

# **Bicameral Legislature in Modern Gulf States: Bahrain and Oman**

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University of Pittsburgh, 2023

Bahrain and Oman adopted a bicameral legislature with an appointed upper house with equal power to the popularly elected lower house. Given that both countries are strong monarchies, this bicameral model allows the government, through the upper house, to limit the possibilities of popular rule and entrench greater authoritarianism.

This study examines the bicameral model used in Bahrain and Oman from four angles. The first step in comprehending this bicameral model is to place it in the context of other bicameral legislatures worldwide. It highlights its features and how and why it varies from other bicameral legislatures. This part of the research also looks at the background and motivations of the first bicameral legislature. It is vital to look into the history of the bicameral legislature in order to comprehend why a nation would choose two houses of legislature than one.

The research explores the causes behind Bahrain and Oman's adoption of this particular model by looking at the political histories of both countries and the various political, economic, and social factors that influenced this choice.

Investigating the relationships inside the legislature is proceeded by research into the political and legal framework of civil society institutions. The study looks into the interactions inside the legislature to see how the bicameral model functions in practice. Additionally, it looks into the political makeup of the Oman Council from 2011 to 2019 and the Bahrain National Assembly from 2002 to 2010.

In order to determine if the upper house functions as merely a government agent in the legislature, it is crucial to examine intra-house relationships relevant to legislative processes. This research exclusively focuses on the legislative process because the oversight power is either entirely confined in the lower chamber, as in Oman, or is centered there principally in Bahrain. This analysis looked at two items: government-submitted bills and proposed laws. Analyzing legislative proposals and laws aims to identify trends among the houses, learn what each one's behavior might reveal about its nature, and assess the degree to which its makeup contributed to that behavior. It also examines how the two houses' system for resolving disagreements operates.

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## **Preface**

This research thoroughly studies two bicameral legislatures of two modern Gulf States, Bahrain and Oman. Both countries adopted a similar model of a bicameral legislature, a bicameral legislature with an appointed upper house that has equal power as the popularly elected lower house. Bahrain and Oman's bicameral model allows the government, through the upper house, to limit the possibilities of popular rule and entrench greater authoritarianism.

The 2002 and 1996 constitutions of Bahrain and Oman, respectively, were unilaterally enacted by the executive branch without the approval of the general public. A bicameral legislature with an appointed upper house and a fully elected lower house was established under those constitutions. Both houses of the bicameral legislature model used in Bahrain and Oman have a symmetrical legislative power. Furthermore, the number of members in both houses is equal. In resolving disputes between the two houses, the lower house has no superior power, even though it is an elected house. These elements, together with the government's broad control over the upper house's membership, point to the government's tight control over the legislative process. This bicameral model threatens the independence of the legislature, and the public's ability to participate in the making of laws is severely constrained.

Between the two countries, Oman was the first to adopt the bicameral legislature in its first Constitution in 1996. The Omani Government promulgated the 1996 Constitution in a relatively calm political environment. Thus, the Omani Government did not have to sell the Constitution or any of its characteristics, such as the structure of the legislature, to the people. In addition, there is no official record of the discussions that occurred as the 1996 Constitution was drafted.

In contrast, Bahrain adopted its bicameral legislature in its 2002 Constitution. The promulgation of Bahrain's 2002 Constitution came after a stormy political environment. Bahrain went through a popular uprising from 1994 until 1999. The 90s uprisings had a terrible impact on Bahrain's political and economic prospects. The government must implement a new political plan to stabilize the country. The chance presented itself upon the Amir's demise in 1999. The new Amir, Hamad, produced a document called The National Action Charter in a referendum, which consisted of a guideline for new political reforms.

Bahrain's National Action Charter proclaimed that many deep-rooted democracies adopted bicameralism. Hence, "it is in the interest of the state of Bahrain to adopt a bicameral legislature."<sup>1</sup> The Bahraini opposition rejected the adopted bicameral model and perceived the legislature as a toothless institution in which the upper house acts as a buffer for the monarchy.<sup>2</sup>

The debate surrounding Bahrain's bicameral system prompts a discussion on bicameral legislature theory, including its goals and what sets one bicameral legislature apart. The purpose of having a second house in the legislature is to provide a different set of distinct interests to counterbalance those represented in the first house. This particular interest is expected to add inputs and checks to legislative decision-making for better legislative output.

