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“The Role of Law in Economic Development Process within the Context of the Islamic
World: De-linking Oil and Gas Projects and Re-linking Legal Reform”

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The Role of Law in Economic Development Process within the Context of the Islamic World:
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In many Islamic countries, particularly the stable oil-rich Arab States; it appears that outside of oil and gas projects and a few specific infrastructure projects, far less real economic development has taking place than would have been expected. This is considering the immense endowment of both natural and human resources in the region. The research argues that the issue centres on the role of Law and the formal legal system in development process. In many Islamic countries, outdated legal environment and legal frameworks largely based on the outworn old UK Law that have remained non-updated (i.e. weak legal reform) and merged with Sharia, which realistically are not compatible with the present-day development. While there are efforts to have different Law for some countries; for example, the Dubai free trade zones – Jebel Ali in the 1970s probably was the first major development of its kind; however, the Law beyond the realm of business still needs revision in these States. The research examines the role of Law and the formal legal system in the economic development process, with a focus on the stable oil-rich (Gulf) Arab States. The research uses the structural-functional legal theoretical approach, interdisciplinary and critical-analytical perspective within the framework of (international) law and development. It employs qualitative empirical evidence from developed and developing countries.

Keywords: (International) Law and Development, Islamic World, Gulf Arab Region, Oil & Gas Economy, Rule of Law, Role of Law, Economic Development

1. Introduction

It is a common place that many Islamic countries, particularly the stable oil-rich Gulf Arab States (like Qatar, Dubai, Jordan, Oman, Bahrain, Saudi Arabia, Kuwait, and other United Arab Emirates) could be described as rich States because they have some of the highest GDP per capita rates in the world.¹ Though, these States collectively have less than one percent (1%) of the world’s population, their enormous oil reserves have placed them in a position where they exert great influence within the international political economy on the global arena.²

These States have operated well and enviably within the global economy because of their natural resource gifts, especially enormous reserve of oil until the recent unforeseen and unpredicted global financial downturn³ that negatively affected the global oil prices.⁴ The unexpected crash on oil prices associated to the financial crises sent a shocking wave throughout the region; for example, available statistics suggest that in a little over one year (2004-2015) oil prices have fallen drastically from \$108 a barrel to around \$33, with 2016 projection, suggesting a lower price of \$20.⁵

This has raised doubt about the wealth and affluence of the States / region centred on oil; it has equally questioned the viability of the region’s diversification development strategies;

¹ Though, the Gulf States is widely seen as the richest among them – The Gulf States have long been an economic powerhouse within the region; for example, of the 50 companies in the Arab world, 45 are located in the member States of Gulf Cooperation Council (GCC). This has placed the members of GCC in a good position and giving them an important role promoting wider economic growth in the region – See The Legal 500, Bridging the Gulf: An investigation of the GCC and Middle East legal market: available at https://www.legal500.com/assests/pages/client-insight/middle_east (accessed 29 June 2019).

² World Bank, ‘Inequality, Uprisings and Conflict in the Arab World, (2015) International Bank for Reconstruction and Development / The World Bank available at www.worldbank.org (accessed 07 July 2019).

³ This crisis arguable started in 2008; it is documented that while it is almost impossible to disentangle the causes of global financial crisis, the most often discussed causes include (1) deregulation of financial markets; (2) sophisticated financial innovations linked to rapid changes in computer technologies; (3) excessive executive compensation; (4) low interest rates; (5) subprime loans, especially for mortgages; (6) speculation in general, with an emphasis on speculation in housing; (7) Fraudulent Misrepresentation; and (8) securitisation on war against terror – See Ikejiaku, B. The Recent Global Financial Crisis, De-Linking Security-Protectionism and Re-Linking Fraudulent Misrepresentation in MNCs & Global Market: contending existing issues in international law (IL) & international relations (IR) (2018) *Comparative and International Law Journal of Southern Africa*, Vol. 50. Issue 3.

⁴ The Legal 500, supra note 1.

⁵ According to International Monetary Funds, the Gulf States are facing a cumulative fiscal deficit of more than \$1 trillion over the next five years, and there seems to be no short-term fix on the horizon. Current projections or forecasts show that oil prices will increase slowly, but by 2020 oil is expected to be trading at around \$63 a barrel, a level that is still lower than most of the States break-even prices at current spending levels.

and has transformed the way international investors think about engaging with the region.⁶ This interesting interplay centred on the dependence and over-reliance on oil, the fluctuations of oil prices, and the effects on the economic development in the region forms the basis of this paper.

It appears that outside of oil and gas projects in the oil-rich States and a few specific infrastructure projects, far less real economic development has taking place than would have been expected. This is considering the immense endowment of both natural and human resources in the region.⁷ The research argues that the issue centres on the role of Law and the formal legal system in development process. In many Islamic countries, outdated legal environment and legal frameworks largely based on the outworn old UK Law that have remained non-updated (i.e. weak legal reform) and merged with Sharia, which realistically are not compatible with the present-day development.⁸ While there are efforts to have different Law for some countries; for example, the Dubai free trade zones – Jebel Ali in the 1970s probably was the first major development of its kind; however, the Law beyond the realm of business still needs revision in these States.⁹ The research examines the role of Law and the formal legal system in the economic development process; it focuses on the stable oil-rich Arab States.

In terms of method and approach, the research uses the structural-functional legal theoretical approach, interdisciplinary, and critical-analytical perspective within the framework of (international) law and development. It employs (comparative) qualitative empirical evidence from Islamic Arab Gulf region, and developed and developing countries for the analysis. While the structural-functionalist legal theoretical approach will be used to analyse the proposed important and functions of Law, which is centred on considering and improving the needs of the local region (in this paper the Arab Gulf countries); the interdisciplinary and critical-analytical perspective involve employing literature in the legal, IR, economics, and

⁶ The Legal 500, supra notes 1 & 4.

⁷ Jordan, D. Trends in Trade and Investment Policies in the MENA region, available at <http://www.oecd.org/mena/competitiveness/WGTI2018-Trends-Trade-Investment-Policies-MENA-Nasser-Saidi.pdf> (accessed 16/08/2019).

⁸ Lackey, R. ‘Why have the Islamic Countries failed to Develop even with Resources like Oil. While Countries with no Resources like Switzerland have Flourished, available at <https://www.forbes.com/sites/quora/2013/01/08/why-have-the-islamic-countries-failed-to-develop-even-with-resources-like-oil-while-countries-with-no-resources-like-switzerland-have-flourished/#7522ce10282c> (28/05/2019)

⁹ Ibid.

international development. This will be critically analysed within the framework of (international) law and development. The (comparative) qualitative empirical evidence is employed by gathering relevant material from Arab region, developing and developed countries for an in-depth analysis.

The paper is structured into five sections – Section 1 introduces the paper. Section 2 discusses the theoretical views on the relationship between the rule of Law and economic development process. Section 3 looks at the structural-functional legal theoretical approach, which the paper employs for the analysis. Section 4 analyses oil-based economy and the challenges of role of law in economic development process with a focus on the stable oil-rich (Gulf) Arab States. Section 5 examines and analyses the functional nature of the role of Law in economic development before concluding.

