenge it.\textsuperscript{186} It allows the constitution to be viewed as a national product made by the people for the people.

Public participation also creates down stream constraints on the makers of the constitution particularly in the case of public referendum. The makers will recognize the need for their document to gain public approval before being adopted and will, therefore, try to anticipate their preferences.\textsuperscript{187} Additionally, it allows public oversight over the process, making it more visible and transparent, which in turn should reduce self-interested behavior during the drafting.\textsuperscript{188}

One of the strongest arguments in support of popular participation relates to its impact on the practice of constitutionalism; i.e. the potential for the constitution to restrain government\textsuperscript{189}. Empirical research has shown a striking correlation between freely elected public representatives participating in the process, and the effectiveness of the constitution in limiting the powers of the executive and holding them to account\textsuperscript{190}.

This result is logical because more public participation in the process will generate common knowledge about the constitution and the acceptable government behavior, beside the involvement in the process itself will strengthen the civil society and make it more willing to participate in implementing the constitution and policing its boundaries.\textsuperscript{191} This may then be anticipated by leaders, who will consequently be less likely to violate its rules.\textsuperscript{192}

\begin{footnotesize}
\begin{enumerate}
\item Raadt, “Contested Constitutions”, p 325.
\item Ibid, p 216.
\item Raadt, “Contested Constitutions”, p 325.
\end{enumerate}
\end{footnotesize}
Research has also demonstrated a link between democratic process and democratic constitution establishing democratic institutions.193

Furthermore, the right to participate in constitution making has been internationally recognized and strengthened by a decision of The United Nations Committee on Human Rights acting in its judicial capacity. In the case of Marshall v. Canada, the committee interpreted the right of political participation granted in the International Covenant on Civil and Political Rights as extending to constitution making.194

However, in the case of the Omani constitution, no public participation was allowed in any stage of the process. In fact, the public were totally excluded from the process until the Basic Law was promulgated. There was no public oversight to scrutinize the process and prevent self-dealing, or any direct form of public influence on the content of the document.

The process was far from being transparent or democratic, which has seriously affected the content of the document and its relevance to the people and to the political reality of the country. Close examination of the Basic Law reveals the impact of institutional self-dealing by granting the executive almost unlimited authority, while failing to effectively constrain the government and limit its powers. The public, who were detached from the constitution-making process, remained detached from the decision-making process, and were not granted any meaningful rights to scrutinize the government or hold its officials to account.

However, it could be argued that public influence was indirectly present in the process because, although the constitution did not require public approval, its makers did not want to create public crisis by producing an extremely tyrannical constitution. Therefore, although they were not constrained by direct public participation, the constitution makers were constrained by the reality of the situation and their desire to maintain the political stability of the country and, in effect, their rule. That’s why for instance a whole chapter of the Basic Law was dedicated to fundamental

193Carey, "Does It Matter How a Constitution Is Created?"
rights and freedoms, which, despite being limited in effect, creates a sense of balance between
the establishment and the people.

These issues will be further explored in the next two chapters when we discuss the
characteristics of the Basic Law and evaluate its impact on the political system.

Why the process was designed in this way?

As the discussion above has demonstrated, the process by which a constitution is made matters
in shaping its content and determining its impact. However, it is important to also understand the
factors that shape the process in the first place.

Because constitutions are often born as part of a peace settlement to end an occupation or a
civil war, or to establish a new rule, they are usually a product of long and intense negotiations
between different political actors and interest groups, all represented in the constitution-making
process to ensure that the end product will be respected and successfully implemented.

However, in Oman the constitution was not written until Qaboos managed to suppress almost all
sources of serious opposition and establish himself as the only powerful political player in the
country. He managed to crush the Dhofar rebellion and end the Marxist movement in Oman,
while neutralizing Sayyed Tariq and the rest of the Royal family. He was also able to end the
question of the Imamate and render it a matter of the past, at least in political reality. Many
leaders of the Imamate and the Dhofar rebellion were invited to join the government and were
neutralized, together with tribal leaders, using oil rents and governmental posts. Even the Sunni
Islamists, who planned a coup in 1994, were suppressed and eliminated as a potential political
threat.

Therefore, at the time of constitution-writing, the Omani political scene had no other strong
actors beside Qaboos.
Furthermore, at the time, Oman lacked a strong and active civil society and had no trade unions or political parties. Most of the civil organizations were under the direct supervision of the government and dependent to a large extent on governmental funding. Besides, they were mainly concerned with issues related to charity, women, children and disabled people. The severely limited freedom of expression and association, and strong government censorship hindered the development of a strong and independent civil society.

In addition to that, the country did not have a well-established parliamentary experience or a strong legislature; Al Shura Council was not directly elected at the time and lacked real powers to legislate or scrutinize government.

All these factors have contributed to shaping the process of constitution making.

Qaboos did not need to negotiate with any one or involve any one to ensure his document would be adopted. The regime needed a constitution for various reasons, but was under no pressure to involve the public in this process and be forced to make compromises.

As was explained in the first part of this chapter, the main objective of the constitution was to maintain and strengthen the regime in many aspects; however, public participation would have possibly undermined this objective and threatened the regime with loss of control over the process.

Therefore, we can conclude that in the absence of serious public pressure and activism, an authoritarian regime is likely to design a non-democratic constitution-making process to produce a non-democratic constitution that would facilitate the continuation and maintenance of the authoritarian regime; a vicious circle that reinforces itself.
Chapter 5: Content of the Constitution

5.1 Introduction

As we have seen from the previous chapter, the Basic Law was promulgated in 1996, as a result of political and economic circumstances at the time, without being preceded by any national public debate or discussion. As with previous political moves in the Sultanate, this first Omani constitutional law can be seen as the Sultan’s granting of rights to his subjects rather than a negotiated concession. The decree promulgating the Law, which begins with the words “We, Qaboos bin Said, Sultan of Oman...” confirms this, and avoids any reference to other entities (like the nation or God).\textsuperscript{195} The preamble, on the other hand, shows that the Basic Law is a continuation of the previous efforts of the regime in the same direction.

The text of the Basic Law itself is broad in scope, addressing a wide range of issues. It is divided into seven chapters and 81 Articles as illustrated in the following table:

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>The State and the System of Government</td>
<td>9</td>
</tr>
<tr>
<td>II</td>
<td>Principles Guiding State Policy</td>
<td>5</td>
</tr>
<tr>
<td>III</td>
<td>Public Rights and Duties</td>
<td>26</td>
</tr>
<tr>
<td>IV</td>
<td>The Head of State</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>The Council of Ministers</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>The Prime Minister, His Deputies and Ministers</td>
<td>8</td>
</tr>
</tbody>
</table>

\textsuperscript{195}Valeri, \textit{Oman: Politics and Society in the Qaboos State}, p 188.
Chapter one deals mainly with the identity of the State and the succession issue. It establishes Oman as an independent Arab Muslim State, and declares the system of government as a hereditary Sultanate in which succession passes to a male descendant of Sayyid Turki bin Said bin Sultan.

The second chapter sets out the political, economic, social, cultural and security principles guiding State policy. However as Al Salmi notes the provisions under chapter two are no more than guiding principles, therefore their legal enforceability is questionable, but in any case they can be a helpful tool in determining the policy direction of the government. 197

Most importantly, chapter three provides a list of all the fundamental rights and personal freedoms protected under the Basic Law, while also setting out a number of duties that citizens need to fulfill. This association of rights and duties may pose a theoretical question about whether entitlement to rights is dependent on the fulfillment of duties. 198

The three chapters that follow illustrate the division of power between the three branches of government, as envisaged by the Basic Law; the executive, the consultative (instead of the legislative) and the judiciary.

Chapter four is entitled “Head of the State” and thus deals extensively with the executive. It defines the role of the Sultan and his prerogatives, establishes the position of Prime Minister and defines its responsibility, and deals with the cabinet and other specialized councils.

Chapter five, on the other hand is composed of only one article dealing with the establishment of the Council of Oman; a bicameral house of representatives composed of Al Shura and Al Dawla Councils.

Chapter six is dedicated to the judiciary and the regulation of the country’s legal system in general. It establishes the independence of the judiciary, defines the role of the Public Prosecution, and sets out the main principles according to which Oman’s legal system should function.

The final chapter deals with various issues including constitutional amendment, international treaties, and the relationship between the Basic Law and other laws of the country.

In order to provide a better understanding of the Omani constitution, this chapter will provide an over-all examination of its text to reveal the main themes, characteristics, and sources of influence on the constitution. The first part will discuss the main sources of ideological influence on it like Islam, Arab nationalism and western constitutionalism. The second part of the chapter will discuss the main characteristics of the constitution in terms of flexibility, adaptation and the status of its provisions in relation to national laws and international treaties. Finally the third part will explore three of the prominent issues in the Basic Law: the economy, the sovereign strong state, and the internationalist trend.

Appendix 1 to this chapter will examine how the issue of succession is dealt with in the Basic Law.
5.2 Influences on the Basic Law

Broadly speaking, the constitutions of all Gulf countries, including Oman, are based on a common model influenced to a great degree by older Arab constitutional experiences and also those of France and the U.S, in addition to international instruments like the Universal Declaration of Human Rights 1948. Therefore, like other constitutions in the region, the influence of western constitutionalism is apparent in the Basic Law.

Moreover, the Arabic and Islamic culture of the region has also played a part in shaping the Basic Law and influencing its provisions.

Western constitutionalism

The influence of western constitutionalism on the Basic Law is evident in two main ways. Firstly, the Basic Law draws on western conceptions of civil rights and liberties. A whole chapter in the Basic Law containing almost a quarter of the total number of Articles, is dedicated to individual rights and liberties like freedom of expression (Article 29), freedom from torture (Article 20), habeas corpus (Article 22), the right to privacy (Articles 27 & 30), religious freedoms (Article 28), freedom of assembly (Article 32) and freedom of association (Article 33).

Secondly, nominally, the Basic Law relies on the Western notion of three separate powers, as evident by allocating a separate chapter for each of the executive, the Council of Oman, and the Judiciary. It establishes an independent judiciary, a bicameral parliament, in addition to the executive which consists of the Sultan as the head of the State, the Prime Minister, and the

---

202 If the Sultan chooses to appoint one.
Cabinet. However, in reality the distinction between these three branches is rather blurred as will be illustrated in the next chapter.

Arabic and Islamic culture

Like all other Arab constitutions, the Basic Law is influenced by its Arabic and Islamic context.

Article (1) declares Oman as an Arab and Islamic state, while Articles (2 & 3) respectively declare Islam as the religion of the state, and Arabic as its official language.

Article (2) also establishes Shari‘ah law as the basis for legislation, a statement that is found in many other Arab constitutions. Moreover, Article (10) recognizes the duty of the State to establish a system of consultation with the people based on the Islamic principle of Shura, while Article (11) states that inheritance is exclusively governed by Shari‘ah law.

However, the significance of Islamic influence should not be overstated. As Abu-Lughod argues, many Arab states have inserted similar clauses in their constitutions as a matter of course and as away of secular states coping with their Islamic heritage without offending the public.

Considering the role Islam plays in the life of Omaniis, no constitution would have been publicly accepted if it did not place itself within an Islamic framework and recognized Islam as an important component of the Omani society. Moreover, whether historically or at the time of the adoption of the Basic Law, the biggest competition and threat to the existence of the regime came from Islamic groups; therefore, it was vital for the regime to assert its Islamic affiliation to avoid alienating the population.

So as Khalil convincingly argues:

However, the Basic Law offers no guidance to the way in which conformity of legislation with Islamic principles will be assessed.

“Islam is only one narrative (within many others) that current regimes use to justify their authority. In other words, constitutional provisions are often used, by current regimes, as a ‘language’ or ‘codes’ to talk, or communicate with, constituencies. The constitutions of Arab states refer to Islam and Shari’ah, but they also refer to equality, rights and freedoms. They talk about citizenship and democracy, limited government and accountability. Those constitutional provisions are directed towards different constituencies. They serve different purposes. Those are different pulses, going to different directions. However, they have one thing in common; they all serve the current regimes to communicate with the various constituencies, whether in the local, regional or international.”

Moreover, for any constitutional order to work and be sustainable it must draw on a common cultural heritage, and revolve around a predominant and pre-established identity. Therefore the Basic Law has employed these two cultural factors to serve two important purposes: first creating a unified national identity, because religion and languages have always generated a sense of collective identity, and therefore were a natural choice in Oman. Secondly, asserting the legitimacy of the regime and justifying its authority.

However the Basic Law was careful not to place increasing emphasis on Islam or on the Arab affiliation of the Omani State for a number of reasons:

Firstly, Oman’s historical independence, geographical remoteness, and political isolation under Sultan Said, have played a part in preventing the spread of Arab nationalism in Oman and

---


206 Ibid.

meant that the country would hardly ever figure in Arab nationalist literature. However, this ideology started to threaten the Omani regime in the 50s and 60s, when Arab nationalist movements in Egypt and elsewhere intervened to support the Imamate forces and questioned Oman’s independence and the British dominance in the country.

Under Qaboos, despite joining the Arab League, Oman continued to distance itself from Arab nationalism, and maintained a unique foreign policy towards the Palestinian-Israeli conflict and other issues. Therefore, the Omani State traditionally resisted this popular ideology strongly rooted in other Arab countries.

Secondly, the careful use of language in the Basic Law in relation to Islam reveals the government’s disinclination to indulge in religious rhetoric, which would empower religious groups and open a window for them to meddle in the political and legal affairs of the State; a situation that was evident in Saudi Arabia for instance. Thirdly and most importantly, it could be argued that this cautious use of language when referring to Islam and Arabic affiliation is a result of the conceptual tension between the State and these ideologies.

Both Islam and Arab nationalism create different collective identities separate from that bestowed by the State. Islam creates a nation of Muslim believers (Al Ummah Al Islamyiah), which does not recognize nationalities and inter-boundaries between different Muslim states. Furthermore, Arab nationalism as an ideology denies legitimacy to the state system and calls instead for the removal of inter-boundaries between all Arab countries to establish a unified Arab State.

Therefore, both ideologies threaten the sovereignty of the state and its existence as an independent unit with its own identity, and as such, the state is bound to be hostile and suspicious of these transnational movements. So, the paradox in the Arab world is the

---

attachment and need to protect the sovereignty of the territorial state; while at the same time the need to legitimize state authority by reference to the Arab and Islamic culture.\textsuperscript{210}

To solve this paradox, the Basic Law adopts a cautious approach when dealing with the issue of Islam or Oman’s Arabic affiliation. It was drafted with cautious use of terminology to avoid any unwanted connotations; so for instance, unlike other Arab constitutions, it does not refer to the Arab \textit{Umma} (nation) at all and instead uses the word \textit{Umma} to refer to the Omani nation.\textsuperscript{211}

Besides, when compared to other constitutions in the Gulf and the Islamic world in general, the role assigned to Islam in the Basic Law remains modest. The Basic Law of Saudi Arabia, for instance, declares the Holy Qur’an as the State’s constitution, and adopts a very religious language and terminology throughout the document. Other Gulf constitutions like Bahrain and Qatar make Shari’ah the primary source of legislation. Oman, on the other hand, as Siegfried points out, uses the term “basis” instead of “source”, which means that laws can be built on the Islamic foundation in its wider sense; but “not everything has to spring from the Shari’ah”.\textsuperscript{212}

Furthermore, although the Basic Law provides Islam with a constitutional role, the extent and significance of this role in practice is extremely vague. In many areas of law, Oman has adopted international standards especially in relation to commercial, banking and company laws. Some of these standards, arguably, conflict with the traditional understanding of Islamic principles.