It is vital to note that the distinctness of interests alone is not enough to constitute a second chamber because multiple interests are inherent in any legislature. Much of the time, due to several factors, these interests cannot be represented in the first house. The lower house's basis of the composition may be inconsistent with the upper house's basis of the composition. For instance,

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<sup>1</sup>Bahrain's National Action Charter's official English translation <https://bahrain.bh/wps/wcm/connect/9d0fa4ed-dd6c-4b82-b521-afab47e6c0d7/National+Action+Chapter+Kingdom+of+Bahrain.pdf?MOD=AJPERES> (last visited January 31, 2022).

<sup>2</sup> Frederic Wehrey, *Bahrain's Decade of Discontent*, 24 Journal of Democracy. 117, 119 (2013).

there is an inconsistency in the federal states' composition. In many federal states, the constituent entities, regardless of population, are equally represented in the upper house.

In contrast, each state's population determines the number of state-elected members in the lower house. Another illustration of why some interests cannot be represented in the first house is for groups with a low likelihood of earning a seat, such as indigenous people or linguistic or cultural minorities. It is important to remember that there are alternate solutions to some of these problems besides the bicameral structure of the legislature.<sup>3</sup>

Bicameral legislatures are not created equally. The second house's form of representation and degree of power influence its contributions to the legislative process. Several uses for the various representations are possible, from straightforward examination and reflection to democratic contestation and checks and balances. Bicameralism is not a pre-made, universal system that functions in every situation. Instead, it is a culturally specific system linked to a nation's history and politics and tailored to achieve specific goals that control the features of the bicameral system. Bicameral legislatures are found worldwide and distinguished by three connected features: the purpose, the composition, and the power.

The upper house's purpose, composition, and power frequently operate in balance with one another. The second house is frequently chosen in direct general elections and tends to have equal power to the lower house when the purpose is to have a high level of democratic contestation. The compositional process gets more relaxed as contestation and checks decline, and the strength of the upper house typically lags behind that of the second house. In this case, some members of the second house are chosen through a limited or indirect election. On the other end of the spectrum

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<sup>3</sup> The literature suggests four other possible options, depending on the circumstances. Those options are 1) Minority-veto referendums and abrogative referendums; 2) Quasi-second chambers; 3) Concurrent majority rules; 4) Electoral quotas in a unicameral system. See Eliot Bulmer, *Bicameralism* 8 (2ed ed. 2017); Betty Drexhage, *Bicameral Legislature an International Comparison* 9 (2015).



are upper houses that are made up by appointment and frequently serve as a house of review and reflection.

Applying the above analysis to the bicameralism in Bahrain and Oman reveals that, in contrast to many other bicameralisms worldwide, there is no harmony in the second house's purpose, composition, and power. Bahrain's 2002 Constitution and Oman's 1996 Constitution were adopted unilaterally by the executive branch without consultation of the people. Hence the establishment of the second chamber is not supported by the people in either nation. According to the Bahraini National Action Charter, the second house would function as a house of experts. The second house's aim was not explicitly stated in the 1996 Omani Constitution, but in the preamble to Law No. 76/1997 on Oman Council, it is to broaden the base of individuals involved in the legislative process to include those with experience and specialty.

If we accept the text of the National Action Charter and the preamble of law No. 76/1997 at face value, the goal is review and reflection rather than democratic contestation. Therefore, the upper house can either be made up of appointed members and be less significant than the elected lower house, or it could be made up of a direct general election and have equal authority over the lower house. However, the governments of both nations adopted a bicameral legislature, which has an appointed upper house with symmetrical power to the elected lower house.

### **Literature review:**

There have not been many studies published on this subject, even though it is crucial, particularly in Bahrain, where it is at the core of the conflict between the Bahraini Government and the opposition. In almost all of the studies, the debate over Bahrain's bicameral system between the government and opposition centered on historical political issues. The bicameral model was

not the focus of those studies; instead, it is just one more issue in Bahrain's contentious politics. The studies by Joyce (2012), Wright (2008), Wehery (2013), AlShehabi (2016), and Kapiszewski (2006) fit within this category. Since there was no study, this researcher went one step further and looked into Bahrain's existing bicameral system.