2. The relationship between the rule of law and economic development

The subject of rule of Law is an age-long discourse,¹⁰ but more recently the discussion on rule of Law and economic development has prominently featured in the academic literature and professional practice.¹¹ There appears to be a close association between efficient rule of Law and high growth, as well as between respect for the rule of Law, justice, political stability, and sustainable development.¹² In his work, Faundez argues that constitutionalism seeks to reduce the stakes of politics by protecting liberty and human dignity.¹³ In this respect constitutionalism sets limit to the powers of the state and protects individual freedom,

¹⁰ Plato wrote one of the earliest surviving discussions. While convinced that the best form of government is rule by a benevolent dictator, Plato concedes that, as a practical matter, persons with the necessary leadership qualities are rare. Accordingly, he imagines a utopia that is governed not by a benevolent dictator, but by Nomos, the god of Law. In "The Politics," Aristotle also considers whether it is better for a king to rule by discretion or according to law, and comes down firmly on the side of law; individuals are too often swayed by private passions. Christian philosophers, seeing the power to rule as a delegation from God, the Lawgiver, saw any kingly act contrary to "natural" law as an express violation of this delegation for which a monarch would surely be punished after death – See Thomas, M. *Rule of Law in Western Thought* (World Bank Group, 2005) available at www.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUST (26/08/2018).

¹¹ See for example, Rolland, S. Developing country coalitions at the WTO: In search of legal support (2007) *Harvard International Law Journal*, 48(2), 483–551; See also Stephenson, M. Rule of Law as a Goal of Development Policy (World Bank Research, 2008) at www.econ.worldbank.org/; and Thomas, C. "The Rule of Law Revival" *Foreign Affairs* 77(2):95-106 (1998)

¹² See Yash, G. "The Rule of Law, Legitimacy, and Governance" (1986) *International Journal of the Sociology of Law* 14:179-208. See also Bingham, L 'The Rule of Law' (2007) *Cambridge Law Journal* Vol. 66, No.1, 67-85.

¹³ See Faundez, J. Law and Development Lives On, Legal Studies Research Paper No 2011-12, Warwick Law School.

considering that the concept of constitutionalism is not far from the notion of the rule of Law, as it provides the institutional foundation for the rule of Law in the contemporary society to thrive.¹⁴ While the similarities between constitutionalism and the rule of Law may still raise some issues, there is clear suggestion that the protection of basic rights and liberties is an essential component of any democratic process and essential feature of the rule of Law.¹⁵ It has been argued that distortion of the rule of Law weakens the institutional foundation of economic growth, and results in legal and institutional frameworks of the State being crippled.¹⁶ This creates the single greatest obstacle to good governance, economic, and social development.¹⁷ The harmful effects of weak legal system are especially severe on the poor, who are hardest hit by economic decline, are the most reliant on the provision of basic needs and public services.¹⁸

While there is available evidence to suggest how the rule of Law¹⁹ interacts with development;²⁰ however, the greater debate centres on the approach and direction of the Law

¹⁴ Ibid

¹⁵ Ibid

¹⁶ See Chong, A. and Cesar C. "Causality and Feedback Between Institutional Measures and Economic Growth" (2000) *Economics and Politics* 12(1):69-81.

¹⁷ ibid

¹⁸ World Bank, 'World Bank finds corruption is costing billions in lost development power'; The Chartered Institute of Building (CIOB), September 29/2004. available at <http://www.odiousdebts.org/odiousdebts/index.cfm?DSP=content&ContentID=11519> (05/09/18)

¹⁹ For the purpose of this paper, the Rule of Law incorporates the simple and direct UN definition and Lon Fuller's eight (8) principles of legality that capture the basic essence of the Rule of Law. The UN defines it as, "The term rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency – See UN "What is the Rule of Law? United Nations and the Rule of Law, available at <https://www.uk.org/ruleoflaw/what-is-the-rule-of-law/> (accessed 14/09/2018). And Lon Fuller, in his much authoritative work, *The Morality of Law*, promulgates eight principles of legality that capture the basic essence of the Rule of Law: (i) laws must be of general application; (ii) laws must be widely promulgated or publicly accessible to ensure that citizens know what the law requires; (iii) laws should be prospective in application; (iv) laws must be clear and understandable; (v) laws must be non-contradictory; (vi) laws must not make demands that are beyond the powers of the parties affected; (vii) laws must be constant and not subject to frequent changes; and (viii) laws must reflect congruence between rules as announced and their actual administration and enforcement – See Fuller, L. *The Morality of Law* (New Haven: Yale University Press, 1964), p.39. The World Justice Project has proposed a working definition of the rule of law that comprises four principles: (a) A system of self-government in which all persons, including the government, are accountable under the law (b) A system based on fair, publicized, broadly understood and stable laws (c). A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced (d) Diverse, competent, and independent lawyers and judges – see American Bar Association What is the Rule of Law, available at <https://www.americanbar.org/content/dam/aba/migrated/publiced/features/Part1DialogueROL.authcheckdam.pdf> (accessed 15/11/2018).

²⁰ According to Sen, development is about creating freedom for people and removing obstacles to greater freedom. Greater freedom enables people to choose their own destiny. Obstacles to freedom, and hence to

that is how to go about it, rather than whether Law has the potential to promote development.²¹ There is a wide assumption suggesting that the rule of Law is essential for economic growth – a very essential attribute of economic development, but the rule of Law is multidimensional concept that connotes various ranges of different components.²² Contemporary legal and economic theory exposes the link between the rule of Law with the economic growth and development. In legal theory there is a general view that the rule of Law is essential to any modern legal system, but there is no single viewpoint in terms of determining its scope and content.²³ Series of empirical research conducted show considerable efforts to formulate suitable empirical assessment of the rule of Law covering the subjective indices and objective indicators.²⁴ However, the relative benefit of either type of indicator has been an ongoing point of controversy; while the subjective measure is prone to risk of bias, there is the tendency that the objective assessment may be irrelevant on how the institution works.²⁵ As subjects seeking assurance of protection from the Law, the rule of Law still implies the creation of legal system that establishes public order. In this respect, it suggests that the exercise of freedom of market and entrepreneurship, and the protection of ownership rights are possible only if the natural and artificial persons acting on the market or property owners feel confident and safe in an entity.²⁶

During the 1990s and 2000s, the notion that favourable economic development impacts on formal legal institutions was virtually acceptable by many. This is essentially as a result of the growing use of standard of measurement professing to measure the quality of the rule of Law.²⁷ The World Bank’s rule of Law Index compiled from many sources and stand-points on the operation of legal institutions was employed to demonstrate that the nature of a

development, include poverty, lack of economic opportunities, corruption, poor governance, lack of education and lack of health – See Sen, A. *Development as Freedom* (Oxford University Press, 2001).

²¹ See Davis, K and Trebilcock, M. “The Relationship Between Law and Development: Optimism versus Skeptics”, *American Journal of Comparative Law* (2008) Vol. 56: No. 4 (section 4 of this paper dealt on approaches and directions of the rule of law).

²² This ranges from the same law applicable to everybody, human rights including security of the person, and property rights, to separation of powers, checks and balances on the arms of government, combating of corruption, and accountability – See Haggard, S. and Tiede, L “The Rule of Law and Economic Growth: Where are We?” *World Development* (2011), Vol. 39, No. 5.

²³ See Kocevka, K. Rule of Law – Condition for Economic Development (Republic of Macddonia), *SEEU Review*, Special Edition, Magna Carta 800th (2015) Vol. 11, Issue

²⁴ While the subjective indices involves the evaluations of experts or citizens or those that make up aggregate measures; objective indicators are mapped out to capture features of the institutional and legal environment.

²⁵ See Haggard, S., MacIntyre, C. and Tiede, L “The Rule of Law and Economic Development”, *Annual Review of Political Science*, Vol. 11, No.1, 205.

²⁶ Kocevka, supra note 23.