Moreover, in spite of strong public demands, and successful experiences in other Gulf countries, and indeed international markets, the Omani state refused for a long time to officially recognize the principles of Islamic finance or allow the practice of Islamic banking.\textsuperscript{213} Additionally, the Penal Code 1974 abandons traditional Islamic means of punishment “hudod” and replaces them with fines and imprisonment.\textsuperscript{214}

\textsuperscript{210}Khalil, “\textit{From Constitutions to Constitutionalism}”.
\textsuperscript{211}Siegfried, “\textit{Legislation and Legitimation in Oman}”, pp.370-371.
\textsuperscript{212}Ibid, p 373.
\textsuperscript{213}The establishment of Islamic banks and adoption of Islamic finance transactions was not allowed in Oman until 2011, when the ban was lifted in response to public protests.
\textsuperscript{214}Although capital punishment still exists, it is very rare in practice.
In reality, the legal role of Shari’ah has been marginalized by the state and reduced to personal status law, dealing with issues like marriage and divorce, in addition to inheritance; outside this area, Islam has very little impact on the legislator.

In case 187/2003, “the Supreme Court stated that the Shari’ah Law will only be applied if other relevant laws have failed to solve a particular legal problem.”215 In fact, “the Commercial Code states that if no legislative provisions exist on a specific topic, the rules of custom will apply.”216 Only in the absence of a rule of custom, will Shari’ah be applied.

Clearly, this reality leaves the declaration in Article (3) almost meaningless.

*Problematic identity?*

As explained earlier, Articles (1 & 3) establishes Oman as an Arab State with Arabic as its official language, in an attempt to create a unified national identity. However, in reality, the Omani society is far from being homogenous, with more than 11 native languages and a number of ethnic minorities. Therefore, by emphasizing the Arabic element, the Basic Law in fact downplays the heterogeneity of the Omani culture217, and ignores the ethnic diversity of the society.

The diversity of the Omani Society means that the country is “crossed by multiple identity and social dividing lines, made sharper by economic difficulties... These tensions generally take the form of questioning the “Omanity” of the others and their loyalty to the Omani nation.”218 And the measures usually used to assess the level of a person’s “Omanity” are based on the levels of Arab-established genealogy and Arabic proficiency he or she possesses.

---

216 Ibid.
218 Valeri, Oman: Politics and Society in the Qaboos State, p 247.
Therefore, it could be argued that by establishing the Arabic element as part of the official Omani identity, the Basic Law in fact provides basis for existing social prejudices allowing the current racial questions to continue, and thus circumventing the concept of equal citizenship. It also carries the risk of implying an intolerant attitude towards those who do not fit within this projected image, and a demand on them to abandon their original identities and conform to it, threatening the existence of their own languages and subcultures.219

5.3 Main Characteristics of the Basic Law

Flexibility

Constitutions are classified as rigid or flexible depending primarily on whether they can be amended with ease. Generally, rigid constitutions provide very stringent procedures to be followed in any attempt to amend its provisions, while flexible constitutions may be amended easily.220

According to Bryce, however, the difference between these two types of constitutions is not just limited to the complexity of the amendment mechanism but depends also on the relationship between the constitution and ordinary legislation, and their respective source of enactment and amendment. Flexible constitutions proceed from the same authority that makes ordinary laws, and are promulgated and repealed in the same manner as ordinary laws. While rigid constitutions, on the other hand, are enacted not by the ordinary legislative authority but by a specially empowered person or body and can only be amended or repealed by that person or body and not by the ordinary legislator.221

According to his proposition, the superiority of the constitution in relation to ordinary laws stems from the fact that it is not subject to the will of the ordinary legislator and cannot be amended by the same amending authority.\(^{222}\)

When applying these criteria to the Omani constitution, the result suggests that the Basic Law is a rather flexible constitution.

Firstly, the Basic Law was promulgated, by a Royal decree, from the same source as ordinary legislation. The only procedural distinction between the two is that the Basic Law was initiated by the Sultan, while other laws are usually initiated and drafted by the executive body concerned. Arguably, however, this does not constitute a real difference because considering that the Sultan is the head of the executive, issuing a framework for the government is within his area of concern; i.e. he is the executive concerned with this area.

Furthermore, Article (81) states that the Basic Law can only be amended in the same manner in which it was promulgated; therefore, according to this Article, the Basic Law can only be amended by a Royal decree, which is no different than amending ordinary laws.

Some scholars have argued that it could also mean that the Basic Law may not be amended unless the amendment is initiated solely by the Sultan.\(^{223}\)

However, in the Omani context, this argument seems completely rhetorical because there is no separate legislator and the Sultan has the sole authority to promulgate and amend any law including the Basic Law. Whether the amendment is his own idea or is initiated based on the

---

\(^{222}\)Ibid.

recommendation of another member of the executive, is neither here nor there. The Sultan, remains the sole amending authority, and all laws are ultimately subject to his will.

Therefore, we can reasonably conclude that there is no material difference between the Basic Law and ordinary legislation in terms of the way in which they are amended or indeed promulgated.

Moreover, the amendment mechanism in Article 81 cannot be described as involving any level of complexity. The constitution may easily be amended, if the Sultan decides so. There is no requirement for a public referendum for instance, or the approval of the Council of Oman.

Therefore, the Basic Law is without doubt a flexible constitution in these respects.

Is it a good or a bad thing?

The biggest problem theoretically with a flexible constitution lies in the assumption that it will be subject to more frequent and significant changes than a rigid constitution, which may deprive the political and legal system of the stability it requires.

If the Sultan can change the Basic Law any time he wants in any way he wants, surely this will undermine the stability of the country’s constitutional framework and will render it uncertain and unpredictable.

However, this is not necessarily the case in reality; the fact that the Sultan can change the constitution at his pleasure does not mean he will. Since its adoption in 1996, the Basic Law has never been amended. Even if there are no formal restrictions on the Sultan’s ability to amend it, other informal constraints may exist.

224 This particularly true knowing that the executive is not independent. The Sultan appoints members of the cabinet, under-secretaries, special advisors, and other senior members of the executive.

225 Informal constraints may include political conventions, traditions, political economic and social circumstances at the time, which could make constitutional amendment very risky and expensive for the ruler.
Nonetheless, utilizing this possibility to abuse the system is not unimaginable. The option to change the constitution is always available, unless the particular political circumstances at the time render it prohibitively costly. Besides, if the current Sultan is less willing to change the Basic Law, his successor might not be. This means that the stability of the constitution depends to a large extent on the political context and on the attitude of the Sultan at the time, which may not be entirely satisfactory.

Furthermore, the almost total freedom of the executive to change the constitutional provisions in relation to issues like fundamental rights, judicial independence and the relationship between the legislative, judicial and the executive authorities may have serious implications on the effectiveness of the constitution and its reliability.

An oppressive successor to the Sultan may decide, for instance, to change the provisions relating to personal freedoms or private property, and will be able to easily do so without breaching the constitution.

Besides, easily-effected amendments by the executive may undermine the legitimacy of the constitution. The constitutional amendments must themselves be seen as legitimate and do not jeopardies fundamental rights or protection afforded to minorities, therefore having a stringent procedure for change would increase the legitimacy of any subsequent amendment.226

On the other hand, a flexible amendment procedure may positively contribute to the endurance of the constitution, prolonging its life span and decreasing the need for transgression.227 This is because, easily-amended constitutions may be more able to adapt to social and political change and therefore can be changed instead of being replaced. Besides if the executive is not willing to work within the existing constitutional parameters, then instead of violating the constitution,


they can amend it. However, this is not necessarily desirable if such a change is motivated by self-interest, because it enables the executive to transgress through intra-constitutional means, therefore defeating the whole purpose of having constitutional constraints. Moreover, prolonging the life of an ineffective constitution may not be a desirable objective anyway.

On the other hand, the benefits of easy amendment procedure may still be achieved if certain important provisions like fundamental rights are entrenched, prohibiting changes to basic fundamental principles relating to the rule of law and individual rights and freedoms. However, without entrenchment or any other substantive limitation on amendments, these vital principles may be at serious risk.

Adaptability

As explained above, because it adopts an easy amendment procedure, the Basic Law can adapt very well to changes in the political, economic and social circumstances and to the demands of the people.

More importantly, in dealing with certain matters, the Basic Law avoided providing detailed accounts and instead gave the legislature almost total freedom to regulate these issues depending on the needs and development of the society. The most obvious example of this approach is the provision dealing with the Council of Oman.

Article (58) establishes the Council of Oman, which consists of Al Shura and Al Dawla Councils. However, all other matters in relation with them, including their powers, membership and procedures are left to be specified by the law. The Basic Law brought these institutions into existence, but it is up to the legislature to regulate their role and functions. Clearly, this approach allows for the free development of institutions by changing the relevant legislation whenever is needed without the need to amend the Basic Law.

---

It also allows easy implementation of Qaboos’s policy in relation to gradually increasing the level of public participation, by amending the relevant legislation for instance to grant the council more legislative powers or change the election process and so on. This approach proved to be useful considering that, since the enactment of the law regulating the Council of Oman in 1997, it has been amended almost 7 times.

However, as with flexibility, it is important to note that adaptability can be a sword with two edges. The lack of minimum guidance in the Basic Law as to the role and function of this important representative body can be extremely dangerous. Of course, it is less problematic when the legislature and the constitution maker is in fact the same person, because you would expect him to follow through with his plans. However, Qaboos’s successor may have other, less favourable, plans for the Council and nothing in the constitution may prevent him from severely limiting the role and importance of the Council. There are no constitutionally entrenched safeguards in the Basic Law to protect the existence of the Council and its role in the political scene against the tyranny of the current ruler or his future successors.

**Statutes of provisions**

Looking at another dimension of flexibility, Bryce argues that flexible constitutions enjoy the same status as ordinary legislation, while rigid constitutions rank higher than ordinary laws and enjoy superior authority, besides when a conflict arises between an ordinary provision of law and the constitution, the latter will always prevail.\(^{229}\)

In this respect, the Omani constitution seems to be more of a rigid nature.

Article (79) requires that all laws and procedures which have the force of law conform to the provisions of the Basic Law of the State. Therefore, according to this Article, ordinary

\(^{229}\) Bryce, *Constitutions*, pp. 8-9.
legislation are subordinated to the Basic Law and required to adhere to its rules and principles; the freedom of the legislator is limited by the constitutional parameters established by the Basic Law. The Article also implies that no laws may be passed in contravention of the Basic Law.

This is clearly establishes the Basic Law in a higher status compared to other national laws, and provides potentially vital constraint on the free will of the legislature to prevent any departure from the minimum standards of protection provided by the Basic Law to individuals and minorities.

However, three main problems may limit the effectiveness of this rule. Firstly, there is no effective measure to scrutinize any proposed legislation for any possible discrepancy by an independent body. Although Articles 18 & 29 of the Council of Oman Law 1997 states that Al Shura and Al Dawla Councils may review proposed legislation prepared by different executive branches and provide their opinions, the Law also allows the Sultan to exclude certain laws from being submitted to the Councils if he decides that doing so is in the public interest.

Secondly, there is no constitutional court in front of which an offending piece of legislation may be challenged.

Therefore, in reality a law may be passed in contravention of the Basic Law, but there is very little can be done to correct the matter or enforce the rule contained in Article 79.

Finally, as we have seen above in relation to the Council of Oman, the Basic Law in fact empowers the legislature and provide it with almost unlimited freedom to regulate many issues including various fundamental rights which are only protected as far as prescribed by the legislator, with no restrictions imposed or guidance provided as to the minimum standards to which the legislature must adhere when practicing its power.

Therefore, in reality the effect of this rule as a constraint on the powers of the law-making authority may not be as significant as it seems.
5.4 Important Themes in the Basic Law

Economy

As we have seen in chapter four, the economic circumstances at the time played an important part in the adoption of the Basic Law and therefore it is expected that particular attention would be given to economy in the actual text of the constitution.

Article (11) is dedicated to the discussion of the principles guiding Oman’s economic policy. It states that the basis of the national economy is justice and the principles of a free economy, emphasizing the need for constructive co-operation between the public and private sectors.

The Article also particularly emphasizes the protection of private property and freedom of economic activity. Expropriation and confiscation of property is prohibited, except as defined in the law and “on condition that the person whose property is expropriated receives just compensation for it”.

Furthermore, the Basic Law prohibits arbitrary taxation and states that the institution, adjustment and cancellation of public taxes may only be done by virtue of the law; no tax exemption may be granted except in circumstances defined in the law and no tax will be applied retrospectively.

Therefore, so far as foreign investment is concerned, these principles represent legal guarantees given by the highest authority in the land that freedom to own and dispose of property, and the liberty to engage in economic activities will be upheld, and may not be arbitrarily restricted or interfered with. It also guarantees a healthy system of taxation which is equal and just, and may not be imposed without a law.

These freedoms and guarantees are balanced by being subject to the laws of social control. The State allows itself discretion to impose legal limits on these freedoms if doing so is considered to be the public interest or is required to ensure the well being of the national economy. Besides, Article (11) recognizes that the ultimate goal of the government is achieving “economic and
social development that will lead to increased production and a higher standard of living for citizens”. It also allows the State to have a strong presence in the economy and to play a prominent role in managing the market, regulating credit and determining the direction of the economy to achieve its goal.

The Basic Law also envisages a prominent role for the State to play in the social sphere; Articles (12) & (13) assigns to the State a number of duties including the provision of public education and health care, combating illiteracy, preserving the environment, encouraging and promoting sciences, art, literature, and scientific research. The State is also responsible for protecting the work force and regulating the relationship between the employee and the employer, in addition to providing “assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system”. Article (12) also recognizes the family as the basis of society, and requires the State to protect it and safeguard its legal structure and reinforce its values.

Thus, it could be argued that Oman’s economic policy and the image of the State which the Basic Law seeks to project is that of a welfare state.

The Omani State: The Strong State

Close examination of the Basic Law reveals that the creation of a strong state was one of its key themes. It reinforces the image of the Omani State under Qaboos as strong, capable, and responsible for establishing social control. The text ‘ratifies a paternalistic conception of a state whose guide is the Sultan. He is responsible for the country’s development, a symbol of its unity and an embodiment of services upon which Omanis are dependent in their daily lives. This gives him the legitimacy to control every political, economic and social system’.

---

230 Article 12.
Therefore, the Basic Law can be seen as a consolidation of the strong state created under Qaboos, a formal articulation of its existence.

To establish this image of the state, the Basic Law reduces the importance of other competing myths, ideologies, and symbolic configurations, for the benefit of the state and its symbols. As we have seen earlier, the Basic Law adopted a very cautious language when referring to Islam and Arabism to downplay their importance in comparison to the nation-state which is the main source of collective identity to its people. The word “ummah” which is traditionally used in relation to the community of Muslims or Arabs, is used in the Basic Law to mean the Omani nation as an independent homogenous group occupying a specific territorial state from which they should derive their sense of identity.

The general language used in the Basic Law puts the State in the centre of attention, not the people. So, for instance, the Basic Law refrains from establishing the people as the source of authority, besides Article (11) states that all natural resources and their revenues are the property of the State, not the people. The state is responsible for extracting these resources and distributing them.

Furthermore, as Al Salmi notes, chapter two is entitled the “Principles Guiding State Policy”, unlike other Arab constitutions (the Kuwaiti for example) which refer to the same part in their constitutions as the “Basic Constituents of Society”, which suggests greater emphasis on the role of the State in the Omani constitution231.

The Basic Law also confirms the state’s monopoly over means of coercion in the society and the right to mobilize the people. Article 14 provides that “It is the State alone that establishes the Armed Forces, public security organisations and any other forces. They are all the property of the nation and their task is to protect the State, safeguard the safety of its territories and ensure

security and tranquility for its citizens. No institution or group may set up military or paramilitary organizations. The Law regulates military services, general or partial mobilization and the rights, duties and disciplinary rules of the Armed Forces, the public security organizations and any other forces the State decides to establish”.

Under this chapter the State penetrates nearly every aspect of the society’s life including the economy and the welfare of the people. So, the State is responsible for providing health care, education, security and other public services, but none of these services is expressed as a right of the citizen. The State is free to provide these services in accordance with its discretion and ability.

And the first political principle according to which the policy should be designed is “preserving the State’s independence and sovereignty, protecting its existence, security and stability, and defending it against all forms of aggression”232.

Moreover, Articles (14 & 38) states that preserving the country’s security, protecting national unity and safeguarding State secrets is the duty of every citizen.