In the instance of the bicameral legislature of Oman, the situation is not all that different. Although there is no disagreement over Oman's choice of a bicameral legislature, the majority of studies did not pay much attention to the bicameral structure of the Omani legislature. The works of AlQasmi (2016), AlYahyai (2015), Alhaj (2000), and Rabi (2002) discussed the bicameral structure in Oman's Council briefly. Most of that work concentrated on how public participation evolved in contemporary Oman starting in the 1970s. Therefore, the bicameral structure is only another step in that process. That literature did not elaborate on how the country came to have a bicameral legislature, what it means in the context of the status of civil society institutions, or how Oman's Council operates in a bicameral structure. Hafiad (2000) provided a descriptive study of the Omani bicameral legislature, but his study was conducted only a few years after the promulgation of the Constitution of 1996. Given that the Oman Council did not get any power until 2011, valuable work can be built upon it in light of these changes. AlJulandi (2021) conducted a new study dedicated entirely to the Omani bicameral legislature, but the study was primarily descriptive and barely went beyond the text of the 1996 Constitution and the 2011 Constitutional Amendment.

The composition of the upper house may be a factor in why Bahrain and Oman's lower houses received more attention than the upper house. Additionally, the lower house received more attention in most of those studies. Valeri (2006) suggested that the upper house in Oman served as

more than a house of experts; the Omani Government may have occasionally used the upper house to appease tribal leaders who had failed to win a seat in the lower house elections.

Turning to the literature on bicameralism more broadly, by examining the major categories within that literature, it is possible to better comprehend the contribution of this thesis. Bicameralism literature falls into three primary categories. The first category provides a general overview, which includes every aspect of a bicameral legislature, such as its history, characteristics, purpose, and current practices. De Minon (1975), Tsebelis and Money (1997), and Bulmer (2017), in their thorough examination of bicameralism, are the strongest examples of this group.

The bicameral arrangement is argued for or against in a second category of critical accounts. This category includes Lijphart's (2017) argument that the bicameral nature of the legislature is frequently linked to consensual democracy. He claimed that in order to contribute to consensus democracy, the bicameral structure had to be strong. The efficiency of the bicameral system has been questioned by other researchers, including Cutrone and McCarty (2008) and Muthoo and Shepsle (2007), given that many of its benefits can be obtained by other means.

In the third group, which is jurisdiction-specific, the studies explore the bicameral legislature in a particular region. Llanos and Nolte (2003) used Lijphart's account of strong bicameralism to rank the strength of the bicameral legislatures in South America. Russell (2013) provided a thorough analysis of the current House of Lords in the United Kingdom and its political influence and effectiveness. South Australia's dispute over bicameralism was examined by Bastoni (2009).

The third category of the research on bicameralism best describes the study at hand. It contributes to the body of knowledge on bicameralism by thoroughly analyzing the bicameral

legislatures of two modern Gulf States, Bahrain and Oman, and how the second house might be used to constrain democratic rule. A comparison of Bahrain and Oman's bicameral legislatures is undertaken in light of the similarities between the two nations and their respective uses of the second house.

The same royal family has ruled Bahrain and Oman, both monarchies, for more than 200 years.<sup>4</sup> The Persian Gulf coast is where Bahrain and Oman are situated. They are both members of the Gulf Cooperation Council, a group of nations whose members are renowned for their substantial oil and gas production. As a result, both nations continue to operate under a rentier system, in which the government extracts natural resources and uses various methods of wealth distribution. For instance, the government is the largest employer in both nations, with a share that surpasses 70%.<sup>5</sup>

Additionally, both nations still have a loose tribal social structure. In other words, both countries have tribes that constitute a large portion of the social fabric, and yet neither country's tribal system is as rigid as it is, for example, in Yemen. Finally, following the creation of their modern states in the twentieth century, Bahrain and Oman experienced various internal political upheavals. With all these similarities between the two countries, it would be insightful to compare the function of the bicameral legislature with an appointed upper house.