²⁷ See Chen, D. and Deakin, S. “*On Heaven’s Lathe: State, Rule of Law, and Economic Development* (Centre for Business Research, Working Paper, 2014) No. 464, University of Cambridge.

country’s adherence to the tenets of the rule of Law significantly correlates to the effects of its level of economic development.²⁸ For example, it was argued robustly that an improvement in the rule of Law scores by one standard deviation (from levels existing in Ukraine in early 2000s) would as it was claimed, lead to a fourfold increase in per capita income over the long term.²⁹ However, this World Bank and other similar initiatives came to be questioned as the expected relationship between rule of Law (or legal reform) and economic growth failed to yield positive result in a number of contexts. A good illustration is China under Deng Xiaoping – how should one reconcile China’s (economic) growth rate with its rule of Law credentials? China has been ear-marked as the fastest growing economy and one of the most important in the world. There is prediction by commentators that China will surpass the size of the U.S. economy at some point in the second decade of this century (in particular on purchasing power parity ‘PPP’, but not in per capita income level).³⁰ For example, China’s profile in manufacturing, particularly in labour intensive industries is an accepted challenge to the manufacturing sectors of the most advanced economies. China is also growing beyond low wage manufacturing and has entered the high technology platform based on high-level research, and highly educated scientists and engineers that have performed in the area of research and development activities from some of the world’s most accomplished high technology firms.³¹ This suggests the coexistence of the two may mean that, contrary to the prevailing academic view, institutions are not important element, after all to economic growth.³² In fact, one group of scholars has gone far about reaching that conclusion, thus;

China is an important counter example to the findings in the law, institutions, finance, and growth literature: Neither its legal nor financial system is well

²⁸ Ibid

²⁹ Ibid

³⁰ Dam. K. China As a Test Case: Is the Rule of Law Essential for Economic Growth? (John M. Olin Program in Law and Economic Working Paper No. 275, 2006).

³¹ Ibid

³² An important alternative route (from the Rule of Law) to achieving economic development is what is generally referred to as ‘phenomenon of economically benevolent dictatorships’ demonstrating that countries under dictators such as Chile under Augusto Pinochet (1973-1990) and South Korea under Park Chung Hee (1961-1979). In these countries rapid economic development was realised not on the basis of adherence to the Rule of Law but on the ability of non-democratic governments to create ‘non excludable’ public goods for the benefit of the masses – See Gilson, R. and Milhaupt, C ‘Economically Benevolent Dictators: Lessons for developing Democracies’ (2011) *American Journal of Comparative Law*, Vol. 59, 227-288. See also Cheng, J. Y. S. China’s approach to BRICS (2015) *Journal of Contemporary China*, 24(92), 357–375.

developed by existing standards, yet it has one of the fastest growing economies.³³

A tentative conclusion could be, at least that legal institutions and the rule of Law are, not particularly important to the extent as previously claimed.³⁴ The Chinese case provides a clearer picture and plausible support, just as Faundez suggests that the rule of Law does not necessarily promotes economic development.³⁵

However, while emphasising the important of rule of Law to development process, Sen argues that development has to include a notion of rule of Law or freedom, since development is not only about economic growth, as measured by standard of indices such as GDP per capita.³⁶ Rather, he views development as a broader process, which aim is to enhance people’s capabilities. Thus, according to Sen, scholars and development practitioners should take into account all the domains of social life, including economic, social, political and legal, since they all have a part on the development process.³⁷ In this context, various spheres of social life cannot be independently considered – economic growth without social equality or economic re-distribution without effective political participation could hardly be taken as meaningful contribution to development. In Sen’s perspective, these different sectors are part of a single process, since each plays a relatively equal role in enhancing people’s capabilities.³⁸ Within Sen’s conceptualisation, even if it were established that Law did not contribute one iota to economic growth, Law’s central role in the process of development would not be questioned. Sen believes, however, that Law does make an important contribution both to economic growth and to other domains of social life.³⁹ Yet, he cautions that while Law’s contribution to economic growth is crucial, its role is not self-evident. Because social life is complex, in order to understand the role of the rule of Law in

³³ Franklin, A., Qian, J., and Qian, M. Law, Finance, and Economic Growth in China (2005) *Journal of Financial Economics* Vol. 77, 57-116.

³⁴ Indeed, one group of scholars, Allen, Qian and Qian (‘AQQ’), has gone far to reaching that conclusion; See Dam, K. “*China As a Test Case: Is the Rule of Law Essential for Economic Growth?*” (John Olin Law & Economic Working Paper, 2006) No. 275, University of Chicago.

³⁵ See Faundez, J. (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin’s Press, 1997).

³⁶ See Sen, A. *Development as Freedom* (Oxford University Press, New Delhi, 1999). See also Faundez, J. Rule of Law or Washington Consensus. The Evolution of the World Bank’s Approach to Legal and Judicial Reform, In Perry-Kesaris, A (ed.) *Law in the pursuit of Development* (Routledge, London, 2010).

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ *Ibid*

development, it is necessary to carefully investigate the causal interconnections between the economic, social, political and legal domains.⁴⁰

The implication is that societies can still experience economic development with or without the rule of Law depending on the culture, political leadership, and attitudinal belief of the indigenous population.

3.The structural-functional legal theoretical approach

From a legal perspective, a functional explanation in legal theory is an important and familiar legal concept in positive legal theory.⁴¹ It emphasises the idea of a functional explanation of a phenomenon or society. For example, in response to the common, but very important questions: “Why do legal rules have the form and content that they do, in fact, have?” A key answer according to functionalist is that the function of a rule can be part of the causal explanation of the content of the rule. Why does corporate law limit the liability of stockholders? A functionalist answer might be that the rules are the way they are because they serve the interest of the capitalist class: Or that this is the rule because it is the efficient rule, and common Law selects for efficient rules.⁴²

Similar questions relevant to this paper are: Why have the problems bordering on the role of Law and/or the role of the rule of Law in development process continues to re-occur in the global south? A simple answer from a functionalist point of view might be that legal reforms in the global south do not take into consideration the characteristic distinctiveness (such as indigenous culture, stage of development, artefacts, and existing local norms) of the countries in the global south. Or why has far less real economic development outside oil and gas projects taking place in many Islamic countries, including the stable oil-rich Arab States? The simple and precise answer from a functionalist perspective will be that the issue centres on

⁴⁰ See Sen, A. What is the Role of Judicial Reforms in the Development Process? (2006) *The World Bank Legal Review: Law Equity and Development*, Vol. 2, 33-51.

⁴¹ Positive legal theory attempts to explain and predict legal behaviour, especially the content of legal rules; see for example, H.L.A. Hart, H. *The Concept of Law* (Oxford: Clarendon Press, 1961); Hart, H. Positivism and The Separation of Law and Morals, (1958) *Harvard Law Review* Vol. 71, 593; and Fuller, L. Positivism and Fidelity to Law, (1958) *Harvard Law Review* Vol. 71, 630.

⁴² See Solum, L. *Legal Theory Lexicon 040: Functionalist Explanations in Legal Theory* (Georgetown University Law Centre, 2003).

neglect for the role of Law and the formal legal system in economic development process in the region. Several other research have applied a similar approach in the realm of Law and economic development: Reference is often made to Max Weber’s nineteenth-century work “Sociology of Law”, which “inquired into the casual relationship between particular features of western Law and the development of capitalism”.⁴³ In particular, Sen’s work also provides a helpful answer to the question which is relevant to functional approach of law.⁴⁴ In line with this theory, it is the views of this paper that the Law has been dysfunctional in the oil-rich Arab countries, as this paper intends to demonstrate in the following sections.