In comparison, the Basic Law allows an extremely limited role for the people in the public life.

Among the extensive lists of public rights and freedoms there is no right of public participation in the decision-making process or in the political life. According to Article (34), “citizens have the right to address the public authorities on personal matters or on matters related to public affairs, in the manner and on the conditions laid down by the Law”. And presumably, the public authority is then entrusted to take up the concern of the citizen. Besides almost all other fundamental rights and freedoms are limited and qualified by laws enacted by the State.

232 Article 10.
Therefore, as Khalil argues in relation to other Arab constitutions and state policy, the principle of the sovereignty of the people is forfeited to establish the state as the new sovereign:

"It is the state that is at the centre of attention; its security, stability, and protection have priority over whatever other objectives in the legal and political system. The state here is priceless and everything else can be sacrificed. Although recognized as citizens, those are no more than subjects on which the state exercises its authority, indiscreetly. It does not serve other objectives, but the preservation of itself is the objective. It is absolute and knows no limits whatsoever."\(^{233}\)

**Internationalist Trend**

Like many other new constitutions, the Basic Law manifests a clear internationalist trend, with numerous references to international laws and standards throughout its text. This can be explained by the great level of interdependence between nation-states in many spheres, particularly those relating to global problems and economic cooperation; besides the significant development in international human rights laws and the penetrative role of international organizations made it vital for the drafters of any constitution to take the international aspect very seriously\(^{234}\).

This concern was particularly important in Oman’s case because, as we have seen in the previous chapter, one of the reasons behind the adoption of the Basic Law was to strengthen Oman’s position and assert its role as part of the international community. And certainly, for States with an authoritarian reputation, like Oman, “the constitutional commitment to observe the rules of international law serves also as a kind of pledge at the highest possible level, of fidelity to international legal values”\(^{235}\).

\(^{233}\)Khalil, “From Constitutions to Constitutionalism”.


\(^{235}\)Ibid, p 30.
The internationalist trend in the Basic Law is evident in a number of provisions. First of all, Chapter three which deals with fundamental rights and freedoms is clearly influenced by the Universal Declaration on Human Rights and was drafted in a way that signals Oman’s respect and adherence to international standards.

Furthermore, Article (10) declares the State’s commitment to uphold established principles of international law\textsuperscript{236}, and comply with international and regional charters and treaties. The State is also committed to maintaining good relationships with other states on the basis of mutual respect, common interest and non-interference in internal affairs.

In addition to this, the Basic Law considers any international treaty ratified by the State as part of the national law, thus, according to Article (76), once ratified the treaty’s provision will have the force of law. However, this position could prove to be problematic because it considers all the treaties automatically self-enacting, while many may require implementing legislation and may conflict with existing laws.

Furthermore, Article (80) includes a general prohibition on issuing any rules, measures, or decisions in breach of the Sultanate’s obligations under international treaties, while Article (72) goes even further by subordinating the constitution itself to international treaties. It states that “the application of this Basic Law shall not infringe the treaties and agreements concluded between the Sultanate of Oman and other States and international bodies and organizations.”

This particular Article poses a great deal of uncertainty regarding the relationship between the constitution and bilateral agreement and international treaties. On the one hand, Siegfried argues that this Article does indeed subordinate the Basic Law to such treaties and agreements,

\textsuperscript{236} Probably refers to customary international law.
while other scholars argue that the effect of this Article is limited to agreements and treaties concluded prior to the adoption of the Basic Law\textsuperscript{237}.

When examining the original wording of the Article in Arabic, the latter explanation seems more convincing; so the Basic Law is subordinated to any bilateral agreement or international treaty ratified prior to 6 November 1996.

This position is probably adopted to assure the international community and the country’s biggest ally, the US, that Oman will remain committed to honouring its legal obligations.

But what about agreements and treaties ratified after the adoption of the Basic Law?

Article (76) states that such treaties and agreements shall have the force of law once ratified, and Article (79) requires any law or measure having the force of law to be consistent with the provisions of the Basic Law.

Therefore it could be argued that these two Articles require such agreements and treaties to be consistent with the Basic Law; hence they establish the supremacy of the constitution over bilateral agreements and international treaties concluded after the adoption of the Basic Law.

Admittedly, the situation is not entirely satisfactory because the text is not decisively clear in this matter and leaves the door open for possible challenges.

\subsection*{5.5 Conclusion}

As we have seen in this chapter, the Basic Law is clearly influenced by western constitutionalism and its conception of civil rights and liberties as evident in chapter three. The

western notion of separation of powers is also apparent in the way the articles are organized but, as the next chapter will illustrate, in reality the Basic Law does not live up to its claims.

The influence of Oman’s Arab and Islamic culture is also evident in the text, but to a minimal degree.

The Basic Law appears to be loyal to the Islamic and Arab affiliation, it also appears to uphold international standards of human rights and to establish three separate powers. But when seen in a realistic context, it becomes obvious that these claims are skin-deep. These are codes and messages serving the regime to communicate with local, regional and international audiences. All these concepts are adopted to the extent necessary to legitimize the regime and make the document acceptable to different interest groups.

The Basic Law, both in its text and effect, maintains the image of the strong state created under Qaboos, which is capable of and responsible for providing a high level of social control. It also establishes the state as the guarantor of economic freedoms and property rights, while assigns to it the responsibilities of a welfare state.

The following chapter will provide further analysis of the Basic Law in terms of separation of powers, limited government, and the protection of rights and freedoms. It will reveal further discrepancies between the text and the reality of the constitution.
Appendix 1 to Chapter 5: The succession Process

Since the later part of the 19th century, a pattern of primogeniture governed the succession process in Oman. However, its continuation is not possible because the Sultan has no children or brothers, and there is no heir apparent to the throne.

In the absence of fixed rules for succession, and where the principle of primogeniture cannot be applied, potentially all members of the extended Royal family, cousins, uncles and other relatives, may be possible candidates. This situation can cause increasing rivalry and division within the Royal family, leading to possible violence and disorderly succession.

The question of succession was particularly critical in Oman’s case because of the fragility of the State’s institutions and the government’s dependence on the personality of the Sultan. In fact, one of the most important sources of regime legitimacy in Oman is the charismatic

---

personality of Qaboos²⁴¹, thus, his death may seriously deprive the regime of part of its legitimacy, particularly if the new Sultan did not seem to have the blessings of his predecessor.

Therefore, as explained in chapter four this problematic situation was one of the issues that the Basic Law was introduced to deal with. It sought to solve the matter by setting out the basic criteria and the procedure according to which the next Sultan shall be selected.

**Basic Criteria**

The Basic Law confirms the country’s system of government as a hereditary Sultanate; and according to Article (5) the successor must be a descendant of Sayyid Turki bin Said bin Sultan, Qaboos’s third grandfather, thereby excluding various branches of the Al Said family from any potential claim to the throne. The most obvious reason behind this is to limit the number of potential candidates and therefore reduce the possibility of conflict and division over the matter. However, it is also possible that this was intended to exclude a particular branch of Al Said; namely the descendants of Azzan bin Qais who in 1868 revolted against the Sultanate and joined the Imamate forces²⁴².

---


²⁴²He was elected as the Imam of Oman in 1868 by Ibadhi scholars and traditional tribal leaders. His reign did not last for long; in 1870 he was killed by Turki bin Said.
Article (5) also requires the successor to be:

- Adult;
- Male;
- Practicing Muslim;
- Of sound mind; and
- A legitimate son of Omani Muslim parents.

These requirements clearly show the Islamic influence on the Basic Law as they mimic the traditional qualifications required in Muslim rulers, in an attempt to add a religious legitimacy to the secular position of the Sultan. Some also argue that it particularly seeks to follow the same qualifications imposed by the Imamate system, however, an important factor in distinguishing the requirements under the Basic Law from those under the Imamate system, or indeed under mainstream Islam, is the hereditary element.
In theory, the Ibadhi doctrine rejects the notion of hereditary Imamate\textsuperscript{243}, however in practice this principle was very rarely upheld.

\textit{The Procedure}

The succession procedure is then explained in Article (6) as follows:

\textit{“Within three days of the position of Sultan becoming vacant, the Ruling Family Council shall determine who will succeed to the Throne. If the Ruling Family Council does not agree upon a Sultan of the country, the Defense Council shall confirm the appointment of the person designated by the Sultan in his letter to the Ruling Family Council”}

Therefore, the Ruling Family Council (RFC) plays a decisive role in determining the identity of the next Sultan. However, if they failed to agree on a candidate within three days, the Defense Council will take over the process and appoint the next Sultan based on the name or names chosen by the previous Sultan.

Those names are kept secret until the Sultan’s death, and no one knows whom they might be. As Qaboos explained, he “already written down two names, in descending order, and put them in sealed envelopes in two different regions”\textsuperscript{244}.

After the identity of the next Sultan is determined, and before exercising his powers he shall swear the following oath at a joint session of the Oman and Defense Councils:


\textsuperscript{244}Miller, “Creating Modern Oman: An Interview with Sultan Qabus,” p 4.
“I swear by Almighty God to respect the Basic Law of the State and the Laws, to fully protect the interests and freedoms of the citizens, and to preserve the independence of the country and its territorial integrity.” (Article 7)

According to Article (8), the government shall continue to conduct its business as usual until this process ends and the new Sultan assumes responsibility.

Potential problems?

Although the Basic Law provides for a process to determine the succession issue, it remains vague and far from satisfactory for a number of reasons.

Firstly, the composition of the RFC, is not clear and there is no provision in the Basic Law to determine the identity or the number of its members. Furthermore, the method of voting and the threshold needed to pass a decision are not provided for.

This can prove fatal to the whole process, particularly that the RFC seems to be a new innovation of the Basic Law and there is no record of the RFC existing before or exercising any kind of power. Without a clear set of rules organizing the way in which the RFC should be composed and how it should function and carry its constitutional role, the potential of dispute and chaos is still present.

Secondly, the Article fails to indicate the criteria required to identify the next sultan; instead it leaves the issue to the ruling family to decide.245

Thirdly, the role of the Defense Council is extremely controversial because it is entrusted with a very critical constitutional power that can be easily abused. If the RFC fails to agree on a

---

candidate, the Defense council is given the power to intervene and impose, by force if necessary, the previous Sultan’s choice which no one knows what it is. However, the envelopes which contain the Sultan’s choice may be tampered with and there is no definite method of verifying the identity of the successor and whether it is in fact the Sultan’s real choice.

More importantly, the composition of the Defense council is rather problematic. According to Royal Decree 105/96, the Council is headed by the Sultan, and composed of the Minister of Royal Office, the General Inspector of Police and Customs, the Head of Internal Security Services, the Commander of the Royal Navy, the Commander of the Royal Air force, the Commander of the Royal Guards, the Commander of the Royal Army and the Commander of the Sultan’s Armed Forces.

In case of the Sultan’s death, the Council should be headed by the highest military ranking member. However, giving the leaders of the military significant power over, the succession process may disrupt it, by placing undue influence on the RFC, and increase the risk of a military coup.246

Fourthly, if the RFC did indeed fail to agree on a candidate and the Defense Council imposed the Sultan’s choice by force, this course of action may have serious and far-reaching implications for the new Sultan and for the stability of the system. To say the least, it may create factions within the Royal family or result in continuing disputes.

Fifthly, the public is totally excluded from the process of selecting the next ruler, which could mean that the new Sultan may not enjoy sufficient public legitimacy particularly that his identity was not known and he may not have been a popular figure before his appointment.

246 Up until February 201, the top two officers in the Defence Council were both from Al Ma’mari tribe, one of Oman’s most powerful and overrepresented tribes. Similar situations may create a potential tribal division within the Defence Council itself increasing the risk of the succession process being hijacked by particular powerful tribes with prominent presence in the army and the Defence Council.
In conclusion, the issue as a whole is still surrounded by a great deal of uncertainty in relation to the process and its outcome. Instead of facilitating a certain and smooth transition of power, the Basic Law in fact created a vague and problematic process that has more than one potential reason to fail or result in a succession crisis: the very thing that the Basic Law was seeking to avoid.

Appointing an heir apparent by the Sultan would have provided more certainty and avoided the potential problems with the current system.

The Kuwaiti Constitution, for instance, provides a good example of dealing with the critical question of succession by requiring the monarch to appoint an heir apparent within a year of his accession to power. The heir is appointed by a recommendation from the monarch which then is submitted for a vote in parliament, therefore, allowing the public to play a part in determining the future ruler of their country. In addition to the constitutional provisions, a special statute is dedicated to the regulation of the succession process.

However, in Oman Qaboos refrained from appointing an heir, leaving the question of succession open for wild speculations about the identity of the next Sultan and the possibility of a crisis breaking out for any of the reasons mentioned above.

His refusal to follow this traditional straightforward solution may be reasonably assumed to grow out of a fear that an appointed predecessor may in fact become a potential competitor.247

This sense of insecurity, as Brownlee argues, is endemic to authoritarian regime, because appointing fellow elites in high ranking posts would mean that they are more capable, and indeed more tempted to mount a challenge to the monarch’s rule.248 Therefore, by grooming a successor, the ruler may be empowering a rival to supplant him while failing to do so may mean

---

247 Michael Herb. All in the family: absolutism, revolution and democracy in the Middle East (New York: SUNY), 1999, p 152.
a potential succession crisis upon the ruler’s death; Herz calls this dilemma: “the crown-prince problem.”

As a solution to this predicament, Tullok argues that many monarchs resort to appointing their eldest sons, because appointing the ruler’s son provides the stability which the regime requires, while reducing the risk to the monarch. However, Qaboos did not have this option to resolve the security dilemma, because he has no children; besides it is unlikely that this solution would have provided him with peace of mind because he himself mounted a coup against his father.

Therefore, Qaboos responded to the crown-prince dilemma by developing a procedure to be invoked after his death to deal with the possibility of a succession crisis, and refrained from appointing any potential competitor to coup-proof his rule, even if this meant less certainty and higher risk for the country and its people.

249 Ibid.
Chapter 6: Critical Analysis of the Constitution

6.1 Introduction

A constitution is considered the supreme law of the land and the main source of legitimacy. It “sets objective standards upon which the people and the international community can judge government performance, thus providing a measure of accountability and transparency in national and local affairs. Further, a constitution sets out the rights and duties of the citizens, and provides mechanisms to enable them to protect their interests.”

However, the question that remained for long unasked was, what should constitutions adhere to, to be legitimate? Or are they legitimate by default?

A constitution was considered as the highest expression of the individual will of a sovereign state, and the state was “conceived of as itself the sole source of legality, the fons et origo of all those laws which condition its own actions and determine the legal relations of those subject to its authority.” On this conception of the state, the traditional perception of a constitution is based. If the state is the only source of legality, it naturally follows that the expression of its will, whatever form or shape it may take, be considered lawful. The emphasis is then placed on lawfulness – i.e. the strict adherence

---

by the government and the people to the letter of the constitution, no matter what that constitution stated.

As Backer puts it “Lawfulness required government to be taken strictly in accordance with law- but did not limit the range of lawful assertions of government power. Lawfulness –rule of law- was tied to avoidance of the tyranny of the individual invoking state power, but not to the regulation of the substantive ends for which that power might be invoked.” The ultimate role of a constitution was viewed as the memorialization and institutionalization of political power, as long as this role was fulfilled it did not really matter, to a large extent, which set of values and principles this constitution adopts.

In short, the content of the constitution was not considered as a decisive factor in determining its legitimacy; a constitution that reserves absolute power for the monarch and denies political participation to the people, still remains a constitution.

However, in the aftermath of World War Two, the balance started to shift towards value-based systems. No longer was a state able to completely shield itself from the influence of other states and the pressure of the then-developing international system of values. “Emerging from that war were the beginnings of a consensus that values matter in the establishment of constitutions, that such values were superior in authority to any peculiarities of national sentiment, and that they could be enforced.”

The modern discourse in constitutional theory has been to evaluate constitutions based on a set of values and standards embedded in the theory of constitutionalism. A distinction is now recognized between constitutions and constitutional practice.