### **Research structure:**

In order to set up the study to evaluate the intra-legislature relations, the study first looks at three elements. It initially examines the characteristics of the bicameral legislative models in

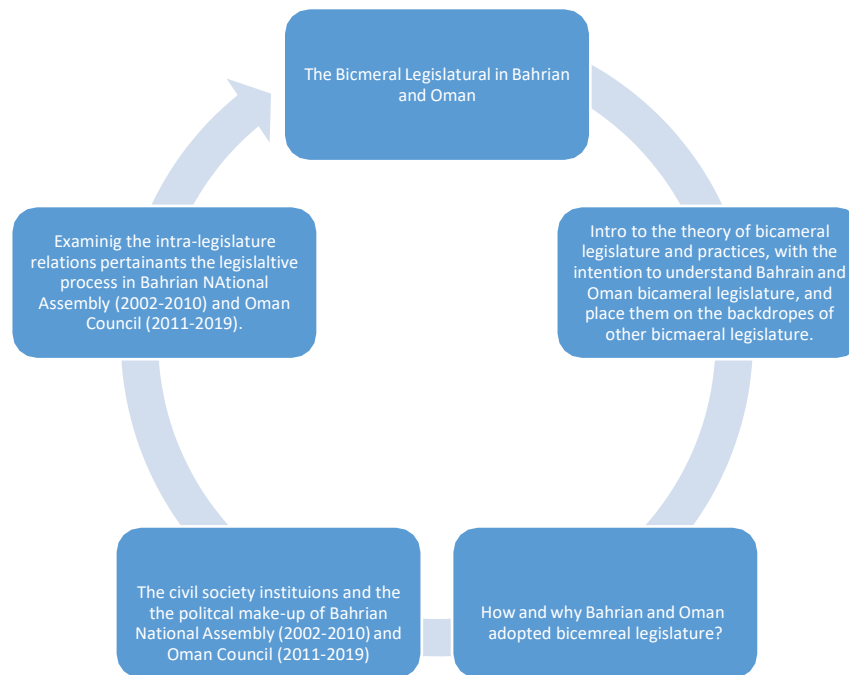
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<sup>4</sup> Morocco and Jordan are other monarchies in the Arab Middle East that have a bicameral legislature.

<sup>5</sup> Crystal A. Ennis, *Rentier-preneurship: Dependence and autonomy in women's entrepreneurship in the Gulf*, in *The Politics of Rentier States in the Gulf* 60, 63 (Michael Herb and Marc Lynch ed., 2019).

Bahrain and Oman using examples of other bicameral legislatures. This section investigates bicameral theory and practices globally in order to contextualize the bicameral model employed in Bahrain and Oman. Second, the study thoroughly analyzes Bahrain and Oman's contemporary political histories to comprehend how and why they evolved to have bicameral legislatures. Third, the paper examines the state of civil society in both countries and the political makeup of Bahrain's National Assembly (2002-2010) and Oman Council (2011-2019).

Following this setup, the analysis details the specific interactions between the two houses in each legislature during the legislative process. The examination of the legislative process is through conducting a quantitative and qualitative analysis of the data released by each legislature.



**Figure 1 The Research Structure**

The first Chapter of this study establishes the framework for the entire research by providing a broad overview of bicameral theory and practice. The comprehensive analysis aims to

contextualize the bicameral legislatures of Bahrain and Oman. To put it another way, the Chapter compares the key features of the bicameralism model used in Bahrain and Oman to those used in other bicameral legislatures. This Chapter does not seek to make a case for or against bicameralism in general, despite the broader critique of the models utilized in Bahrain and Oman in this dissertation. Instead, it develops generalized portraits of bicameral legislatures worldwide to understand their essential traits and place the bicameralism of Bahrain and Oman in context.

For that reason, the first Chapter describes how the idea of the bicameral legislature came about. It emphasized how the Great Council of England in the fourteenth century served as the foundation for modern bicameral legislatures. Since England had a class divide at the time, the common people's representatives met in a separate chamber to discuss issues that affected their constituents. These impromptu gatherings developed into a second chamber.

Reviewing the origin of the bicameral legislatures helps reveal the characteristics that set one bicameral legislature apart from another. The history of the concept of bicameralism and its practices show three essential components of a bicameral legislature: the purpose and representation, the composition process, and democratic legitimacy and power. The first Chapter examines every one of these components. The analysis concludes that the Bahraini and Omani model of bicameral legislature lacks harmony between the three components that distinguish bicameral legislature.