4. Examination and analyses of oil-based economy and legal challenges to economic development process in the oil-rich Arab States

Under this section, the paper examines and analyses the nature and dynamics of an economy based on oil and the legal challenges (or problems on the role of Law) in boosting such economies centred on natural resources like the Arab Gulf region in economic development process.

4.1 Oil-based economic development in the oil-rich Arab Gulf States

Trends of events suggest that most of the countries within the global south with large oil and gas reserves, including the oil-rich Arab States are over-dependence on oil.⁴⁵ Most of the developments that have taking place in these countries were based on wealth from oil and gas.⁴⁶ In other words, the economy of these countries is build on natural resources extraction, as opposed to economy of most countries in the global north build on productive labour by the population. There is a huge qualitative difference between an economy built on natural

⁴³ See Gadio, K. *The Role of Law in the Development for the African Continent from a Development Agency Perspective*, Keynote Speech delivered at the 2010 Harvard African Law and Development Conference from 16–18 April, available online at: <<http://www.afdb.org/en/newsevents/article/the-role-of-law-in-development-for-theafrican-continentfrom-a-development-agency-perspective-6590/>>, accessed 2 September 2018.

⁴⁴ Sen, A. 1999 *supra*.

⁴⁵ Al-Khatteeb, L. ‘Gulf Oil Economies must wake up or face Decade of Decline. Brookings Initiative available at www.brookings.edu (accessed 04/07/2019).

⁴⁶ Hutt, R. Which Economies are most Reliant on Oil? World Economic Forum available at <https://www.weforum.org/agenda/2016/05/which-economies-are-most-reliant-on-oil/> (accessed 24/8/2019).

resource extraction, where the populace is a cost centre, and an economy built on productive labour by the population – where increasing capabilities of the society leads to more wealth.⁴⁷

A good consideration of the development pattern of the western countries, Taiwan, Korea, Japan, and prominently China suggests that these countries more or less virtually achieved development through manufacturing strategy, initially low cost, low value added manufacturing, climbing up the ladder-chain, which results in vigorous, well-educated, and diversified economies.⁴⁸ This does not suggest that natural resource endowments have not been one of the factors that helped led some countries (for example the US) to achieve economic greatness. However, economies centred on natural resources in the absence of local value creation and active legal reform / rule of law would hardly, in most cases lead to well developed society.⁴⁹ Just as argued above, China is the only very good case of a country that has (defied this theory) achieved buoyant economy and economic development with a poor rule of Law credentials.⁵⁰ However, it should be appreciated that the China’s unique and surprising economic breakthrough was possible because China maintained a competitive labour-intensive manufacturing industries, technological advanced structure grounded and backed up with high-level research, and highly educated scientists and engineers that rivalled the world’s most advanced technological countries.⁵¹

Resource-based economic wealth is usually distributed much more unfairly and unequally without producing any significant or desired effect. The distribution of such wealth is to a small number of the people at the top echelon of the society – this set of people in most cases is at the top due to tribal, family, or political connections, not due to their skills or productive capacity – thus, it could be described as patronage-oriented placement opportunity.⁵² The reverse is the case in a vibrant, competitive manufacturing economy, where wealth tends to accrue to innovators and efficient operators, and someone with a novel idea or better approach of doing things has more chance to get or rise to the top of the ladder. It is

⁴⁷ Lackey, R., supra note 8.

⁴⁸ Ibid.

⁴⁹ Ikejiaku, B., International Law, International Development Legal Regime & Developing Countries, *Law & Development Review* (2014) Vol. 7(1): 131-163.

⁵⁰ Franklin, A., Qian, J., and Qian, M. Law, Finance, and Economic Growth in China (2005) *Journal of Financial Economics* Vol. 77, 57-116.

⁵¹ Dam. K., supra note 30.

⁵² Lackey, R. supra, note 8, 47.

acknowledged, this is not an ideal situation and imperfect even in the United States, but it is more accepted as a better system than political patronage system.⁵³

There is also the danger or possibility that at a point, the oil and gas will run out and finished or unable to be burned because of global warning; this will pose a great challenge to the oil-based economy.⁵⁴ This is because almost every economic activities and development are centred on oil – products and services for local consumptions that is consumer spending income is directly from energy related jobs or from government redistribution of energy wealth, and development in local transport, power, and water funded by energy wealth.⁵⁵ Even other domestic-based development that has taking place seems to be economically inefficient; for example, building of skyscrapers in the desert has been largely directed by government, or influential families affiliated with government, and financed by huge capital flows from oil/gas and foreign investments from Russia, South Asia, and other parts of the Arab or Muslim world and not the product of real free enterprise founded on active legal framework and rule of law.⁵⁶

A closer look at these set of investments suggests that they are not wealth producing, rather they are business or economic model of storing wealth generated elsewhere, as a form of regulatory venture. Abysmally, even most of the labour sourced for these investments, (including skilled labour, to build building, and operate companies) is also imported – involving labour from China and Pakistan, accountants from the Philippines, advertising executives from the Levant, and engineers and architects from the UK and US.⁵⁷ More so, setting oil and gas revenue into sovereign wealth funds (SWFs) which invest in business in the West has from all indications identified as the other form of investment, and notwithstanding the risk posed by the western financial collapse of 2008-2009, major Islamic SWFs still make most of their investments outside the region.⁵⁸

⁵³ Ibid

⁵⁴ Malik, A. The Gulf Economies coming Meltdown How to prevent it? Foreign Affairs, available at www.foreignaffairs.com (accessed 27/07/2019).

⁵⁵ Ibid

⁵⁶ Lackey, R. *supra*, note 8, 47, 52.

⁵⁷ Ibid

⁵⁸ Lambrianos-Sabeh, E and Graves, D. Mid-East States Attempt to Diversify Economies Amid Low Oil Prices – Forbes available at www.forbes.com (12/08/2019).

While scholars and experts have put up a few likely reasons why energy wealth has not been sufficient to push these countries in the Arab Gulf region (like Qatar, Dubai, Jordan, Oman, Bahrain, Saudi Arabia, Kuwait, and other United Arab Emirates) toward greater, robust and more buoyant development;⁵⁹ however, the fundamental proposition and crucial reason put forward by this paper is that outside of oil and gas projects and a few specific infrastructure projects, far less real economic development has taking place than would have been expected. This is considering the immense endowment of both natural and human resources in the Arab Gulf region. The paper argues that the issue centres on the role of Law and the formal legal system in development process in the Islamic Gulf Arab region.