---

254 Ibid.
255 Ibid.
6.2 The Theory of Constitutionalism

Constitutionalism is basically conducting government under the provisions of a fundamental law. It is also defined as being “descriptive of a complicated concept, deeply imbedded in historical experience, which subjects the officials who exercise governmental powers to the limitations of a higher law. Constitutionalism proclaims the desirability of the rule of law as opposed to rule by the arbitrary judgment or mere fiat of public officials…. Throughout the literature dealing with modern public law and the foundations of statecraft the central element of the concept of constitutionalism is that in political society government officials are not free to do anything they please in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme, constitutional law of the community. It may therefore be said that the touchstone of constitutionalism is the concept of limited government under a higher law.”

It is therefore, the antithesis of arbitrary and tyrannical rule: the government of will rather than law; and the crucial feature of constitutionalism is the existence of constitutional limitations on the powers of government. It also requires the adherence to the rule of law and the protection of fundamental rights and freedoms.

Is Constitutionalism dependent on the existence of a constitution?

The practice of constitutionalism does not necessarily depend on the existence of a written constitution. The U.K, for instance, provides a good example of adhering to the essential values of constitutionalism without having a formal codified constitution: So, while a written constitution is not indispensable for the formation of a government that

---

260 Ibid.
upholds the values of constitutionalism, it definitely provides strong basis for one. The
determining factor however is whether there is a commitment from the government and
the people to constitutional practice, and whether there are institutions strong enough to
enforce and monitor this commitment.

Is constitutionalism an automatic result of the existence of a constitution?

On the other hand, the existence of a formally written constitution does not always
indicate the adherence to the standards required by constitutionalism; simply because
not all constitutions are constitutional.

This realization has led scholars to revisit the definition of a constitution to reflect this
sharp distinction.

What is a constitution?

Munro presents two definitions for a constitution. The first is based on Bentham’s
definition and means “the aggregate of those laws in a state which are styled collectively
the public law.” 261 Therefore, according to this definition every state in the world has a
constitution. 262

The second definition, however, is more linked to our modern understanding of a
constitution as “fundamental framework for government [which] has been set forth in a
document”, and is given special recognition. 263

Jennings defines the constitution as “the document in which are set out the rules
governing the composition, powers and methods of operation of the main institutions of
government “ and where there is no such document, “the rules determining the creation
and operation of governmental institutions.” 264

---

262 Ibid.
263 Ibid, 3.
264 Giovanni Sartori, “Constitutionalism: A Preliminary Discussion”, The American Political
A more problematic definition is proposed by Wheare who defines the English constitution as “the collection of legal rules and non-legal rules which govern the government in Britain.”\textsuperscript{265}

However, this approach in defining a constitution is rather problematic, incomplete and poses even more questions than it solves. Firstly, they do not include a purposive element, what purpose the constitution is serving or is suppose to serve? Secondly, they do not refer to the functionality of the constitution, what are the functions of the constitutions? Would a collection of rules that sit idle in a document without any impact on the political reality of the country, be worthy of being called a constitution? The third problem is the unspecified use of the term rule\textsuperscript{266}; what kind of rules, and what values these rules should aim to uphold?

These are “purely formal definitions, in the sense that they can be filled with any content whatever.”\textsuperscript{267} The conclusion towards which this approach is leading us, is that any set of rules providing a frame of government is a constitution, including those constitutions which do not limit or restrain governments, and has no impact whatsoever on their political realities.

These definitions encompass such a wide variety of political systems and frameworks that the historical and philosophical understanding of what a “constitution” is, or ought to be, is lost, and the concept is blurred with confusion and ambiguity.

This may not be so problematic when seen in the context of old successful constitutional experiences, like the English, the American or the French, where the concept is well established and institutionalized. However, when seen in the context of the proliferation of constitution making in the last century from Eastern Europe to Asia and Africa, the question becomes more important.

\textsuperscript{265} Ibid.
\textsuperscript{266} Ibid.
\textsuperscript{267} Ibid, pp. 856-857.
“Whereas in the nineteenth century what was meant by “constitution” [the concept of limited government] was reasonably precise, definite, and clear, it seemed in the mid twentieth century that constitutional government meant simply that there existed in any given country a document formally styled the “constitution”. Even if this constitution was constantly violated, ignored in reality or played no real role in the political scene to which it belongs. This is according to Sartori nothing but a “political exploitation and manipulation of language.”

A constitution that does not: guarantee the protection of fundamental rights, fails to effectively limit the powers of the government and is ignored in practice cannot by any mean form a real basis for constitutional government, and should not be called a constitution; because for a constitution to be considered as a “real” one, certain conditions must be satisfied, otherwise it “is not, properly speaking, a constitution”. And it would be misleading, that the term should be used in this way without any proper qualifications.

To deal with this issue, Sartori has proposed that these constitutions be called “façade constitutions”, while Loewenstein calls them “fictive constitutions”, and for Spiro they are nothing but “paper constitutions.”

In fact both Sartori and Loewenstein have proposed a threefold classifications for the variety of present-day so-called constitutions, this classification is as follows:

- Normative constitution: This is a proper constitution that guarantees rights and freedoms and effectively restrains the powers of the government.
- Nominal constitution: which is fully applied and activated but it is not more than a description and formalization of the existing power structure, that organizes

---

269 Ibid.
270 Ibid, p 23.
271 Ibid, p 22.
273 The labels used by Sartori and Loewenstein for each type are different.
power but does not restrain it. Therefore, the values of constitutionalism here are totally irrelevant.

- Façade constitution: this is a constitution that appears to be a proper constitution, in the sense that it includes limitations on the power of the government, and guarantees fundamental rights and freedoms but in effect the constitution is dead letter. It is disregarded in reality and is routinely and incontrovertibly violated.

It can be argued that in the Arab world there are no façade constitutions, because constitutions are usually applied and are rarely violated; the problems, however, stems from the content of their clauses and most importantly from their silences.

The majority of Arab constitutions are, to a varying degree, accurate descriptions of the existing power structure with no real provision for the values of constitutionalism. They establish the basis for unconstitutional government through providing for unchecked executive authority, fusion of powers and ineffective rights provisions. Their authoritarian nature is constitutionally established, and any attempt to depart from such a regime becomes a constitutional violation.

As a result of this, these constitutions stand or fall with the regimes that enact them, and upon their demise, constitutionalism and the rule of law may be established.

In the remainder of this chapter we will evaluate the Omani constitution in light of the above discussion: to understand the choices made by the Omani State when drafting the constitution, and to see where does this place the Omani constitution in Sartori and Loewenstein’s threefold-classification for present-day constitutions. But, before we do that, we must decide against which standard will the Omani constitution be evaluated?

---

275 Brown, Constitutions in a Non-constitutional World, p 7.
276 Ibid.
277 Ibid.
Although, Western constitutional thought could seem like a convenient choice, but taking a very Western view of constitutional theory and applying that theory to the Omani constitution, unreflectively and without taking into account contextual factors, can lead us to inaccurate or irrelevant conclusions. Therefore, the analysis in this chapter would work best as a kind of immanent critique; trying to take the values expressed in the constitution itself and see whether the reality of the situation lives up to these values. Therefore, we will be evaluating the constitution against self-imposed rather than external standards.

6.3 Constitutional Values in the Basic Law

As the discussion below will show, on the face of it the Basic Law provides for accountability, government limited by law, protection for fundamental rights and personal freedoms, and a three-fold government division with complete independency to the judicial branch.

The following part of this chapter will therefore discuss how the Basic Law provides for these values and to what extent it really upholds them when looked at within its wider context.

6.3.1 Accountability and Government Limited by Law

The Basic Law has made several attempts to restrain the government’s power when performing both its executive and legislative functions.

- The first attempt is through providing a list of principles guiding State policy in Articles (10-14). These principles include the protection of property rights, the guarantee of economic freedom, the State’s duty to promote public and private education and to provide health services and social security to citizens.

Article 11, provides that while all natural resources are the property of the State, it must ensures that they are properly utilized taking into account the requirements of State
security and the interests of the national economy; and that no concession may be granted, nor may any of the country's public resources be exploited, except in accordance with the Law and for a limited period of time, and in such a manner as to preserve national interests.

It states that the basis of taxes and public dues shall be justice and the development of the national economy, while the institution, adjustment and cancellation of public taxes shall be by virtue of the Law. No one may be exempted from payment of all or part of such taxes except in circumstances defined in the Law; and no tax, fee or other entitlement of any kind may be applied retrospectively.

Article 12, on the other hand, requires the State to enact labor laws protecting the employee and the employer, prohibiting compulsory work and providing for a fair wage.

These examples show how the constitution is trying to direct and guide the practice of government power towards certain objectives and within certain, albeit very wide, boundaries.

- The second attempt by the Basic Law to limit the exercise of governmental power and prevent abuse is through Article 52 which establishes Ministerial Responsibility. It provides that “members of the Council of Ministers are politically collectively responsible before the Sultan for carrying out the general policies of the State, and each is individually responsible before the Sultan for the discharge of his duties and the exercise of his powers”.

Therefore, the Basic Law establishes Cabinet collective responsibility before the Sultan for the overall performance of the government in implementing State policies. It also establishes individual ministerial responsibility whereby each minister is totally responsible for his performance and that of his department.

Ministers are also expected to avoid conflict of interest between their official position and any commercial activity they, or their families, may have.
Furthermore, Article 53 states that ministers “shall not combine their Ministerial position with the chairmanship or membership of the Board of any joint stock company. Nor may the Government departments of which they are in charge have dealings with any company or organization in which they have an interest, whether direct or indirect. They should be guided in all their actions by considerations of national interest and public welfare and should not exploit their official positions in any way for their own benefit or for the benefit of those with whom they have special relations”.

The Basic Law also require the ministers, before assuming their powers, to swear in the presence of the Sultan to: *respect the Basic Law of the State and its implementing regulations; uphold at all times the integrity of the State and the security of its territories, promote fully its interests and the interests of its citizens, and discharge his/her duties truly and honestly*.\(^{279}\)

This attempt to restrict the exercise of governmental power, however, cannot be described as fully successful . Its effectiveness is undermined by the contradictions contained in the Basic Law itself and by the practices allowed by its silences.

Ministerial responsibility whether collective or individual is established before the Sultan only, which means that the Sultan is the authority constitutionally empowered to scrutinize the performance of the government and hold it accountable.

This position, however, is problematic because the Sultan himself is not only part of the executive, but also head of the government as he occupies the position of the Prime Minister since 1971. Thus, constitutionally, the Sultan is accountable to himself for the performance of his cabinet and is responsible for scrutinizing the actions of his government; i.e. the government is accountable to itself, which for obvious reasons cannot be said to provide effective and sufficient level of government accountability.

This unsatisfactory conclusion is a natural result of the failure of the Basic Law in insisting on the separation between the positions of the Sultan and the Prime Minister,

\(^{279}\)Article 50 of the Basic Law.
and its failure to create institutions that are capable of balancing and supervising each other. The more logical way of dealing with ministerial responsibility is to empower the Council of Oman to act as the scrutinizing authority, before which the government is held accountable.

On the other hand, the Sultan himself is constitutionally accountable to no one. The Basic Law remained silent in relation to this issue, and the only indication of any kind of limitation on the Sultan's power is Article 7 of the Basic Law which requires the Sultan to swear, before assuming his position, to respect the Basic Law and the Laws of the State. However, it could be argued that this oath has no real value because there is no mechanism to ensure that he upholds his oath.

In fact, the Sultan is legally protected from any criticism; his actions may not be scrutinized and there is no channel through which he may be held accountable.

The Council of Oman has no authority to question the Sultan or scrutinize his actions, and he himself is the head of the Judiciary Supreme Council.

Furthermore, Article 41 of the Basic Law states that his person is inviolable and must be respected and his orders must be obeyed, while Article 126 of the Penal Code considers it a crime, punishable by up to three years in prison, to criticize the person of the Sultan or question his rights and authorities.

Besides, the Press and Publication Law prohibits the publication of anything that may offend, implicitly or explicitly, the person of the Sultan or any member of the Royal Family.\textsuperscript{280}

Besides, this oath is supposed to be taken in front of the Royal Family Council. However, the composition of this council is unknown and it has no defined powers or role to play constitutionally other than its role in the succession process, and there is nothing to suggest that the Sultan is accountable to this Council or that the Council has any supervisory power. Moreover, in reality the Royal Family, unlike other royal families

\textsuperscript{280}Article 25.
in the region\textsuperscript{281}, does not have a great deal of power over the Sultan himself or the
government, which includes only a few royal family members\textsuperscript{282}, and hence cannot by
any means create a balancing power to his authority. Even if it did, it will not be
considered a constitutional constraint since the Basic Law is silent in that regard.

Moreover, the ultimate legislative power rests in the hand of the Sultan; therefore, there
is no need for him to violate any law as he may simply change it. Any legal rule, which
may pose an inconvenient limitation, may be changed easily by ordinary means of
legislation.

Even the Constitution cannot effectively limit the will of the Sultan, because it may be
changed instantly by a Royal decree issued by the Sultan. Therefore, even the
constitution itself does not play an effective constraining role on the power of the Sultan.

This clearly illustrates the absence of any proper mechanism to limit the power of the
Sultan or ensure his accountability; as Montesquieu argues:

“All when the legislative and executive powers are united in the same person, or in the
same body of magistracy, there can be no liberty; because apprehensions may arise,
lest the same monarch or senate should enact tyrannical laws, to execute them in a
tyrranical manner”.

- The third attempt is through placing legal limitations on the government by insisting on
the supremacy of the constitution, and by establishing the rule of law where government
agencies and State officials are bound by the law and must operate within its framework.

Article 79 states that all “laws and procedures which have the force of law must conform
to the provisions of the Basic Law”, while Article 79 requires the government to issue
any law, which is not yet in existence, but which is necessitated by the Basic Law, within
two years of the date on which the Basic Law came into force.

\textsuperscript{281}Kuwait and Saudi Arabia for instance.
[online]: http://www.bertelsmann-transformation-index.de/index.php?id=1398#chap3
Article 59 declares the Rule of the Law as the basis of governance in the State, while Article 80 provides that “no body in the State may issue rules, regulations, decisions or instructions which contravene the provisions of laws and decrees in force, or international treaties and agreements which constitute part of the law of the country”.

However, for this kind of restraint to function effectively, the essential prerequisite is the existence of a strong and independent judiciary with a capacity to hold the government accountable for any violation of the law.283

The Basic Law has recognized this necessity and hence provided for the establishment of: an administrative court to review actions and decisions by the executive284, and a constitutional court concerned with settling disputes arising from the incompatibility of laws and regulations with the Basic Law and ensuring that the latter's provisions are not contravened285.

However, the powers, composition, and procedures of these courts were left to be determined by the legislator, i.e. the government itself.

By delegating the task of establishing these courts and defining their role to the same branch which these courts are supposed to limit, the Basic Law has seriously undermined their significance.

As a result of this, the constitutional court was never established in reality, instead, Article 10 and 11 of the Judiciary Law (issued in 1999) provided for the establishment of a judicial panel, from within the Supreme Court, to meet whenever there is a need to settle disputes over courts’ jurisdiction and compatibility of laws and regulation with the provisions of the Basic Law. This panel was not actually established until 2008, and even then its authority was limited to disputes over courts’ jurisdiction.286

---

284 Article 67
285 Article 70
286 RD 88/2008.
Clearly the absence of a constitutional court to arbitrate constitutional limits and ensure compliance of the executive and the legislature with the provisions and the spirit of the constitution, undermines the effectiveness of the constitution and creates a serious gap in the system where constitutional violations can go unchallenged.

As a result of this, a number of laws and regulations contravening the Basic law were issued after its introduction, without facing any challenge.

To give examples, the Personal Status Law issued in 1997, discriminates between men and women in marriage, custody and divorce issues which contravenes Article 17 of the Basic Law stating that all citizens are equal before the Law, and that there shall be no discrimination between them on the grounds of gender.