The discussion also focuses on Lijphart's theory of strong bicameralism and bicameralism in Bahrain and Oman. Applying Lijphart's account of Bahrain and Oman's model of bicameral legislature shows the disparity between strong bicameralism and a strong upper house, in the sense that a powerful upper house could mean weak bicameralism, especially where the upper house lacks democratic legitimacy.

Chapter 2 focuses on the emergence of the bicameral legislature in Bahrain and Oman. The bicameral configuration of Bahrain's and Oman's respective legislatures was chosen solely by their respective governments. However, this choice resulted from the political reality in each country. The government's compromise to reinstate, or initiate in the case of Oman, a constitution, was a bicameral legislature with an appointed upper house. The compromise was more apparent and imminent in Bahrain than it was in Oman. For several reasons, both governments had to ratify a new constitution. These governments consequently drafted constitutions that granted them significant legislative branch control.

As elaborated on in Chapter Two, there have been two constitutions for Bahrain and Oman in the previous 70 years. The country of Bahrain enacted its first Constitution in 1973, and its second in 2002. The 1973 Constitution established a unicameral legislative body. The Constitution of 2002 established a bicameral legislature. A bicameral legislature was included in Oman's constitutions of 1996 and 2021. Except for Bahrain's 1973 Constitution, three of the four constitutions were created unilaterally and without adhering to a democratically recognized procedure, and each of them has a bicameral legislature. Contrary to the US Constitution, for example, the three constitutions were not even placed to a public vote; instead, they were drafted by the appropriate authority behind closed doors.

The 1973 Bahraini Constitution is the exception that proves the rule. The powerful Bahraini national movement of the twentieth century impacted Bahrain's 1973 Constitution and brought a strong unicameral legislature. The 1974 unicameral legislature placed a significant check on the government. The Bahraini Government perceived the legislature and its members as obstructing its plans and dissolved it in 1975. The 90s uprisings in Bahrain pushed the government to introduce some political reforms to the system to preserve the political and economic prospects of the

country. Reinstating the same legislature model as in 1975 was not ideal for the government because it would probably lead to the same fate. Thus, the Bahraini Government had to come up with some new arrangements. Even though the Bahraini Government was under much public pressure, it had the power to choose the conditions of the new reforms. As a result, the government established a bicameral legislature with a powerful upper house that was fully appointed.

On the other hand, the approval of the 1996 Oman Constitution was primarily driven by the need to enhance the country's standing concerning the economic objectives of the highly touted “Oman 2020 Vision,” the country’s economic strategy for the next twenty years. Diversifying the economy away from oil and gas was required due to the escalating economic strain. Oman first launched its resulting economic strategy among the Gulf Cooperation Countries in 1996. Oman 2020 included allowing international investment and joining the World Trade Organization. For those initiatives to be successful, the nation's laws had to be updated, and a new constitution had to be adopted. The Constitution's promulgation was not a compromise in the traditional sense because there was no widespread outcry. As a result, when the Constitution was being written, the government maintained authority over the legislature in two ways. First, the Constitution did not grant the legislature any vital authority. Second, an upper chamber comprised of appointed members shares the legislature's meager consultative power.

The bicameral structure put in place by the 1996 Constitution may be perceived as strengthening the government's power even though it lacks actual legislative authority. The government's power was ensured by this system, which was tested during the 2011 uprising, even if it had to cede control to the people. In 2011, in response to public pressure, the government granted the legislature real legislative authority for the first time. The government viewed the bicameral system, which features a powerful and appointed upper house, as a risk-control



mechanism that helped to mitigate the effects of the extra power given to the legislature by the 2011 Constitutional Amendment.

The status of civil society and the political composition of Bahrain's National Assembly (2002-2010) and the Oman Council (2011-2019) are examined in Chapter 3. An examination of the institutions of civil society will come before an illustration of the political composition of each nation's legislature. The importance of discussing the state of civil society institutions in the context of a bicameral legislature can be seen in two ways. The first is that it contributes to explaining why a country chooses to have a bicameral legislature and why it is designed with specific attributes. The best example is the Congress of the United States of America, which is discussed in Chapter 1 of this dissertation. Understanding the arguments the American Founding Fathers put forth, and the compromises made at the 1787 Constitutional Conventions is merely the first step toward comprehending the Constitutional debates and the makeup of Congress. For a complete understanding, it is essential to look into the communities and organizations present in the American colonies at the time. Then, using the dynamics of the societies, one may demonstrate how the Founders came to be in a position to talk about the colonies' constitutional destiny.