⁵⁹ These includes (i) a historical legacy of a Soviet alliance and socialism in the Arab world (due to their opposition to the west during the early cold war, opposition to Israel, and some ties between Pan-Arab nationalism and socialism just due to both being revolutionary anti-colonial movements, and due to the beliefs of specific leaders like Nasser): see Lackey, R. *supra*, note 8, 47, 52, 56.; see also Radchenko, S. *The Rise and the Fall of the Sino-Soviet Alliance 1949-1989* (ed) Naimark, N., Pons, S., and Queen-Judge, S., *The Cambridge History of Communism*, (2017) Cambridge University Press, 243-268 available at www.cambridge.org/core/books/cambridge-history-of-communism/rise-and-the-fall-of-the-sinosoviet-alliance-19491989/C1CDD3827D7D4DB5EABBDA5B92B3548 (22/8/2019); (ii) anti-intellectualism and anti-science bias of modern fundamentalist Islam. Clearly it's not the case that Islam itself is hostile to science; after all, for hundreds of years, the Islamic world was the standard-bearer for world scientific knowledge and progress. Yet, education in many Muslim countries consists primarily of religious rather than scientific programs, and those who do get quality educations in the west tend to remain overseas: Ibid. Lackey, R., see also Lynch, M. Onar, N., and Kerr, C., *Islam in a Changing Middle East*. In *Islam and International Order*, Middle East Political Science, Transatlantic Academy available at https://pomeps.org/wp-content/uploads/2015/07/POMEPS_Studies_15_Islam_Web.pdf (22/8/2019); (iii) Women as second-class citizens. It's not just that women can't contribute directly to the workforce (although that's a big factor), but that women aren't educated to the same standard, and thus aren't able to raise children to be scientists and engineers as effectively. This is one area where great progress has been made, but there's a generational lag: Ibid. Lackey, R., see also Allam, R. *Countering the Negative Image of Arab Women in the Arab Media: Toward a 'Pan Arab Eye' Media Watch Project*, Middle east Institute, available at <https://www.mei.edu/publications/countering-negative-image-arab-women-arab-media-toward-pan-arab-eye-media-watch> (accessed 19/8/2019); (iv) Corruption, It's a combination of an inefficient official process and a small number of wealthy and powerful families, able to either change the law as needed, or ignore it. If you ever get into a dispute with a local national, you're going to lose. If local nationals of different levels of power ("wasta") get into a dispute, it's usually decided on the basis of connections, vs. the merits of the case: Ibid, Lackey, R., see also Fabir, I & Yarkes, S., *Governance and the Future of the Arab World*. Carnegie Endowment for International Peace available at <https://carnegieendowment.org/2018/10/16/governance-and-future-of-arab-world-pub-77501> (accessed 07/8/2019); (v) Geopolitical instability. In general, lack of stability doesn't lead people to make long-term investments in the future. If you're worried the world is going to end, you're going to enjoy life now (to the extent possible), not sacrifice a lot to potentially have a better future. A high level of fatalism and lack of feeling of agency has never helped entrepreneurship: Ibid, Lackey, R., see also Cordesman, A. *Stability in the Middle East: The Range of Short and Long-Term Causes*. Centre for Strategic & International Studies (CSIS) available at <https://www.csis.org/analysis/stability-middle-east-range-short-and-long-term-causes> (accessed 12/6/2019); (vi) Basically, there is a kind of assumption that this is a push against the economic efficiency gradient. It will not happen without serious effort and luck, at least until energy income declines, see xxx Ibid, see also xxx; and (vii) Resource curse ("Dutch Disease"). Essentially, it appears that anyone smart goes into oil/gas, or if smart/lazy, into oil/gas ministry jobs, and anyone seeking safe investment returns tends to invest in oil/gas, where a great return is likely. Having some resources is better than no resources, but having resource based industries dominate your economy crowds out all other investment: Ibid, Lackey, R.; see also Bacevich, A. '6 Basic Assumptions about the Middle East That the Washington Consensus Gets Dead Wrong. *Mother Jones Magazine* available at <https://www.motherjones.com/politics/2014/11/its-time-reconsider-these-5-assumptions-about-middle-east/> (accessed 21/8/2019).

4.2 Legal challenges (to the role of law) in economic development process within the context of oil-rich Arab Gulf States

When Faundez⁶⁰ doubted whether the shift in attention from legal institutions to economic analysis would help avoid the problems of the earlier attempts at reforms in developing countries; his concern was that there are unanswered questions that lurked behind the law and development movement. One of his concerns about unanswered questions relates specifically to the role of law and the formal legal system in development process. Faundez presented his argument by analysing the different approaches of the law and development movement and that of the World Bank.⁶¹ Even though, they appear similar, he argued that the context in which the Bank’s programmes were being carried out was to a large extent different. While the law and development movement premised that the State ‘would initiate and promote the process of economic development’, in contrast, the Bank perceived Law as facilitating market transactions by defining property rights, guaranteeing the enforcement of contracts, and maintaining Law and order. Since the State is no longer the champion of social change, as it was in the law and development model, there is less room for error.⁶² However, Faundez in his analysis appeared to be uncertain that the mistakes of the law and development movement would not repeat itself. There was doubt whether the shift in attention from legal institutions to economic analysis would thereby avoid the problems of the earlier attempts at reform.⁶³ His concern was that all the unanswered questions that lurked behind the law and development movement – the role of Law and the formal legal system in development, the relationship between Law and politics, and the relationships among democracy, authoritarianism, and development – will continue to exist.⁶⁴ But, McAuslan and Thome had no doubts that the mistakes of the past, particularly those bordering on the role of Law and the formal legal system in development process would reoccur and, no doubt this have

⁶⁰ See Faundez, J. (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin’s Press, 1997).

⁶¹ Ibid

⁶² Ibid

⁶³ See Faundez, J. (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin’s Press, 1997). See also World Bank ‘Law and Development Movement’ available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/LawandDevelopmentMovement.pdf> (accessed 18/11/2018).

⁶⁴ Ibid

continued to reoccur.⁶⁵ It is relevant to examine a few prominent approaches to the role of Law in development process.

These mistakes bordering on the role of Law and the formal legal system have actually continued to reoccur in the global south, including within the Islamic rich Gulf countries. In many Islamic countries, there are outdated legal environment and legal frameworks largely based on the outworn old UK Law that have remained non-updated (i.e. weak legal reform) and merged with Sharia, which realistically are not compatible with the present-day development.⁶⁶ Within the oil-rich Arab region, while there are efforts to have different Law for some countries; for example, the Dubai free trade zones – Jebel Ali in the 1970s probably was the first major development of its kind⁶⁷; however, the Law beyond the realm of business still needs revision in these States. A good example is domestically, Sharia permits a man to marry many women (wives), and instructed he could beat and scourge the wife when she disobeys him⁶⁸ – this is against democratic tenets and the principles of rule of Law, and may work against development projects. This is because in democratic settings, where the rule of Law is active, this could lead to issues and court cases, with implications on development.

⁶⁵ See McAuslan, P. “Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions”, In Faundez, J. (ed.), *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin’s Press, 1997), pp. 6–17.

⁶⁶ See Perfects, S., Sharia Law: what it is, what it is not, and why you should know, THEOS available at <https://www.theosthinktank.co.uk/in-the-news/2019/02/25/sharia-law-what-it-is-what-it-isnt-and-why-you-should-know> (accessed 27/8/2019).

⁶⁷ The development of free zone was not dependent on wealth from natural resources and was based on different legal framework, where the Law was allowed to play its role; for example, the free zone (Jebel Ali Port) became independent of Dubai municipal laws in 1986 and the UEA Commercial Companies Law amended in 1998 to carve out the free zone, allowing establishment of free zone companies inside JAFZ (FZCOs). JAFZ developed over time in response to needs of business – By some estimates, responsible for as much as 30% of the GDP of Dubai and after 15 years of development, JAFZ became a model that Dubai could replicate. For example, Dubai actually copied JAFZ ‘rules’ in establishing Dubai Airport Free Zone (DAFZ); however, DAFZA authority was established as separate authority from JAFZA – See Gunson, C. Attracting Investment Zone Users. Case Study: The Dubai Free Zone, Second Meeting of the Working Group on Investment Zone in Iraq. Pillsbury available at <https://www.oecd.org/mena/49226268.pdf> (12/08/2019).