Also, Royal Decree (55/2010) discussed earlier which allows the Sultan to act as an appeal judge in claims submitted by women seeking to marry against their guardian’s will, is in clear contravention to Article 60 which establishes the independence of the judiciary. Moreover, the fact that a constitutional court has not been established within the two-year period stipulated in Article 78, is in itself a clear violation of the Basic Law.

On the other hand, however, an administrative court was established in 1999 with exclusive power to review decisions issued by government bodies and issues relating to administrative disputes, such as lack of competence, erroneous perception, violation of laws or regulations and mis-application, misinterpretation or misuse of authority.287

Article 6 of the Administrative Court Law establishes the exclusive jurisdiction of the court over disputes relating to civil servants employment disputes, administrative contracts and administrative disputes. Article 7, on the other hand, provides that the Court shall have no jurisdiction over sovereign matters or Royal Decrees or Orders.

Therefore, by law the Court may not scrutinize any order or decision taken by the Sultan.

Interestingly, this Article was later amended in 2009 to extend the exclusion list to include disputes involving security or military agencies, and disputes relating to nationality and tribal matters.288

Furthermore, although the Court is claimed to be independent, administratively it falls under the Minister of the Royal Court, who has the power to refer any of its judges to investigation.289

However, since its establishment the Court has played an important role in providing judicial supervision over decisions issued by the executive, overturning ministerial decisions at times. In fact, in 2002 the Court made an attempt to expand its role into the constitutional territory and fill the vacuum left by the failure to establish a constitutional court. In case 22/Year 1J, the Court found that Article 7 of the Police Pension and End of Service Benefits Law violates Article 12 of the Basic Law, therefore and based on the supremacy of the constitution established in Article 79 of the Basic Law, the Court refused to apply the offending Article and found for the claimant. It concluded that until a proper constitutional court is established, ordinary courts may refrain from applying any law which does not comply with the provisions of the constitution.290

However, on appeal by the defendant, Royal Oman Police, the Appellate division of the Administrative Court reversed the initial judgment stating that the Court of First Instance has crossed its jurisdiction on the basis that Articles 10 and 11 of the Judiciary Law reserves the right to review the compatibility of laws with the constitution to a special panel, and despite the fact that this panel has not been established yet, it remains the only body authorized by law to review constitutional matters, and thus the Administrative Court has no jurisdiction over those291.

Clearly, the result of the Appeal is a lost opportunity to provide some degree of constitutional review, whereby the judiciary will be able to review the constitutionality of

289Article 87 of the Administrative Court Law.
291Ibid.
government’s actions and decisions and will have an effective mechanism to contest any violation thereof. It would have the ability to declare a law that violates the provision of the Basic Law as incompatible with the constitution, and to refrain from applying it, therefore protecting the limits of the constitution and ensuring the effective implementation of its provisions.

After this judgment, however, there was no second attempt, in fact in 2008 the Administrative Court took an extremely conservative approach in a case involving an evident violation of the Basic Law and human rights. In case 446/ Year 7J the claimants contested a Ministerial Decision, issued by the Ministry of Interior, according to which the claimants’ surname was changed on the basis that it does not represent a real Omani tribe and that they should be attached to another tribe. The decision was clearly in violation of Article 17 which prohibits discrimination between citizens on the grounds of race and origin, and was rejected by human rights activists as racial and discriminatory. The Court, however, ruled that it has no jurisdiction to review this decision because it is considered a sovereign matter, and the case was dismissed.

Following this case, the Administrative Court Law was amended to explicitly exclude tribal matters from the jurisdiction of the Court. This example, while clearly showing how the Court may at times refrain from challenging the government, also illustrates the danger of the fact that the jurisdiction of the Court is defined and redefined by the government, the same body that the Court is supposed to scrutinize.

While this, and the limitation set on its jurisdiction, clearly undermines the effectiveness of the Court, its establishment remains an important step towards building the rechtsstaat promised by the constitution. It provides a direct limitation on government through its decisions and judgments in administrative disputes, but, most importantly, it also provides indirect limitation; because the possibility of having their decisions

\[ ^{292}\text{Case 446/ Year 7J.} \]
overturned by the Court makes decision-makers more vigilant when performing their
duties, to avoid facing legal action.

In conclusion, the Administrative Court has managed to provide some degree of
limitation on governmental power; however, it could not fill in the gap created by the
absence of a Constitutional Court.

6.3.2 Three-fold Division of Power, and complete Independence of the Judiciary

The way in which the Articles of the constitution are organized suggests that the
government is divided into three separate branches; chapters four, five, and six deal
with the organization of government. Chapter four is dedicated to the executive power,
outlining the duties of the head of State, the Prime Minister and Council of Ministers, in
addition to the specialized executive councils.

Chapter five deals with the Council of Oman, which is composed of Majlis Al Dawla and
Majlis Al Shura (The State Council and the Consultative council respectively). These two
councils are the representative bodies composing the Omani parliament; Al Shura being
the lower chamber with elected members, and Al Dawla is the upper one, whose
members are appointed by the Sultan.

Chapter six, on the other hand, is devoted to the Judiciary. Article 60 provides that the
"judicial power is independent and vested in the Courts of Law, of whatever type or
status, which issue judgments in accordance with the Law".

Article 61 "guarantees that there is no power over the judges in their rulings except the
Law. Judges can only be dismissed in cases specified by the Law. No party may
interfere in a law suit or in matters of justice; such interference shall be a crime
punishable by law".

Therefore, it could be argued that this is a clear indication that the constitution has
adopted a three-fold division of government and accepted, at least with respect to the
judiciary, that they should be independent.
The problem, however, is that the Council of Oman cannot by any means be regarded as the legislative power in the country. It has no authority to legislate, as the constitution reserves this power to the executive, to the Sultan in particular. Article 42 states that among the functions discharged by the Sultan are issuing and ratifying laws, and signing international treaties and agreements.

In practice, the laws are often drafted by the relevant executive branch and forwarded to the Ministry of Legal Affairs which is responsible for revising the draft law and approving it before being submitted to the Sultan for his approval. Once approved by the Sultan, the law will then be issued by a Royal decree and published in the Official Gazette.

In the legislative process, Al Shura and Al Dawla play only a limited consultative role.

According to Articles 18 and 29 of the Council of Oman’s Law (RD 86/97), both councils may review draft legislation prepared by ministries and other executive agencies before these laws are promulgated. However, they cannot veto a law or prevent its promulgation for any reason. Their role is limited to reviewing the draft and offering their comments, with no obligation on the executive to take these comments into account; which casts a serious doubt on the effectiveness of the councils in the legislative process.

Furthermore, Article 29 states that the Sultan may approve and issue laws without them being reviewed by the Councils, if the public interest requires so. This exception is of course problematic because it gives the Sultan a wide discretion not to refer any piece of legislation to the Councils, allowing him, therefore, to issue controversial laws without them being properly debated.

Furthermore, the Councils have no authority to initiate legislation; Al Shura may only propose amendments and refer them to Al Dawla to be debated. However, the executive is under no obligation to accept such proposals.

Therefore, it is safe to conclude that the legislative process is owned and managed solely by the executive, and the Council of Oman has only a limited consultative role to
play in it. This conclusion means that there is no separation of agencies or of persons because the same agency and the same group of people perform the executive and the legislative functions of government.

With the judiciary, the matter is different. Article 60 of the Basic Law explicitly guarantees the independence of the judiciary. Article 61 states that "there is no power over the judges in their rulings except the Law. Judges can only be dismissed in cases specified by the Law. No party may interfere in a law suit or in matters of justice; such interference shall be a crime punishable by law".

The Law of the Judiciary (RD 90/99) reinforces this independence by requiring judges to refrain from any political or commercial activities, or any other activity which may jeopardize their integrity and independence.\(^{294}\)

However, this independency is not maintained all the way. The Sultan makes all judicial appointments and presides over the Supreme Judicial Council, which, in turn, oversees the judiciary and formulates judicial policy.\(^{295}\)

Article 68 of the Basic Law establishes the Supreme Judicial Council to oversee the smooth running of the Law Courts and auxiliary bodies. This Council is composed of the Sultan, head of the executive, as a chairman, and the Minister of Justice, the General Inspector of Police and customs, the Attorney General, in addition to the president of the Supreme Court, the president of the administrative Court, and 4 other judges.

Among the duties of this council, is supervising the performance of the courts, appointing senior judges and proposing legislation related to the judiciary.

Clearly, the fact the Sultan is head of this Council, and the General Inspector of Police and customs is among its members, indicates that the judiciary is not completely independent and that it is, to a certain extent, subject to the executive power.

\(^{294}\)Articles 51-52

Furthermore, according to Article 42 of the Basic Law, the Sultan is responsible for appointing and dismissing senior judges.

He also has the power to waive or commute punishments issued by courts, a power that is not rarely used by him. In 1994 and in 2005 the Sultan pardoned a number of political prisoners who has been sentenced by the court.\(^\text{296}\) In 2004, the Sultan also used his constitutional authority to pardon a number of public servants who have been convicted by the court in a corruption case and sentenced to prison.\(^\text{297}\) He also uses this power often to waive sentences of capital punishment when the convict is a Western national.\(^\text{298}\)

Moreover, occasionally the Sultan pardons a number of ordinary prisoners in national and religious celebrations. This interference in the duties of the judiciary is clearly in contravention of the doctrine of separation of powers.

A more obvious example of the interference of executive in the duties of the judiciary can be seen from a recent Royal decree (RD 55/2010) issued in May 2010 to deal with the right of women to marry themselves without a guardian.

The Personal Status Law does not allow a woman to marry herself without the permission of her male guardian, except if the judge, at his sole discretion, believes that her guardian is abusing his authority to prevent her from marrying. However, many judges were reluctant to use their discretion and would rather uphold the guardian’s decision.

This legal position has created serious social problems resulting in many women being denied their right to marry.

---

The obvious solution advocated by women rights activists was to abolish this rule and allow women to marry themselves without the need for a guardian, instead the Sultan issued a Royal Decree stating that if any woman is denied her right to marry, she does not have to go through the normal hierarchy of the court system. She may present her case to the Supreme Court directly, and if the Supreme Court rejects her claim, she can appeal directly to the Sultan, who will act as an appeal court and decide her case.

This Royal Decree, therefore, establishes the Sultan as a part of the judicial system acting as a judge, deciding cases and issuing judgments.

From all the discussion above, we can conclude that despite the attempt in the Basic Law to introduce the concept of separation of powers, in reality there is a fusion of power. The executive has a considerable authority over the judiciary and is totally dominating the legislative process.

In fact, the Basic Law provides the executive with considerable powers compared with the two other branches of government, particularly the Council of Oman. To illustrate this imbalance, the Basic Law dedicates only one Article to the Council of Oman: Article 58 which states that:

The Oman Council shall consist of:
- The Shura Council
- The Council of State

(2) The Law shall specify the powers of each of these Councils, the length of their terms, the frequency of their sessions, and their rules of procedure. It shall also specify the number of members of each Council, the conditions which they must fulfill, the method of their selection and appointment, the reasons for their dismissal, and other regulatory provisions”.

Therefore, the powers and regulation of the Council are left totally to the legislature, which is the executive in reality, without any constitutional safeguards to ensure that the Council is not marginalized or stripped from any meaningful powers. In effect, the Constitution leaves the role and composition of the Council totally to the imagination of the executive to mould it according to its wishes and interests without any guidance or overarching principles.

The effect of this silence can be clearly seen in the development of the legislation relating to the Council. The Law of the Council of Oman was originally issued in 1997, and has been amended more than 5 times since then. The Law originally provided for a nomination process according to which Al Shura membership is determined. Each Wilayat (district) is to nominate either 4 or 2 candidates depending on the population of the Wilayat, in accordance with the guidance of the Ministry of Interior. From these nominations, members were selected by the executive and appointed by a Royal decree.

This was changed in 2000, when the law was amended to replace the nomination process by elections, and to introduce universal suffrage.

The powers of the council however have not changed much and its role remains limited in reality and by law. Any expansion in these powers is a matter left constitutionally to the discretion of the executive; the Basic Law offers no guidance or guarantees in that regard.

In contrast to this extreme lack of protection and attention to the Council of Oman, the Basic Law was very generous with the executive by dedicating almost quarter of its total provisions to the executive, providing it with extensive powers.

Furthermore, the constitution fails to place any effective constraints on the practice of this power, allowing the Sultan to monopolize the distribution of power within the system. It provides whoever occupies the position of the Sultan with immense power, and with almost no restraint.
Article 41 declares that the Sultan is the Head of State and the Supreme Commander of the Armed Forces. He is also the symbol of national unity as well as its guardian and defender.

Article 42 states that “The Sultan discharges the following functions:
- preserving the country’s independence and territorial integrity and assuring its internal and external security, maintaining the rights and freedoms of its citizens, guaranteeing the rule of law, and guiding the general policy of the State.
- Taking prompt measures to counter any threat to the safety of the State or its territorial integrity, the security and interests of its people, or the smooth running of its institutions.
- Representing the State both internally and externally in all international relations.
- Presiding over the Council of Ministers or appointing a person to serve in that position.
- Presiding over the Specialized Councils or appointing chairmen for them.
- Appointing and dismissing Deputy Prime Ministers, Ministers and those of their rank.
- Appointing and dismissing Under-Secretaries, General Secretaries and those of their rank.
- Appointing and dismissing senior judges.
- Declaring a state of emergency, general mobilization, or war, and making peace in accordance with the provisions of the Law.
- Issuing and ratifying laws.
- Signing international treaties and agreements in accordance with the provisions of the Law (or authorizing a signatory to sign them) and issuing decrees ratifying them.
- Appointing and dismissing political representatives to other States and international organizations according to the limits and circumstances laid down by the Law.
- Accepting accreditation of representatives of States and international organizations.
- Waiving or commuting punishments
- conferring honors, decorations and military ranks.”

Furthermore, because the Basic Law makes the appointment of a Prime Minister only optional, Sultan Qaboos continued to assume the position of the Prime Minister and

\[\text{Article 48}\]
the Chairman of the Council of Ministers, therefore, in effect he is responsible for the
daily running of government. This is of course in addition to his position as the Finance
Minister, the Defense Minister and the Foreign Affairs Minister.

This unusual concentration of power is seriously problematic, particularly if it exists
where there are no effective legal limitations on the practice of this power and no proper
system to scrutinize and hold accountable those who enjoy it.

6.3.3 Protection of Fundamental Rights and Personal Freedoms

The Basic Law dedicates its third chapter (Articles 15-40) to public rights and duties,
covering what could be classified as criminal rights, personal liberties and civil rights,
and social duties.\footnote{Allen and Rigsbee, From Coup to Constitution, p 223.}

It provides for the protection against retrospectivity in criminal law\footnote{Article 21.}, habeas corpus\footnote{Article 22.},
access to legal representation\footnote{Article 22.}, protection from unlawful and arbitrary detention\footnote{Articles 18 and 19.},
and prohibits torture, enticement and ill treatment.\footnote{Article 20.}

It also covers personal liberties and civil rights including the right to litigation\footnote{Article 25.},
protection from trespass on the home or the person\footnote{Articles 26 & 27.}, religious freedom\footnote{Article 28.}, freedom of
expression\footnote{Article 29.}, freedom and privacy of correspondence\footnote{Article 30.}, freedom of press and
publication\footnote{Article 31.}, and freedom of association and assembly.\footnote{Articles 32 & 33.}

The constitution, therefore, provides what seems like a comprehensive list of
fundamental rights and freedoms. The question however is: does it provide adequate
protection for the enjoyment of these rights and freedoms in reality?
The answer to this question depends on two factors:

First it depends to a certain extent on the text of the constitution and the way in which these provisions are worded,

Secondly and most importantly, it depends on the authority and the power of the constitution and its relevance to political reality.

In other words, what does the constitution actually say? And to what extent does it matter, in reality, what the constitution is saying?

A closer look at the wording of these provisions reveals the limitations embedded in them and their inability to provide effective protection to the rights and freedoms they seek to guarantee.