Second, the state of civil society in a particular country makes it simpler to evaluate the operation and prospects of a bicameral legislature, particularly in situations where such arrangements, as in Bahrain and Oman, were not the result of a democratically accepted process. Perhaps the bicameral Parliament of the United Kingdom can shed some light on this. The UK's bicameral parliament was an unplanned development; it was not the result of a democratic process in the modern sense. Among other things, the UK's robust civil society helped the House of Commons redefine the power structure in its favor. The House of Lords and the monarchy were reduced to ceremonial status after a protracted period of power consolidation.

The situation in Bahrain and Oman is somewhat similar to that in the UK in that there was no genuinely democratic referendum on the bicameral legislative arrangement. Instead, Bahrain and Oman's governments jointly settled on a bicameral system of legislature. Due to this characteristic, there is a chance that the two houses could eventually clash to shift the balance of power.

Chapter Three discusses the civil society and the political makeup of the legislatures of Bahrain and Oman. Bahrain and Oman provide two different illustrations of how their human capital could voluntarily participate in interest-based organizations separate from the state in a manner that affects how bicameralism will operate. Bahrain's democratic components have been significantly influenced by a vibrant civil society compared to Oman. The numerous notable organizations and civic movements that occurred throughout the 20th century, as well as the boom of associations that followed the National Action Charter of 2001, are evidence of this. Bahraini civic associations continued to exist despite repeated attempts by the government to suppress them through excessive force and restrictive laws. In comparison, Oman has fewer and weaker civic associations. In addition to the government's restrictions on civic organizations, Oman's population is less inclined than Bahrain's to participate freely in civic associations.

The political makeup of the Oman Council (2011-2019) and Bahrain's National Assembly (2002-2010) was impacted by the state of civil society in both countries. Because the upper chamber members in both countries are appointed, it is challenging to discuss their political makeup. However, the Bahraini and Omani governments routinely nominate moderates who previously held important executive branch positions. On the other side, the lower house is elected by the general public. Assessing the political makeup of Bahrain's lower house to that of the Omani lower house is easier. All candidates in Oman must run as independents because political parties

are forbidden. On the other hand, Bahrain tolerates political organizations and allows them to identify and campaign for their candidates. Nonetheless, the major opposition parties boycotted the first election in 2002 before deciding to run in the 2006 election.

Despite Oman's lack of party affiliations, the movement's enthusiasm in 2011 attracted ardent members to the lower chamber. However, by the 2015 election, the Omani Government had tightened its grip and prohibited many members from running again, allegedly for security reasons.

The last Chapter examines how the Bahrain National Assembly and Oman Council interact inside their respective chambers. Examining intra-legislature relationships primarily aims to determine how the composition method influences the legislative process and whether the upper house acts as merely the government's legislative agent. Bahrain's bicameral legislature was reviewed from 2002 to 2010. The examination of Oman's bicameral legislature spans the years 2011 through 2019.

Two things are shared by the study periods. To begin with, both periods were distinguished by a relatively calm political environment. This is not to say that significant political events did not occur in Bahrain and Oman. Significant occasions like the Constitutional Boycott and Bandergate took place in Bahrain from 2002 to 2010. The same is true of Oman, which saw a significant widespread upheaval before the 2011 election. However, neither nation faced severe political polarization or human rights violations, as Bahrain had in 2011. Secondly, attributing new powers to each legislature at the beginning of each legislative term—2002 in Bahrain and 2011 in Oman—signaled the start of each study period. The Bahraini Constitution of 2002 and the Omani Constitutional Amendment of 2011 established these powers.

In Bahrain, the entire legislative process has been derailed from the beginning of the third term, 2010-2014, when political turmoil swiftly engulfed the nation. This began in 2011 when a

sizable fraction of Bahrainis took to the streets to call for political reforms, motivated by the uprising in the Arab world. This movement is known as February 14. Eighteen lawmakers, all from the opposition *Wefaq* association, resigned from the House of Deputies after the government executed several protesters in February.