⁶⁸ See The Holy Qur’an 4.34 – This suggests that men are generally responsible for the well-being and prosperity of the family members. So while the verse directs men as to how they should treat rebellious women who are of bad conduct, it guides them to a gradual means of education: admonish them (to do what is right), then, (if that proves to be of no avail), remain apart from them in beds; then (if that too proves to be of no avail), ‘beat or strike them lightly’ (without slapping them in their faces). Some Islamic scholars in their interpretation suggest that these measures are aimed at education and saving the marriage from collapse in case of a wife’s rebelliousness. It is not a matter of women being beaten only because they are women, but rather this punishment is only applicable to a truly rebellious person who is of evil conduct, a person who displays obstinacy, not only not doing her duty in the home but also one who does not care about good moral conduct; in short, such a woman is not only wronging her family, she is also wronging herself.

Notwithstanding the above, historical antecedents inform us that Islam is certainly not inherently opposed to development and progress⁶⁹ – there are good cases in point: the shining example of the classical period of Islamic civilization, and the huge number of successful Muslim scientists, engineers, entrepreneurs, and business people in the US, Europe, Africa and elsewhere.⁷⁰ The irony is that while real growth should originate from and be sustained by the private sector, it is undeniable that some of the enlightened governments of the Gulf (particularly Qatar, Dubai, Jordan, Oman and to some extent, Bahrain, Saudi Arabia, and other UAE emirates) are more progressive and pro-growth than their populace.⁷¹ So, there is probably a necessary government role in starting the process, but the State needs to get out of the way after giving an initial push.⁷² However, it is argued that this is due to combination of weak legal framework in these countries – in particular weak and inactive rule of Law and outdated Law that is weak legal reforms and an inefficient official process in the State championed by a few wealth and influential (oil-magnate) people or families, able to either

⁶⁹ Elshaikh, E., The Rise of Islamic Empires and States, Khan Academy available at <https://www.khanacademy.org/humanities/world-history/medieval-times/spread-of-islam/a/the-rise-of-islamic-empires-and-states> (accessed 27/8/2019). Though, it has been argued that contemporary Islam is not known for its engagement in the modern scientific projects. But this attribution or reference to Islam science of old is a sort of heir to legendary ‘Golden Age’ of Arabic Science frequently cited or invoked by commentators in a bid to make Muslim and Westerners more respectful and understanding to each other. This alludes to President Obama’s speech in Cairo, in June 4, 2009, where he praised Muslims for their historical scientific and intellectual contributions to civilization; thus:

It was Islam that carried the light of learning through so many centuries, paving the way for Europe’s Renaissance and Enlightenment. It was innovation in Muslim communities that developed the order of algebra; our magnetic compass and tools of navigation; our mastery of pens and printing; our understanding of how disease spreads and how it can be healed.

It is suggested that tributes of this kind to the Arab world’s era of scientific achievement are generally made with political underlining or in service of a broader political point, as they usually precede discussion of the region’s contemporary problems. They serve as an implicit exhortation and an avenue to re-inspire the spirit of the old that the Islamic could still attain advancement in development: the great age of Arab science demonstrates that there is no categorical or congenital barrier to tolerance, cosmopolitanism, and advancement in the Islamic Middle East. See Ofek, H., Why the Arabic World Turned away from Science, *The New Atlantis, A Journal of Technology and Society* Number 30, Winter 2011, pp. 3-23. available at <https://www.thenewatlantis.com/publications/why-the-arabic-world-turned-away-from-science> (accessed 27/8/2019).

⁷⁰ See Kroessin, M., Concepts of Development in ‘Islam’: A Review of Contemporary Literature & Practice. Working Paper 20-2008 Religion and Development Research Programme, International Development Department, University of Birmingham. See also Rodney, W., *How Europe Underdeveloped Africa*, (Bogler-L ‘Ouverture Publications and Tanzanian Publishing House, 1973); and Hvidt, M. *Economic diversification in GCC countries: past record and future*. The Kuwait programme on development, Governance & Globalisation. London School of Economics (LSE) 2013.

⁷¹ Lackey, R. *supra*, note 8, 47, 52, 56, 59; See also Sturm, M., Strasky, J., Adolf, P., and Peschel, D., *The Gulf Cooperation Council Countries Economic Structures Recent Developments and Role in the Global Economy*. Occasional Paper Series No 92 July 2008 European Central Bank.

⁷² *Ibid*

change the Law as they desire, or neglect it.⁷³ This seems to buttress the point that the Law beyond the realm of business still needs revision in these States.

It has generally appeared in the international development legal regime that Law could be approached as a tool for development itself. In this sense, experts sometimes assume that Law is both distinctively placed and uniquely suited as mechanism for development programmes and projects because a key function of Law is to engineer, attain or enhance the social and economic changes necessary to achieve the goals of development.⁷⁴ From this perspective, it is expected that Law will provide the infrastructural mechanism required for development, and that Law has the capacity to bring about the social, economic, and political changes needed, as well as necessary cultural attitudinal tenets conducive to development.⁷⁵

However as argued, the role of Law beyond the realm of business within the rich-oil Arab Gulf States is weak and needed reform in order to achieve economic development not dependent on natural resources and investment (in oil and gas) controlled by the government. Basically, investment by government can only provide a foundation for private development. Building infrastructure (physical, legal, and educational/human capital) with oil wealth, until the oil wealth runs dry (solving the resource curse) – so the best, brightest, and efficient of the individuals, will then go and start productive businesses⁷⁶ and, with a good legal reform, are the key path-way for the solution, but this could take some time depending on the commitment of the Gulf Arab States. On the other hand, if you consider where the Arab World was about fifty years ago, and where it is today, there is good reason to be optimistic about the future,⁷⁷ but only if there is an enabling environment for the rule of Law to flourish.

⁷³ See Bellin, E., *The Road to Rule of Law in the Arab: Comparative Insights*. Crown Centre for Middle East Studies, Brandeis University US Publications available at <https://www.brandeis.edu/crown/publications/meb/MEB84.pdf> (accessed 25/8/2019).

⁷⁴ See for example: McAuslan, P., *Law, Governance, and the Development of the Market: Practical Problems and Possible Solutions*, in Faundez, J. *Good Governance and Law: Legal and Institutional Reform in Developing Countries* (New York: St. Martin's Press, 1997); Sherman, F. *Law and Development Today: The New Developmentalism* (2009) 10 *German Law Journal*, No.9, pp. 1258-1273; Scot, S. 'International Law and Developing Countries', In Denmark R; & Farrell, T (ed.), (2010) *The International Studies Encyclopedia*, edn. 1st Wiley Blackwell Malsen, MA; Badarin, M. *Law and Development in Africa: Towards a New Approach* (2011), *NIALS Journal of Law and –Development*; Ikejiaku, B. *International Law, International Development Legal Regime & Developing Countries* (2014), *Law & Development Review (LDR) Vol. 7(1): 131-163*.

⁷⁵ *Ibid*

⁷⁶ Lackey, R. *supra*, note 8, 47, 52, 56, 59, 71.

⁷⁷ See Puddko, M., and Bhargava, N., *The Influence of Islam on the Economic Development of Muslim Countries*. *Economy, Business & Finance* Vol. 20, 235 16-28.; See also IFEP. *Global Peace Index 2018 Measuring Peace in a Complex World*. Institute for Economics & Peace available at <http://visionofhumanity.org/app/uploads/2018/06/Global-Peace-Index-2018-2.pdf> (accessed 24/8/2019).