To illustrate this point:

Article 32 states that (Citizens have the right of assembly within the limits of the law.) This Article guarantees the freedom of assembly only within the boundaries of the law, giving the legislature unqualified freedom to restrict this right as it sees fit. This is particularly problematic because the legislature in practice is the Sultan and the executive branch. There is no real public involvement or oversight on the legislative process to ensure that legislation respects the boundaries of the right and goes no further than necessary. Even if the most restrictive measures were imposed, they will still be lawful and consistent with this Article. Because, in essence, this constitutional provision does not limit the legislature, in this case the government, from adopting any law which may impinge on the right, to serve its own interest. In effect, the Article is equivalent to saying that freedom of Association is protected as far as the regime wishes to do so, and may be restricted, even practically eliminated, if the regime decides so. The same conclusion applies to the Articles dealing with Freedom of expression, Freedom of Association, Freedom of Press and Publications and other rights and freedoms.

314Al Kiyumi, “Human Rights in Oman”, p 34.
Clearly this is not a satisfactory conclusion.

Under the ECHR and the ICCPR, the legislature, when legislating to restrict freedom of expression or freedom of association, for instance, has to do so with a number of considerations in mind: Firstly, the restriction must have a legitimate aim, be necessary in a democratic society or be applied in a non-discriminatory fashion. 315

No such limitations are imposed by the BL on the legislature. However, the lack of such limitations could have been more tolerable if the system as a whole has more meaningful checks and balances, if the legislature was independent and separate from the government, the public had more involvement in the process, and the judiciary had a role to play in determining the constitutionality or otherwise of laws and legislation, i.e. the possibility of judicial review and the existence of a constitutional court. But with all these checks and balances missing, the limits and content of fundamental rights and freedoms are solely within the unfettered discretion of the government.

“This leeway allowed the government to maintain old legislation enacted long before the introduction of the BL, even though they violate human rights. The government had no duty under the BL, to amend this legislation to achieve consistency with its Articles, simply because, although some of them are remarkably restrictive and impinging on individual’s rights and freedoms, they are still consistent with the country’s constitution.”316

If we take freedom of expression and freedom of press and publication as examples, the law does not seem to take much account of the constitutional provisions. Most of the legislation related to the practice of these rights was issued many years before the Basic Law, and have not been amended (at all or in a meaningful way) since.

The Press and Publication Law 1984, for instance, has been constantly criticized by journalists, writers and human rights activists for its unreasonably tight restrictions on

315 Ibid, p 23.
316 Ibid.
freedom of expression, but despite the demands for amending the law, particularly after
the introduction of the BL, it remains unchanged.

The Law provides the Minister of Information with the power to confiscate and ban the
import, and distribution of any publication which violates ethics, public morality, Islamic
principles, accepted norms and traditions or public order.

In fact the law has a whole chapter entitled “Prohibited Issues”, listing a wide range of
restrictions on what may be published. This list includes publishing anything that may
offend explicitly or implicitly the person of the Sultan or the Royal family, offend the
regime or turn public opinion against it, promoting ideas that violates the principles of
Islam (Article 25), undermine the external or internal security of the State (Article 26),
violes public morality, public order, offends religions (Article 28), undermines the
strength of national currency or creates a confusion over the economic situation in the
country (Article 27).

In addition to this list, Article 32 provides the Minister of Information with an unlimited
power to ban the publication of any report, article, picture or any other material without a
need to justify his decision, and this ban may only be removed by him. This Article
means that the Minister can add new restriction on freedom of expression without being
provided for in the law, and without having to satisfy any requirement of proportionality
or reasonableness for example.317

Violations of these Articles may lead, upon conviction, to three years in prison and/or a
considerable fine.

The problem with this list is not only that it includes a wide range of restrictions, but also
that it is vague. Concepts like Islamic principles, public morality, offending the regime or
the person of the Sultan are not easily determinable or precise enough and may open
the door for abuse by the regime to ban whatever it perceives as a threat. This leads to
people engaging in self-censorship to avoid breaching the law.

In practice, this law has been used to ban tens of books, most of which are for authored by Omani writers and poets who are considered in opposition to the government.318

As a result of the wide restrictions on freedom of publications, journalists practice a high degree of self-censorship. Journalists are also required by this law “to obtain licenses to practice, and since 2005 they have been obliged to reapply each year as an employee of a specific media outlet, thus making the practice of freelance journalism problematic. Journalists may have their licenses revoked at any time for violating press laws or for crossing red lines.”319

In addition to the Press and Publication Law 1984, the Penal Code 1974 and the Regulations of Communications Law also include restrictions on freedom of expression.

Article 61 of the Regulation of communications Law states that it is prohibited to “knowingly send a message via any form of communication that violates public order and morals or is harmful to a person’s safety.”320 This Article was widely interpreted by the courts to include sending a message by mobile phone (SMS) to a friend, in which government policies were criticized.321

If we take the right of association as another example, the Public Associations Law, which regulates the establishment and management of NGOs and public association, imposes severe restrictions on the practice of this right, and is considered as an obstacle and a slowing factor in the development of a robust civil society in Oman.322

It lists no more than five purposes for which an association may be established. These are children, women, orphans, elderly people, and the disabled. Any other purpose has to be approved by the Council of Ministers (Article 4). The Ministry can refuse the

---

321 Appeal No (777/2005), Court of Appeal-Muscat.
establishment of an association if: the society does not need its service, it may undermine the security of the state or threaten its interests, or for any other reason the Minister deems appropriate. This provision clearly allows the Minister a wide discretion to interfere and restrict the establishment and development of civil society. Therefore, “through either outright denial or imposition of burdensome bureaucratic requirements, the government effectively blocked the formation of even the most benign organizations.”

Following the establishment of the association, it remains subject to the jurisdiction of the Ministry of Social Development, which regulates its activities. According to the law, the Ministry’s approval is required before holding any public function of any nature, sending delegates outside the country, inviting a foreign guest or joining any international or regional body (Article 5). More importantly, public associations may not engage in any form of political activity or interfere in religious affairs.

“Thus, forming a political group that aims to further democracy or human rights, for instance, is prohibited in Oman. Therefore, it is hardly surprising to know that, in 2005, a request to form a human rights organization was rejected by the Ministry.”

By strictly applying this prohibition the government managed to maintain its monopoly over the political scene in Oman, and to remain the only “legitimate” actor in it. All these restrictions work in practice to discourage individuals from practicing their right to freedom of association, because the scope of this right is severely curtailed by the law.”

These two pieces of legislation clearly illustrate the fact that the BL cannot provide sufficient protection to fundamental rights and freedoms because the wording of the provisions is weak and is not intended to limit the power of the legislator. Instead it protects the right to the extent allowed by the legislature, subordinating the right to the

---

324Al Kiyumi, “Human Rights in Oman”, p 34.
will of the legislator, the government, in this case. For this reason, many restrictive laws remained the way they are even after the introduction of the BL, and many other laws were introduced after the BL, like the Public Associations Law without reflecting any change in the government’s attitude towards fundamental rights and freedoms.

In fact, the government did not hesitate to explicitly contravene the provisions of the BL, one year after its promulgation, by introducing the Personal Status Law 1997 which discriminates against women in terms of the right to marriage, divorce, and custody.

For instance, under Article 19, a woman may not marry herself without the consent of her male guardian, who may be her father or brother, or the judge if she does not have a male relative. If a woman marries without the consent of her guardian, he may apply to court to annul the marriage. This was confirmed by the Supreme Court in its Decision No 46 on Appeal No (76/2002), holding that a marriage without the consent of the guardian is legally invalid. This clearly contradicts the right to non-discrimination upheld by Article 17 of the Basic Law.

Therefore, we can reasonably conclude that the Basic Law has failed to provide sufficient protection to fundamental rights and freedoms. The way its provisions are worded does not provide strong grounds to challenge existing restrictive legislation, and its minimal impact on the system of government as a whole, by failing to establish meaningful checks and balances, allowed the regime to continue its practices in relation to right and freedoms without facing any challenge.

6.4 Conclusion

In this chapter we have seen how the Omani constitution fails to restrain the power of government. Separation of powers is not provided for in the constitution nor practiced in reality. The Sultan, with the assistance of the cabinet, holds in his hands the executive and legislative powers, in addition to his interference in the role of the judiciary as explained above.

326 Decision No 46 on Appeal No (76/2002), Supreme Court- Muscat.
Despite the concentration of power in his hands, the Sultan is not accountable to anyone and there are no established checks and balances on his exercise of power, apart from the very limited role and jurisdiction of the Administrative Court.

Examples cited above have shown that the constitution itself has been violated or ignored in practice in a number of occasions, but these violations went unchallenged because there is no established venue to do so. In addition to this, it does not provide sufficient protection for fundamental rights and freedoms, because it is worded to leave full discretion to the legislator, not to restrain it.

Therefore, using Sartori’s classification of constitutions, the Omani constitution cannot be said to be a normative constitution; this is a proper constitution that guarantees rights and freedoms and effectively restrains the powers of the government. Nor can it be described as a façade constitution; this is a constitution that appears to be a proper constitution, in the sense that it includes limitations on the power of the government, and guarantees fundamental rights and freedoms but in effect the constitution is dead letter. It is disregarded in reality and is routinely and incontrovertibly violated. Because the text of the Basic Law does not provide for limitation of government powers, it is incapable of doing so. Although it is occasionally ignored in practice, in general it is respected simply because its provisions are very modest and its impact is very minimal on the existing structures of government.

Therefore, the most suitable description is nominal constitution; which is fully applied and activated but it is not more than a description and formalization of the existing power structure that organizes power but does not restrain it. Thus, the values of constitutionalism here are totally irrelevant. As we have seen from the discussion above, the main premises of constitutionalism are not upheld in Omani constitution, to the extent that it cannot be said to provide for a constitutional rule. Instead, its value is more as a codification of the system of government; it preserves the status quo without attempting to change it.
Chapter 7: Research Conclusions

7.1 Research Findings

This thesis has set out to provide an understanding of the Basic Law within the wider context of the Omani modern constitutional experience (1967-2010). In order to achieve this understanding, the thesis attempted to answer a number of questions: why was the Basic Law introduced in 1996 and not earlier? And what purposes does it serve? Was it a genuine attempt to create constitutional rule in Oman?

The first chapter started with a basic argument that the constitutional experience of a strong state will be determined to a large extent by the regime rather than by the society, or the people. Questions like: (should the country have a constitution? if yes, what type of constitution should it be? When is the suitable time for it to be introduced? How will it be drafted?), will all be answered by the state rather than by the people.

This argument is built on Joel Migdal’s theory of strong societies and weak states. According to Migdal a strong state is one that is highly capable of penetrating society, regulating social relationships, extracting resources, and appropriating or using these resources in determined ways. By applying this definition to Oman, Manea concludes that Oman, under the rule of Sultan Qaboos, provides a good example of strong state.

Based on this conclusion, the thesis proposes a vital and direct link between the strength of the Omani state and its constitutional experience under Qaboos’s Rule.

However, Manea also argues that although the Omani state emerged as a strong state under Qaboos’s rule, the foundations for this state were laid during Sultan Said’s time.

Therefore chapter three examined Oman’s most serious constitutional attempt led by the Sultan’s brother at the time, Sayyid Tariq, in 1967. The chapter provides a brief

background to this proposed constitution, and the reasons behind its failure. It also examines its text to better understand the political and constitutional choices made by its drafter.

This constitutional attempt did not die in 1967, but was put again on the table by Sayyid Tariq, after Qaboos came to power, from his position as a prime minister. The question of the constitution became so important and controversial that it eventually led to a breakdown in the relationship between the Sultan and his uncle. Qaboos was adamant in his rejection, insisting that introducing a constitution at that particular time would be a great mistake. Thus, no constitution was introduced in 1970.

However in 1996, the Sultan changed his mind and felt that introducing a constitution was an important step in the country’s development and that the right time has come to do so. Therefore a constitution was indeed introduced in 1996.

Chapter 4 provided a discussion on the reasons why Qaboos rejected the idea in 1970, and why he changed his mind in 1996. The chapter looked at the prevailing political and social conditions in 1970 which had influenced the decision of the Sultan at the time and how these conditions have changed to make it in the regime’s best interest to change its position and introduce a constitution.

A constitution seemed an appropriate response to the crisis of legitimacy that the regime was facing in the first half of the 1990s. Besides, the question of succession was becoming more prominent after a failed coup and a near death accident involving the Sultan in the same period. International pressure and economic necessity were also among the main reasons for the introduction of the Basic Law.

However, to ensure that the constitution is designed in accordance to the regime’s preferences, the public were excluded completely from the constitution-drafting process. The public had no idea that a constitution was being drafted until it was promulgated. The appendix to chapter 4 provided an account of the constitution-making process, concluding that the process was closed, non-transparent and non-democratic. Because
the state was so strong, the regime was under no pressure to involve the public in this process or make any meaningful compromises in terms of its contents.

This clearly proves the basic argument made in chapter 2 that a strong state will almost have a monopoly over the constitution and its related questions.

However, in the absence of public involvement, the constitution-making process is likely to produce a non-democratic constitution that would facilitate the continuation and maintenance of a strong regime instead of empowering citizens and providing meaningful protection for their rights and freedoms.

Therefore, to follow this line of argument, the thesis had to examine the actual text and provisions of the Basic Law, to see whether indeed the end product fits the above conclusion. Chapter 5 provided an overview of the Basic Law, discussing the influence of Arab and Islamic culture, as well as western constitutional thought, on the constitution.

It showed that although Oman’s Arabic affiliation is emphasized and Islam is given a constitutional role as the basis for legislation, the terminology used is vague. This cautious use of language when referring to Islam and Arabic affiliation is a result of the conceptual tension between the State and these ideologies. The regime, as predicted by this thesis, chose to undermine this affiliation in favor of the state as the prevailing issue.

To establish the image of a strong state, the Basic Law reduces the importance of other competing myths, ideologies, and symbolic configurations, for the benefit of the state and its institutions. Chapter 5 has clearly illustrated how these are used as codes and messages serving the regime to communicate with local, regional and international audiences. All these concepts are adopted to the extent necessary to legitimize the regime and make the document acceptable to different interest-groups. The Basic Law, both in its text and effect, maintains the image of the strong state created under Qaboos, which is capable of and responsible for providing a high level of social control.
The succession issue the Basic Law does not provide a satisfactory solution. The process introduced in it to appoint the successor is very risky and does not guarantee a smooth transition. It appears that Qaboos is facing the crown-prince dilemma; he cannot appoint an heir apparent to avoid creating another power centre which may potentially threaten his rule, but at the same time cannot leave the issue undealt with. He, therefore, established a procedure to be invoked after his death to select the new Sultan.

His choices in this regard can be seen as another attempt to strengthen his rule even if the price could be the stability of the country’s future. As Migdal points out, in his attempt to consolidate his control, the leader of a strong state may thwart any attempt to create other independent-minded power centres. This could in effect, and in the long term, weaken the state and increase its vulnerability because it becomes very dependent on the person of the leader.

Chapter 6 presented an immanent critique of the Omani constitution. It illustrated how the Basic Law fails to live up to the value it claims to uphold. There are no meaningful restraints on the power of the government or sufficient protection of fundamental rights and freedoms. Separation of powers is not provided for in the constitution nor practiced in reality. The Sultan, with the assistance of the cabinet, holds in his hands the executive and legislative powers, in addition to his interference in the role of the judiciary as explained above.

Despite the concentration of power in his hands, the Sultan is not accountable to anyone and there are no established checks and balances on his exercise of power, apart from the very limited role and jurisdiction of the Administrative Court.

From a constitutional perspective, the Basic Law is very modest and its impact is very minimal on the existing structures of government. The chapter concludes that it should be considered a Nominal constitution; fully applied and activated but not more than a description and formalization of the existing power structure that organizes power but does not restrain it. Therefore, the values of constitutionalism here are almost irrelevant.
A close examination of the provisions of the Basic Law reveals the extent to which it is tailor-made to suit the purposes of the state and to maintain the parity in power between the state and society.