For example, considering the role of Law beyond the realm of business – it is documented that the absence of modern insolvency laws has restricted the Gulf Cooperation Council (‘GCC’ made up of six Middle Eastern countries – Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman) corporates’ ability to compete favourably within the international global economy.⁷⁸ There are the so-called zombie companies – entities generating sufficient revenue to cover debt payments but not to grow – are noticeable and widespread in the region.⁷⁹ There are poor qualities of commercial courts in these States, resulting to both domestic and international lawyers’ reluctant to litigate.⁸⁰ Also the courts are slow to reach a decision and judges often lack relevant commercial law expertise.⁸¹ While the GCC economies continue to perform well and show impressive growth with oil-based businesses; however, there is the tendency that any fall in the oil prices in the coming years will translate into lower margins, increased litigation, tighter, and tougher legal budgets.⁸²

In these countries, there is clash of legal cultures – the tension between civil and common Law practice in the GCC is a common trend. While many international firms are steeped in UK or U.S common Law traditions, the legal systems of the GCC are, for the most part, based on civil Law.⁸³ The countries of the GCC are not black-letter Law jurisdictions, and many GCs felt confident that U.S and UK style contracts would protect their interests, even if not strictly enforceable under local Laws. Nonetheless, for international deals with a GCC component there is a great premium on the need for local counsel capable of acting as an intermediary between the regional courts and the legal assumptions of the commercial parties to a deal.⁸⁴

There are other apparent legal challenges within the region; the UAE, for example has one of the most complicated legal system of all the GCC states, with its Laws varying between the

⁷⁸ Legal 500 Bridging the Gulf: An Investigation of the GCC and Middle East Legal Market available at https://www.legal500.com/assets/pages/client-insight/middle_east_insight/files/assets/common/downloads/publication.pdf

⁷⁹ Ibid

⁸⁰ Fieldman, N. Constitutions in a nonconstitutional world: Arab basic laws and the prospect for accountable government, Nathan J. Brown, Albany (SUNY press, 2002 xiv 244pp).

⁸¹ Ibid

⁸² Turak, N., Oil price slump won’t hurt most Gulf States – but they’re far from out of the woods, available at <https://www.cnbc.com/2018/11/27/oil-price-slump-wont-hit-most-gulf-states---but-theyre-far-from-out-of-the-woods.html> (accessed 26/8/2019).

⁸³ Legal 500, supra, notes 78, 79; and Fieldman, N, supra, notes 80, 81.

⁸⁴ Ibid

various emirates and free zones. As a civil law country overlaid with an impression of common Law practice, the UAE is in many ways a strange jurisdiction; this is in view of its legal challenges on: compliance, financing, litigation and data protection.⁸⁵ And in common with other GCC states, compliance was the top concern of UAE-based businesses.⁸⁶ There is a similar situation in the Saudi Arabia, where its Laws are found to be challenging, mostly due to the so-called legislative vacuum.⁸⁷ Also in Kuwait, there is still too much ambiguity and contradictions in their legal processes and lack of clarity on legal provision made planning difficult, even for businesses, including global investments with long standing operations in the country.⁸⁸ Excessively lengthy and uncertain timeframes for licensing and starting companies were seen as a barrier to new business, as was the limited legal protection offered to foreign investors.⁸⁹

All these issues and challenges about dysfunctional legal system would no doubt have negative impact on business activities and retard economic development.

5. The functional nature of role of Law in economic development

The oil-rich Arab Gulf States should respond to the international development community approach of promoting the Law that is legal and judicial reforms. There is the belief that, besides their inherent efficacy, such reforms will help improve economic performance.⁹⁰ As argued, this belief in the efficacy of legal and judicial reforms to stimulate economic development is supported by a growing body of research showing that economic development is strongly determined by the quality of institutions – including the quality of a nation’s legal institutions.⁹¹ However, while there is the case for reforming legal institutions on economic basis, there is little about what institutions to reform and how to engage in such institutional reform. It is a very difficult task to measure the quality of legal institutions, but even more difficult to practically reconcile the strength of the causal relationships between

⁸⁵ Ibid

⁸⁶ Ibid; see also Cogel, M. Miceli, T., and Ahmed, R., ‘Law, State Power, and Taxation in Islamic History (2009) *Journal of Economic Behaviour and Organisation*, Vol. 71, 704.

⁸⁷ Ibid

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Aymo, B. and Weder, B. "Political Credibility and Economic Growth in Less Developed Countries" (1994) *Constitutional Political Economy* 5(1):23-43

⁹¹ Notes 13, Yash, G. "The Rule of Law, Legitimacy, and Governance" (1986).

their quality and economic development, and virtually impossible from the trends of events within the international system, to sort out the complex and contingent relationship between the different components of real-world institutions, particularly in the developing countries.⁹² This is similar to what Haggard terms ‘the Rule of Law complex,’ – suggesting that the relationship between the efficient Law and economic development goes beyond ‘getting the Law right’, but rather how distinct entities may emerge from complex casual chains that include reciprocal institutions and political arrangements.⁹³

Law and development in the form of legal reform should be made to be functional in the Islamic Arab Gulf States, in order to build economic development beyond the realm of business. From the functionalist theoretical point of view, the local lawyers and practitioners in the region should be trained to learn international development legal reform from the context of indigenous exigencies and distinctiveness (that is the needs, stage of development, cultures, and value systems of the local people) of the Gulf region. The functionalist perspective suggests that the role of Law in this direction will be to facilitate local empowerment, social cohesion, and justice.

It is the contention of this paper that there is a ‘gap’ that Law supposes to fill in the efforts towards actualisation of good governance and socio-economic development in Islamic Arab countries.⁹⁴ This, no doubt has led to more legal scholarly works on the very important of Law in this direction. Perry and Hatchard arguing in this perspective, observe that ‘the ideas about development which fuel contemporary interest in the Law also seem to encourage the hope that Law could simplify development policy making, toning down its engagement with political and economic controversy’.⁹⁵ In reaction to the exploitative activities of some multinational companies (MNCs) and poor CSR in poor developing countries, there were

⁹² See Smith, J. Inequality in international trade? Developing countries and institutional change in WTO dispute settlement (2004) *Review of International Political Economy*, 11(3), 542–573.

⁹³ Haggard, S. and Tiede, L. *The Rule of Law and Economic Growth: Where Are We?* (2010) Presentation at The University of Texas School of Law, Conference on Measuring the Rule of Law.

⁹⁴ See for example, Sachiko, M., and Zaelke, D (2007), *Rule of Law, Good Governance, and Sustainable Development*; paper presented in the Seventh International Conference on Environmental Compliance and Enforcement. The authors submit that while many factors play an important role in development and good governance that many donors are recognising the importance of rule of law, by actively supporting legal and judicial reforms, including judicial training, development of new laws and legal institutions, and capacity building.

⁹⁵ See Perry, A. and Hatchard, J. eds. ‘The Rule of Law as Development’ in *contemplating complexity: Law and Development in the 21st century*, (Cavendish Publishing London, 2002).

calls to both the international community and national governments of resource-rich developing countries – ‘To ensure that there is a balanced legal framework in place that recognises the interests of the broader population...’⁹⁶ This is important and relevant to the Islamic Arab regions. This is in line with the functional theoretical approach as presented in this paper. The functional theory subscribes that Law should be functional by considering the distinctiveness of developing countries in which it is expected to reform. There is the necessity of the Law to serve the needs for the welfare of the indigenous people in the Arab Gulf countries.