In conclusion, the state, represented by the Sultan, has to a large extent dictated the constitutional experience of the country. Qaboos refused to introduce a constitution when he came to power in 1970, but when the situation changed and introducing a constitution became a good solution to a number of questions facing the regime at that time, Qaboos changed his position and decided by himself that Oman should have a constitution.

He did not involve the public or take their views in the matter. Instead, he called four of his most trusted advisors and asked them to draft a constitution for the country within a year. When their mission was accomplished to his satisfaction, the constitution was promulgated; taking people by surprise.

The content of the constitution displays clearly the strength of the state and its ability to penetrate society and impose its new rules and values. In fact, it could be argued that the Basic Law is in itself a tool for this penetration and a manifestation of its depth. It shows the ability of the state to unilaterally define the political and legal landscape and impose the “rules of the game” successfully on its people.

This conclusion with no doubt supports the main argument of this thesis; that is in a strong state, the constitutional experience is defined to a large extent by the state rather than by the people.

In fact, this thesis can go as far as proposing that the situation will remain so until the power of the state weakens.

7.2 Future research

Towards the end of 2010 and the beginning of 2011, a revolutionary wave hit many Arab countries creating what came to be known as the “Arab Spring”. This movement led to
the collapse of at least four regimes so far, while shaking the foundations of many others in the region.

The regime in Oman was seriously affected, as protesters took to the streets demanding political change. To prevent the situation from escalating, the Sultan responded swiftly with a number of economic, legal and social measures including the promulgation of historical constitutional amendments allowing for more public participation in the decision-making process. Appendix A provides an account of the events and the constitutional amendments that followed.

Unfortunately, this thesis had to be completed before it is possible to fully evaluate and understand the events of spring 2011, the reasons that led to them, and the significance of the resultant amendments. However, following the line of argument proposed in this thesis, it could be argued that what happened in Oman recently was a manifestation of the changing power dynamics between the state and society. For a number of economic, social and political reasons, the regime was not able to maintain the same level of strength. Signs of weakness started to show mainly because the economy was no longer able to cope with societal needs.

On the other hand, with the increase of the level of education, economic independency and empowerment, and the impact of globalization, the strength of the society was clearly increasing.

The previous parity in power between the state and society was no longer maintainable. Therefore, for almost the first time since the emergence of Qaboos’s strong state, the society was able to influence the constitutional arrangements and experience of the country.

This proposed explanation will of course require further research to be verified, however, it could be a worthwhile question to pursue in the future based on the findings of this thesis.
Bibliography

Legislation:

The Basic Law of the State, RD 101/1996.
Amendment to the Basic Law of the State, RD 99/2011
Amendment to the Civil and Commercial Procedures Law, RD 55/2010.

Archival Documents:

TNA: PRO DEFE 24/1855.
TNA: PRO FCO 8/1426.
TNA: PRO FCO 8/1845.
TNA: PRO FCO 8/568.
TNA: PRO FCO 8/1671.
TNA PRO: FCO 8/1844.
TNA: PRO FCO 8/2454.
**Cases:**

Decision No 46 on Appeal No (76/2002), Supreme Court- Muscat.

Appeal No (777/2005), Court of Appeal-Muscat.

22/Year 1J, Administrative Court, Muscat.

466/Year 7J, Administrative Court, Muscat.

187/2003, Supreme Court, Muscat.

**Books:**


**Journals:**


**Online Resources:**


176


**Dissertations:**


**News Papers:**

“Oman is Moving,” Al Watan Newspaper, Bahrain 17 June 1955.

“Interview with the Omani Minister of Information Abdul Aziz Al Rawas”, Asharq Al-Awsat, 27 December 1996.

Appendix A: Constitutional Amendments

In December 2010 a wave of demonstrations and protests started in Tunisia and travelled across the Arab World leading to the collapse of four of the oldest regimes in the world, in Tunisia, Egypt, Libya, and Yemen. Major protests took place in Syria, Bahrain, Morocco, Jordan, Saudi Arabia and Oman demanding political reform and respect for people’s fundamental rights and freedoms. These revolutionary moves which brought about historic changes in Arab politics came to be known as the “Arab Spring”.

Oman was among those countries affected by the revolutionary wave. On 17 January 2011, hundreds of protesters took to the streets in Muscat in what they called “the Green March”, demanding, among other things, the appointment of a prime minister, the expansion of the powers of Majlis Al Shura, eliminating corruption, removal of certain ministers, and improving living standards for citizens. This was followed by the “Green March 2” on 18 February 2011, in which the number of protesters almost doubled. A petition listing the demands of the Green March was later delivered to the Royal Court.

In response to these protests, the Sultan ordered a cabinet reshuffle, which was received with great disappointment and further fuelled people’s frustration.

The situation escalated with protests spreading to all major cities and towns across the country, and violent clashes taking place between the protesters and the security forces. At least two protesters died as a result of these confrontations.

By end of February 2011, demonstrations turned into prolonged sit-ins with thousands of people camping in the streets or outside prominent governmental buildings in Sohar, Muscat, Salalah and Sur.
In a desperate attempt to control the situation the Sultan took charge of managing the crisis and ordered the security forces to refrain from using violence against peaceful protesters. A number of rushed-in Royal decrees were announced including making 50 thousands jobs available, paying out job seekers allowance, and the removal of more than 12 prominent ministers. More importantly, however, the Sultan announced the complete independence of the Public Prosecution Office, and the establishment of a committee to amend the Basic Law to grant the Council of Oman legislative powers and the authority to challenge and scrutinize government plans and actions.

These amendments, however, were announced almost six months later on 20 October 2011; the first amendments to the Basic Law since its introduction in 1996.

The Constitutional amendments

The amendments deal with two main issues: the succession process, and the role and duties of the Council of Oman.

Succession:

Prior to the amendment, it was the responsibility of the Ruling Family Council (“RFC”) to select a successor within three days of the position of the Sultan becoming vacant.

If no consensus is reached within the specified period, the Defense Council, will confirm the appointment of the person nominated by His Majesty the Sultan in the letter he left to the Ruling Family.

However, Article 6 was amended to involve the chairmen of State Council, Shura Council, Supreme Court and two of its oldest deputies, in case of the RFC failing to reach an agreement. Together with the Defense Council they will be responsible for confirming the appointment of the person designated by the Sultan.

This amendment made the process more transparent and reduced the risk of military coup by involving participants from outside the military institution to oversee the
succession process. At least one of those participants, the Chairman of Al Shura Council, is an elected representative, which provides certain degree of public participation in the process..

**The Council of Oman:**

The most important change introduced by the constitutional amendments was in relation to the Council of Oman.

45 new Articles were added to chapter 5 of the Basic Law specifying in great detail the composition, powers and responsibilities of the Council of Oman. Prior to the amendment, the constitution was silent in this regard, with only one Article on the subject, delegating to the legislature the power to define the role of the Council and determine its significance. This was particularly problematic, since the law-making power rested almost solely with the executive, and was therefore easily subject to change.

The recent amendments have elevated the status of the Council and made defining its role and responsibilities a constitutional matter, providing therefore an increased protection for the Council and clarity as to its exact position in the Omani political scene.

*Amendments in relation to the State Council*

The newly added Articles address a wide range of issues including the conditions and requirements according to which the members of the State Council should be appointed.

The Chairman of the State Council remains appointed by the Sultan but his two deputies are elected by the Council.

The membership of the State Council will end only in the following three cases:

- The end of the Council’s term.
- Death or total disability.
- Exemption from membership.
A member can ask for his exemption by submitting a request to the chairman who should then submit the same to the Sultan. Alternatively, the member may be exempted if he lost one of the conditions of the membership, lost confidence or violated his duties.

*Mutations in relation to the Shura Council*

A new condition was added requiring a Shura Council candidate to hold at least high school certificate to be able to run. This particular requirement is seen as a way of preventing tribal leaders from continuing to dominate the Council, in favour of the younger, more educated generation.

The amendments also specify clearly the length of the Council term and the period within which election must be held.

Another important change is that the Shura Council will be able to elect its own chairman and his deputies. Furthermore, an independent, neutral Supreme Committee will be responsible for supervising the Shura Council election and taking decisions on election complaints, instead of the Ministry of Interior previously.

Membership of the Shura Council ends in the following cases:

- The end of the Council term.
- Resignation.
- Death or total disability.
- Exemption from membership
- Dissolution of the Council.

The Council will be responsible for deciding whether to approve or reject a member’s resignation. And if a member loses one of the membership conditions, loses confidence or violates his duties, the Council may relieve him of his position with the approval of two thirds of the members.
Article 58 (bis19) gives the Sultan unlimited discretionary power to dissolve the Shura Council and call for new election within four months. This could be seen as a way of retaining the balance of power between the executive and the elected Council, and leaving the upper hand for the Sultan.

Members of the State and Shura Councils were given immunity from actions taken against them for expressing their opinions or views in front of the council or in its committees. No penalty may be imposed on a Council member without permission from the Council.

Each of the State Council and Shura Council will be in charge of setting their own bylaws regulating their procedure, committees, discussions, voting, questioning, and the appropriate disciplinary action in case of a violation committed by a member.

*Responsibilities of the Council of Oman*

In a direct response to public demands, the constitutional amendment included significant expansion in the powers and responsibilities

All draft laws prepared by the government must be referred to the Council of Oman to approve or amend it, and then it will be referred directly to the Sultan to be promulgated. If the Sultan does not agree with the Council’s amendments, he may return the draft law back to the Council for reconsideration. However, it is not clear what should happen if the Council and the Sultan fail to reach an agreement.

The Council can also initiate legislation and propose draft laws which should then be referred to the government for consideration. After commenting on the draft, the government will refer the draft back to the Council and the same process explained above will be followed.

However, the Sultan has the right to issue Royal Decrees that have the power of law between the terms of the Council and when it is adjourned.
Under the new provisions, the Cabinet will have to refer the state annual budget, any economic or social agreement the government intends to sign or accede to, and proposed development plans to the Council for discussion and recommendations. However, the Council’s views in this regard are not obligatory although the Cabinet will have to inform the Council if any of its recommendations have not been accepted, and the reasons for this.

Upon the request of at least 15 members of the Shura Council, service Ministers may be called for questioning if they are suspected of overstepping the limits of their legal authority. The outcome of this questioning shall then be referred to the Sultan.

Service ministers will have to present the Shura Council with an annual report explaining the progress of different projects undertaken by their respective ministries.

**Conclusion**

Although it is very early to assess the significance of these constitutional amendments on the Omani political scene and its power dynamics, they have without doubt paved the road towards increased public participation in the decision-making process.

The Shura Council enjoys now greater legislative powers, and is able to provide a certain degree of scrutiny and oversight in relation to government actions and decisions. The previous exclusion from financial and international affairs has been slightly relaxed as the Council now has the right to comment on the annual budget and development plans, it also has to be consulted prior to signing or acceding to any social or economic agreement.

All these changes indicates a bigger role for the public in the political process, however it is still a long way for the Council before it acquires the status of an independent, legislative parliament.
Appendix B: The Omani Basic Law

Part One

Basic Law of the State

The State and the system of Government:

Article (1) The Sultanate of Oman is an independent, Arab, Islamic, fully sovereign state with Muscat as its capital.

Article (2) The religion of the State is Islam and the Islamic Shari’ah is the basis of legislation.

Article (3) Arabic is the official language of the State.

Article (4) The law shall determine the State’s Flag, its Emblem, its decorations and medals and its National Anthem.

Article (5) The system of government is an hereditary Sultanate in which succession passes to a male descendant of Sayyid Turki bin Said bin Sultan. It is a condition that the male who is chosen to rule should be an adult Muslim of sound mind and a legitimate son of Omani Muslim parents.

Article (6) Within three days of the position of Sultan becoming vacant, the Ruling Family Council shall determine upon who will succeed to the Throne.

If the Ruling Family Council does not agree upon a successor, the Defense Council shall confirm the appointment of the person designated by the Sultan in his letter to the Family Council.

Article (7) Before exercising his powers the Sultan shall swear the following oath at a joint session of the Oman and Defense Councils:
“I swear by Almighty God to respect the Basic Law of the State and the Laws, to fully protect the interests and freedoms of the citizens, and to preserve the independence of the country and its territorial integrity.”

Article (8) The Government shall continue to conduct its business as usual until the Sultan is chosen and begins to exercise his powers.

Article (9) Rule in the Sultanate shall be based on justice, Shura Consultation and equality. Citizens shall have the right to take part in public affairs - in accordance with this Basic Law and the conditions and circumstances defined in the Law.

Part Two

Principles Guiding State Policy

Article (10) Political principles:

- Preserving the State’s independence and sovereignty, protecting its security and stability, and defending it against all forms of aggression.

- Reinforcing co-operation and reaffirming ties of friendship with all States and peoples on a basis of mutual respect, common interest, non-interference in internal affairs, compliance with international and regional charters and treaties, and the generally recognized principles of international law, in a manner conducive to the promotion of peace and security between States and Peoples.

- Laying suitable foundations for the establishment of the pillars of genuine Shura Consultation, based on the national heritage, its values and its Islamic Shari’ah, and on pride in its history, while incorporating such contemporary manifestations as are appropriate.

- Establishing a sound administrative system that guarantees justice, tranquility and equality for citizens, ensures respect for public order and safeguards the higher interests of the country.
Article (11) Economic principles:

- The basis of the national economy is justice and the principles of a free economy. Its chief pillar is constructive, fruitful co-operation between public and private activity. Its aim is to achieve economic and social development that will lead to increased production and a higher standard of living for citizens, in accordance with the State’s general plan and within the limits of the Law.

- Freedom of economic activity is guaranteed within the limits of the Law and the public interest, in a manner that will ensure the well-being of the national economy.

- The State encourages saving and oversees the regulation of credit.

- All natural resources are the property of the State, which safeguards them and ensures that they are properly utilized while taking into account the requirements of State security and the interests of the national economy. No concession may be granted, nor may any of the country’s public resources be exploited, except in accordance with the Law and for a limited period of time, and in such a manner as to preserve national interests.

- Public property is inviolable. The State shall protect it, and citizens and all other persons shall preserve it.

- Private property is protected. No-one shall be prevented from disposing of his property within the limits of the Law. Nor shall anyone’s property be expropriated, except for the public benefit in those cases defined by the Law and in the manner stipulated by the Law, and on condition that the person whose property is expropriated receives just compensation for it.

- Inheritance is a right governed by the Shari’ah of Islam.

- Confiscation of property is prohibited and the penalty of specific confiscation shall only be imposed by judicial order in circumstances defined by the Law.

- The basis of taxes and public dues shall be justice and the development of the national economy.
• The institution, adjustment and cancellation of public taxes shall be by virtue of the Law. No one may be exempted from payment of all or part of such taxes except in circumstances defined in the Law.

• No tax, fee or other entitlement of any kind may be applied retrospectively.

Article (12) Social Principles:

• Justice, equality and equality of opportunity between Omanis are the pillars of society, guaranteed by the State.

• Co-operation, compassion, strong ties between citizens, and the reinforcement of national unity are a duty. The State shall prevent anything that could lead to division, discord, or the disruption of national unity.

• The family is the basis of society, and the Law regulates the means of protecting it, safeguarding its legal structure, reinforcing its ties and values, providing care for its members, and creating suitable conditions for the development of their aptitudes and capabilities.

• The State guarantees assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system. It also encourages society to share the burdens of dealing with the effects of public disasters and calamities.

• The State cares for public health and for the prevention and treatment of diseases and epidemics. It endeavors to provide health care for every citizen and to encourage the establishment of private hospitals, clinics and other medical institutions under State supervision and in accordance with the rules laid down by Law. It also works to conserve and protect the environment and prevent pollution.

• The State enacts laws to protect the employee and the employer, and regulates relations between them. Every citizen has the right to engage in the work of his choice within the limits of the Law. It is not permitted to impose any compulsory work on anyone except in accordance with the Law and for the performance of public service, and for a fair wage.
• Public employment is a national service entrusted to those who carry it out. The State employees while performing their work shall seek to serve the public interest and society. Citizens are considered equal in taking up public employment according to the provisions of the Law.