This paper emphasises that attention to the role of Law in development offers an opportunity to re-focus attention on the indigenous political choices and economic assumptions embedded in policy making that favour the local populace.⁹⁷ There is a suggestion for the centrality of Law as a facilitator of development process when it was highlighted that more recent legal reforms throughout Latin America have focused on local necessities, as a way to increase transparency in most institutions and nation building.⁹⁸ There is a common conjecture by many scholars that such reforms also improve good governance and by extension economic development.⁹⁹ Scholars have argued that for the Law to be effective it must be meaningful and functional in the societal context in which it is applied, so citizens have an incentive to use the Law and to demand for institutions that work to enforce and develop the Law. A legal reform strategy should aim at improving legality by carefully selecting legal rules which meaning can be understood in the context of local needs and which purpose will be appreciated by domestic Law makers, Law enforcers, and economic agents, who are the final consumers of these rules. This is a crucial condition for improving the overall effectiveness of legal institutions, which over time and in turn, will foster economic development.¹⁰⁰

Tamaharan’s work lends credence to the position of this paper that legal reform should be pursued based on the needs of the local people (in this case, the people in the Arab Gulf

⁹⁶ See Catholic Agency for Overseas Development (2006), *Unearth Justice*, CAFOD Report May, p.12

⁹⁷ Ikejiaku, B., supra, note 49.

⁹⁸ Hammergren, L. Latin American Experience with Rule of Law Reforms and its Applicability to Nation Building Efforts, (2006) *Case Western Reserve Journal of International Law*, Vol. 38, Issue 1.

⁹⁹ See Tiede, L. (2012). Legal Reform and Good Governance: Assessing Rights and Economic Development in Chile, *Law & Policy*, Vol. 34, Issue 3, 237-262.

¹⁰⁰ Berkowitz, D., Pistor, K., and Richard, J. Economic Development, Legality, and the Transplant Effect available at www.siteresources.worldbank.org/INTLAWJUSTINST/Resources/pistor-transplantpdf (accessed 19/11/2018).

countries).¹⁰¹ He argued that legal development (not law and development) projects without enjoying an artificial boost from money and pressure from externality, must gather sufficient local support from influential players to prevail in local socio-political contexts over reform.¹⁰² Local agendas and priorities need be pursued. The projects would be designed, run, and implemented by people who understand the situation, who know what is possible and appreciate what compromises must be made, and who have long term relationships and understanding of social and political capital, to draw on in the course of implementation.¹⁰³ While none of this assures the success of legal development initiatives because legal development in every country is uneven, but this format of local process of legal reform avoids several of the key flaws that plagued law and development projects.

In most Arab Gulf countries for example, the legal reforms on anti-corruption Laws have not been effective over the past decades. This weak legal framework on anti-corruption has provided a fertile ground on which corruption at all levels, particularly political corruption thrive. It is argued that by distorting the Rule of Law and weakening the institutional foundation of economic growth corruption is the single greatest obstacle to economic and social development.¹⁰⁴ The Corruption Perceptions Index 2018 presents a grim picture, but reality in the Middle East, including the Arab countries. With a score of 70, United Arab Emirates (UEA) leads the region on the CPI, followed by Qatar 62. At the bottom of the region, Syria scores 13, followed by Yemen 14 – these two countries are also in the bottom five of the entire index.¹⁰⁵ In the region any attempt at democratisation proves an impossible task, civil liberties and under suppressive state control and the social contract between States and their citizens has been wrecked for decades; it therefore, no surprise that corruption remains headstrong.¹⁰⁶

On another angle, Hernando de Soto, in his works ‘the Mystery of Capital’ rightly rationalised that ‘Capital’ is a legal institution; and, made us to see reasons that everything in

¹⁰¹ Tamanaha, B. The Primacy of Society and the Failures of Law and Development (2011) *Cornel International Law Journal*, Vol. 44, 209-247.

¹⁰² Ibid

¹⁰³ Ibid

¹⁰⁴ United Nations Office on Drug and Crime ‘*Crime and Development in Africa*’ (UNODC New York, 2005) p.81.

¹⁰⁵ Transparency International ‘Middle East & North Africa: Corruption Continues as Institutions and Political Rights Weaken’ available at www.transparency.org (27 July 2019).

¹⁰⁶ In many Arab governments, powerful individuals have actively influenced government policies and diverted public funds and state assets for their own self-interest and enrichment at the expense of the citizens. Ibid.

a market is built on the foundations of norms and mapped out regulations. The more these norms and regulations are streamlined to suit indigenous needs, the more efficient and active the Law becomes.¹⁰⁷ A good illustration is an event titled: “The Rule of Law in Afghanistan”, which was organised in 2013 – what was known in German as ‘Rechtskultren’ program of the Forum Transregionale Studien.¹⁰⁸ The event had invited the head of a Rule-of-Law promotion project of the GIZ, the leading German agency for development cooperation, to a project called ‘Strengthening Administrative Education in Afghanistan’.¹⁰⁹ The project aimed at a more efficient public administration by helping to establish basic and advanced training for senior-level public service staff in Afghanistan.¹¹⁰ Two Fellows of the Rechtskulturen program were also invited to comment on the presentation of the project. The project, which was (may be naively) meant to show as an example of ‘encounter between theory and practice’, however ended up (may be predictably) in a show-case of the ‘abyss that separates the two world’ (developed and developing) about how the notion of legal reform works in theory and in practice.¹¹¹ The motivation of representative of the GIZ, sent to Afghanistan with a mission to implement the project with pre-defined goals, was to present success of the project and to ask for scholarly advice about how to address the very specific difficulties and failures encountered so far. The representative was open to criticism, but not in a position to change the fundamental structure of the project with pre-defined goals (that is ‘*transplanted*’).¹¹² In contrast, the scholarly advice criticized the underlying assumption of development projects in general and the specific intervention in Afghanistan in particular. They questioned based on their own empirical research and indigenous experience in Afghanistan, the basic concepts used in the project description and presentation, such as ‘corruption’ or the ‘rule of law’.¹¹³ They pointed out to the damage that was done by the presence of Western experts on the ground (in Afghanistan), such as surge of prices for food or rent. Or by the artificial economy that was created by the demands of these experts for interpreters, drivers or bodyguards, which were destined to collapse once the experts left – in this sense the reform project was not designed based on indigenous needs. In this direction, it agrees with the argument that the aim of the rule of Law promotion more often than not was

¹⁰⁷ See Hernando de Soto, (2000), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books: New York.

¹⁰⁸ Note 10: Boulanger, C. *Law and Development as Practice and as Theory* (2015), p. 4-5.

¹⁰⁹ *Ibid*

¹¹⁰ *Ibid*

¹¹¹ *Ibid*

¹¹² *Ibid*

¹¹³ *Ibid*

to transform local economies to better serve the interest of global investors, rather than improve the living standards of the local population.¹¹⁴ This direction is not functional and does not serve the interest of the indigenous populations – it is therefore against the stipulations of the functional legal theory as presented in this paper. Equally, this is not the proposition of this paper that is seeing Law as a facilitator will help take into consideration indigenous needs and distinctiveness, thereby remove disagreements over reform priorities and improve efficiency and accountability (in this context, within the Arab region).

In brief conclusion, the focus on Law as a development policy directed to suit the distinctiveness of a particular local community, shares a great deal with other efforts to replace political and economic thinking with a general appeal to technical expertise and ideas about best practice, which serves the interests of the indigenous people as an aid or facilitator to both economic and political approach to development.¹¹⁵ The countries in the Arab region must refocus their attention to rebuild their legal system and establish workable legal frameworks as an alternative to an economy build on oil and gas.

¹¹⁴ Ibid

¹¹⁵ See Lane, J. Good Governance: The Two Meanings of ‘Rule of Law’, (2010) International Journal of Politics and Good Governance Vol. 1 No. 1. Quarter.