Article (13) Cultural Principles:

• Education is a fundamental element for the progress of society which the State fosters and endeavors to make available to all.

• Education aims to raise and develop general cultural standards, promote scientific thought, kindle the spirit of enquiry, meet the needs of the economic and social plans, and create a generation strong in body and moral fibre, proud of its nation, country and heritage, and committed to safeguarding their achievements.

• The State provides public education, combats illiteracy and encourages the establishment of private schools and institutes under State supervision and in accordance with the provisions of the Law.

• The State fosters and conserves the national heritage, and encourages and promotes the sciences, literature, and scientific research.

Article (14) Security Principles

• The State’s goal is peace, and safeguarding the country’s security is a duty entrusted to every citizen.

• The Defense Council studies matters concerning the maintenance of the Sultanate’s security and its defense.

• It is the State alone that establishes the Armed Forces, public security organizations and any other forces. They are all the property of the nation and their task is to protect the State, safeguard the safety of its territories and ensure security and tranquility for its citizens. No institution or group may set up military or paramilitary organizations. The Law regulates military services, general or partial mobilization and the rights, duties and disciplinary rules of the Armed
Forces, the public security organizations and any other forces the State decides to establish.

Part Three

Public Rights and Duties

Article (15) Nationality is regulated by the Law. It may not be forfeited or withdrawn except within the limits of the Law.

Article (16) It is not permitted to deport or exile citizens, or prevent them from returning to the Sultanate.

Article (17) All citizens are equal before the Law, and they are equal in public rights and duties. There shall be no discrimination between them on the grounds of gender, origin, colour, language, religion, sect, domicile or social status.

Article (18) Personal freedom is guaranteed in accordance with the Law. No person may be arrested, searched, detained or imprisoned, or have his residence or movement curtailed, except in accordance with the provisions of the Law.

Article (19) Detention or imprisonment is not permitted, except in the places designated for that purpose in the prison laws, which provide for health care and social welfare.

Article (20) No person shall be subjected to physical or psychological torture, enticement or humiliating treatment, and the Law lays down the punishment for anyone who is guilty of such actions. No statement shall be valid if it is established that it has been obtained as a result of torture, enticement or humiliating treatment, or threats of such measures.

Article (21) There shall be no crime and no punishment except in accordance with the criteria of a Law, and there shall be no punishment except for actions cognizable in Law. Punishment is personal not transferable.
Article (22) An accused person is innocent until proven guilty in a legal trial which ensures him the essential guarantee to exercise his right of defense according to the Law. It is prohibited to harm the accused either bodily or mentally.

Article (23) The accused has the right to appoint a person who has the ability to defend him during the trial. The Law defines the circumstances which require the presence of a lawyer on behalf of the accused and guarantees those without the financial capacity, the means to resort to justice and the defense of their rights.

Article (24) Anyone who is arrested shall be notified of the causes of his arrest immediately and he shall have the right to contact whoever he sees fit, to inform them of what has taken place or seek their assistance, in the manner regulated by the Law. He must be informed promptly of the charges against him, and he and his representative shall have the right to appeal before the judicial authorities against the measure which has restricted his personal freedom. The Law regulates his right of appeal in a manner which ensures that a judgment will be issued on it within a specified period, failing which he must be released.

Article (25) The right to litigation is sacrosanct and guaranteed to all people. The Law defines the procedures and circumstances required for exercising this right and the State guarantees, as far as possible, that the judicial authorities will reconcile the litigants and settle cases promptly.

Article (26) It is not permitted to perform any medical or scientific experiment on any person without his freely given consent.

Article (27) Dwellings are inviolable and it is not permitted to enter them without the permission of the owner or legal occupant, except in the circumstances specified by the Law and in the manner stipulated therein.

Article (28) The freedom to practice religious rites in accordance with recognized customs is guaranteed provided that it does not disrupt public order or conflict with accepted standards of behaviour.
Article (29) Freedom of opinion and expression, whether spoken, written or in other forms, is guaranteed within the limits of the Law.

Article (30) Freedom of postal, telegraphic, telephonic and other forms of communication is sacrosanct and their confidentiality is guaranteed. Hence, it is not permitted to monitor or inspect them, reveal their contents, or delay or confiscate them except in circumstances defined by the Law and in accordance with the procedures laid down therein.

Article (31) Freedom of the press, printing and publication is guaranteed in accordance with the conditions and circumstances defined by the Law. It is prohibited to print or publish material that leads to public discord, violates the security of the State or abuses a person's dignity and his rights.

Article (32) Citizens have the right of assembly within the limits of the Law.

Article (33) The freedom to form associations on a national basis for legitimate objectives and in a proper manner, in a way that does not conflict with the stipulations and aims of this Basic Law, is guaranteed under the conditions and in the circumstances defined by the Law. It is forbidden to establish associations whose activities are inimical to social order, or are secret, or of a military nature. It is not permitted to force anyone to join any association.

Article (34) Citizens have the right to address the public authorities on personal matters or on matters related to public affairs, in the manner and on the conditions laid down by the Law.

Article (35) Every foreigner who is legally resident in the Sultanate shall have the right to protection of his person and his property in accordance with the Law. Foreigners shall have regard for society’s values and respect its traditions and customs.

Article (36) Extradition of political refugees is prohibited. Extradition of criminals is subject to the provisions of international laws and agreements.
Article (37) Defense of the homeland is a sacred duty, and rendering service in the Armed Forces is an honour for citizens regulated by the Law.

Article (38) Preserving national unity and safeguarding State secrets is a duty incumbent upon every citizen.

Article (39) Payment of taxes and public dues is a duty in accordance with the Law.

Article (40) Respect for the Basic Law of the State and the laws and ordinances issued by the public authorities, as well as observance of public order and public morals, is a duty incumbent upon all residents of the Sultanate.

**Part Four**

**The Head of State**

Article (41) The Sultan is the Head of State and the Supreme Commander of the Armed Forces. His person is inviolable and must be respected and his orders must be obeyed. The Sultan is the symbol of national unity as well as its guardian and defender.

Article (42) The Sultan discharges the following functions:

- preserving the country’s independence and territorial integrity and assuring its internal and external security, maintaining the rights and freedoms of its citizens, guaranteeing the rule of law, and guiding the general policy of the State.
- taking prompt measures to counter any threat to the safety of the State or its territorial integrity, the security and interests of its people, or the smooth running of its institutions.
- representing the State both internally and externally in all international relations.
- presiding over the Council of Ministers or appointing a person to serve in that position.
- presiding over the Specialized Councils or appointing chairmen for them.
• appointing and dismissing Deputy Prime Ministers, Ministers and those of their rank.
• appointing and dismissing Under-Secretaries, General Secretaries and those of their rank.
• appointing and dismissing senior judges.
• declaring a state of emergency, general mobilization, or war, and making peace in accordance with the provisions of the Law.
• issuing and ratifying laws.
• signing international treaties and agreements in accordance with the provisions of the Law (or authorizing a signatory to sign them) and issuing decrees ratifying them.
• appointing and dismissing political representatives to other States and international organizations according to the limits and circumstances laid down by the Law. Accepting accreditation of representatives of States and international organizations.
• waiving or commuting punishments
• conferring honours, decorations and military ranks.

Article (43) The Sultan shall be assisted in drafting and implementing the general policy of the State by a Council of Ministers and Specialized Councils.

The Council of Ministers

Article (44) The Council of Ministers is the body entrusted with implementing general State policies. In particular it shall:

• submit recommendations to the Sultan on economic, political and social, as well as executive and administrative matters of concern to the Government, and propose draft laws and decrees.
• foster the welfare of citizens and ensure the provision of health and other essential services in order to improve the quality of their life socially and culturally as well as economically.
• formulate aims and general policies for economic, social, and administrative development and propose methods of implementing these policies which will make the best use of financial, economic and human resources.
• discuss developmental plans prepared by the relevant departments, submit them to the Sultan for approval, and follow up their implementation.
• discuss proposals by Ministries in their fields of executive jurisdiction and make appropriate recommendations and decisions in this regard.
• oversee the smooth running of the State’s administrative apparatus, follow up its performance of its duties, and co-ordinate the activities of its different departments.
• monitor the implementation of all laws, decrees, ordinances and decisions, as well as treaties and agreements and court judgments, in a manner that will ensure that they are complied with.
• discharge any other competencies vested in it by the Sultan or conferred upon it by the provisions of the Law.

Article (45) The Head of the Council of Ministers shall preside over the Council’s sessions and has the right to entrust the chairmanship of sessions, which he does not attend, to one of the Deputy Prime Ministers. If the Prime Minister and his Deputies are absent, the Sultan will authorize whoever he sees fit to chair the sessions.

Article (46) Meetings of the Council shall be quorate with the attendance of a majority of its members. Its deliberations are secret and its decisions are issued with the approval of a majority of those present.

Article (47) The Council of Ministers shall draw up Standing Orders including its Rules of Procedure. The Council shall have a General Secretariat which will be provided with a sufficient number of staff to assist it in carrying out its work.

The Prime Minister, His Deputies and Ministers
Article (48) If the Sultan appoints a Prime Minister, his competencies and powers shall be specified in the Decree appointing him.

Article (49) It is a prerequisite that whoever is appointed as Prime Minister, his Deputy, or a Minister:

a. Shall be originally of Omani nationality in accordance with the Law

b. Shall be aged not less than 30 years of the Gregorian calendar.

Article (50) Before assuming their powers the Prime Minister, his Deputies, and Ministers shall swear the following oath in the presence of the Sultan:

“ I swear by Almighty God that I shall be faithful to my Sultan and my Country, that I shall respect the Basic Law of the State and its implementing regulations; that I shall uphold at all times the integrity of the State and the security of its territories, and shall work to promote fully its interests and the interests of its citizens, and that I shall discharge my duties truly and honestly.”

Article (51) Deputy Prime Ministers and Ministers shall supervise the affairs of their Ministries and Organizations, and implement the general policy of the Government therein, as well as drawing up future guidelines for their Ministries and Organizations and following up their implementation.

Article (52) Members of the Council of Ministers are politically collectively responsible before the Sultan for carrying out the general policies of the State, and each is individually responsible before the Sultan for the discharge of his duties and the exercise of his powers.

Article (53) Members of the Council of Ministers shall not combine their Ministerial position with the chairmanship or membership of the Board of any joint stock company. Nor may the Government departments of which they are in charge have dealings with any company or organization in which they have an interest, whether direct or indirect.
They should be guided in all their actions by considerations of national interest and public welfare and should not exploit their official positions in any way for their own benefit or for the benefit of those with whom they have special relations.

Article (54) The emoluments of Deputy Prime Ministers and Ministers, during their term of office and after their retirement, shall be determined in accordance with the directives of the Sultan.

Article (55) The provisions of Articles 49, 50, 51, 52, 53 and 54 shall apply to all those with the rank of Minister.

Specialized Councils

Article (56) The Specialized Councils shall be established, their powers defined and their members appointed in accordance with Royal Decrees.

Financial Affairs

Article (57) The Law specifies the provisions concerning the following matters and the bodies responsible for them:

- collection of taxes, revenues and other public monies, and measures for their disbursement.
- maintenance and administration of State property, the conditions of its disposal, and the limits within which a part of this property may be assigned.
- the general State budget and the final account
- the autonomous and supplementary budgets and their final accounts
- control of State finances
- loans extended by or obtained by the State
- currency and banking, standards, weights and measures
- salaries, pensions, indemnities, subsidies and gratuities charged to the State Treasury
Part Five

The Oman Council

Article (58) The Oman Council shall consist of:

- The Shura Council
- The Council of State

The Law shall specify the powers of each of these Councils, the length of their terms, the frequency of their sessions, and their rules of procedure. It shall also specify the number of members of each Council, the conditions which they must fulfill, the method of their selection and appointment, the reasons for their dismissal, and other regulatory provisions.

Part Six

The Judiciary

Article (59) The sovereignty of the Law is the basis of governance in the State. Rights and freedoms are guaranteed by the dignity of the judiciary and the probity and impartiality of the judges.

Article (60) Judicial power is independent and vested in the Courts of Law, of whatever type or status, which issue judgments in accordance with the Law.

Article (61) There is no power over the judges in their rulings except the Law. Judges can only be dismissed in cases specified by the Law. No party may interfere in a law suit or in matters of justice; such interference shall be a crime punishable by law. The Law shall specify the conditions to be fulfilled for those administering justice, the conditions and procedures for the appointment of judges, their transfer and promotion, the security offered to them, the cases in which they are not liable for dismissal, and other relevant provisions.
Article (62) The Law shall regulate the Law Courts of whatever type or status and shall specify their functions and competencies. The jurisdiction of Military Courts shall be restricted to military crimes committed by members of the Armed Forces and the security forces and shall only extend to others in the case of martial law and then within the limits laid down by the Law.

Article (63) Court hearings are public except when the Law Court decides to hold the case in camera in the interests of public order or public morals. In all cases pronouncement of finding and sentence shall be in open session.

Article (64) The public prosecution shall conduct legal proceedings on behalf of the community, shall oversee matters of judicial prosecution and shall be vigilant in the application of the penal code, the pursuit of the guilty and the execution of court judgments. The Law shall regulate the public prosecution and its competencies and shall specify the conditions and security applicable to those who discharge its functions. In exceptional cases, Public Security departments may be legally empowered to conduct proceedings in cases involving misdemeanors, in accordance with the conditions laid down by the Law.

Article (65) The legal profession shall be regulated by the Law.

Article (66) The judiciary shall have a Higher Council, which shall oversee the smooth running of the Law Courts and auxiliary bodies. The Law shall specify the powers of this Council with regard to the functions of the judges and the public prosecutor.

Article (67) The Law shall adjudicate in administrative disputes through a Special Administrative Causes Court or Department, whose organization and mode of procedure shall be specified in Law.

Article (68) The Law shall adjudicate in disputes over jurisdiction between judicial departments and in cases of conflict of judgments.
Article (69) The Law shall define the competencies of the department which expresses legal opinions to Ministries and other Government departments and formulates and revises draft laws, regulations and decisions. The Law shall also specify the mode of representation of the State and other public bodies and organizations before the Departments of Justice.

Article (70) The Law shall stipulate the judicial department concerned with settling disputes arising from the incompatibility of laws and regulations with the Basic Law of the State and ensuring that the latter’s provisions are not contravened, and shall define that department’s powers and procedures.

Article (71) Judgments shall be issued and executed in the name of His Majesty the Sultan. Failure or delay in executing these judgments on the part of the concerned public officials shall be a crime punishable by law. In such a case the judgment beneficiary has the right to bring a criminal action directly to the court concerned.

Part Seven

General Provisions

Article (72) The application of this Basic Law shall not infringe the treaties and agreements concluded between the Sultanate of Oman and other States and international bodies and organizations.

Article (73) None of the provisions of this Basic Law shall be suspended except in the case of martial law and within the limits laid down by the Law.

Article (74) Laws shall be published in the Official Gazette within two weeks of the day of their issuance. Laws will come into force from their date of publication unless they stipulate another date.

Article (75) Provisions of laws shall only apply from the date of their coming into force; whatever happens before that date is of no consequence, unless the text specifies
otherwise. Excluded from this exception are penal laws and laws concerning taxes and financial dues.

Article (76) Treaties and agreements shall not have the force of law until they have been ratified. In no case may a treaty or an agreement contain secret conditions which contradict its declared conditions.

Article (77) Everything stipulated by laws, regulations, decrees, directives and decisions in force on the date of this Basic Law becoming effective shall remain in force, provided that they do not conflict with any of its provisions.

Article (78) Laws which are not yet in existence but are necessitated by this Basic Law shall be promulgated by the competent departments within two years of its coming into force.

Article (79) Laws and procedures which have the force of law must conform to the provisions of the Basic Law of the State.

Article (80) No body in the State may issue rules, regulations, decisions or instructions which contravene the provisions of laws and decrees in force, or international treaties and agreements which constitute part of the law of the country.

Article (81) This Basic Law can only be amended in the same manner in which it was promulgated.