It is challenging to think about the legislature's representative nature when more than half the Deputies have resigned. Extending the research to that third term is not encouraging, given the resignations, the tremendous political divide, and the turmoil Bahrain has seen since 2011. Instead, the eight-year period selected for this study, from 2002 to 2010, can give a clear picture of the nature of intra-legislature relations in Bahrain's bicameral legislature.

Even though the Omani Government switched to a bicameral legislative structure in 1996, it is not wise to research intra-legislature dynamics before 2011. There was no legislative or oversight power in either house. In 2011, similar to Bahrain, a sizeable part of Omanis were inspired by the Arab revolutions and took to the streets to call for, among other things, political reforms. In response, the Omani Government unilaterally enacted the first constitutional amendment in 2011, granting the legislature control over legislation and supervision. The analysis, therefore, covers two election cycles: one from 2011 to 2015 and the other from 2015 to 2019.

The analysis extended up to 2019, as the nation saw significant changes soon after the 2019 elections and when the long-serving Sultan, or monarch, passed away in 2020. The new monarch published a constitution in 2021 that removed 95% of the legislative body's provisions. A new Oman Council Law was also passed by the government without the Oman Council's consent, in addition to the new Constitution. Thus, the eight-year period selected for this study, from 2011 to 2019, can provide the most explicit image of the nature of intra-legislature relations in Oman's bicameral legislature.

The law-making practices under investigation involve two main areas, the law proposals issued by the legislature and the bills proposed by the government. Unlike many other legislatures across the world, the Bahraini and Omani legislatures' proposed laws do not become legislation directly. All proposals are forwarded to the government, which is expected to draft a bill and return it to the legislature. Making a legislative proposal in Oman is far more complex than in Bahrain since, unlike the Bahraini Constitution, the 1996 Omani Constitution requires the approval of both houses. The importance of the law proposals stems from the fact that they are a significant indicator of each house's preferences and approaches.

By looking at how each council voted on the government-sponsored bills, it is possible to identify any recurring trends in voting patterns. In Bahrain, this includes each house's actions during the house shuffle, which involves negotiating a bill by going back and forth between the two houses (Oman Council does not use shuffle to settle disputes between the two houses.) The investigation also looks into the details of measures sent to a joint session by the two houses that could not be resolved through shuffles. It is important to note that there was just one combined session of the Oman Council. The Bahrain National Assembly referred 19 items to a joint session during the study period; however, there was no joint session. As a result, the focus of the analysis of these measures was on identifying the intricacies of the disagreement and the perspectives held by each chamber rather than on what transpired in joint sessions, which mostly did not occur.

The legislative outcomes of Bahrain and Oman legislatures throughout the research period demonstrate that the composition method employed in each house had a limited influence on the legislative process. Both houses have almost similar general inclinations and modes of operation. Both houses passed most of the legislation the government presented to the legislature. However, there were some contrasts because the Deputies were thought to be more responsive to the public

and behave somewhat differently than the upper houses. These subtle differences appeared mostly in social welfare bills. The lower house supported all welfare proposals enthusiastically, although the upper house was more cautious. The upper house, which is closer to the government, was concerned about the state budget, while the lower house, which is closer to the people, continued to call for increased social welfare.

Although the bicameral model in both countries enables the government to interfere directly in the legislature through the upper house, there was no evidence that the government did so during the research period. It is important to stress that the upper house's inclinations toward government viewpoints were understandable given the members' backgrounds as former officials. This finding may come as a surprise, given that non-elected governments directly appoint the upper house members. One would have anticipated that the upper house would have had a more significant impact, obstructing lower-house legislation. The lower house did not present a serious challenge during the study period; thus, even if it were arguable that the government intended to employ the upper house, there was no reason to do so.

## **1.0 Chapter One: Oman and Bahrain Bicameral Legislature among the World Bicameral Legislature.**

### **1.1 Introduction:**

Bahrain's National Action Charter proclaimed that many deep-rooted democracies adopted bicameralism. Hence, "it is in the interest of the state of Bahrain to adopt a bicameral legislature." This Chapter compares the bicameralism of Bahrain and Oman to that of other bicameral legislatures.<sup>6</sup> Whether on purpose or not, this basic approach overlooks the bicameral parliamentary system's complexity. Bicameralism is not a universal system that works in all circumstances. Instead, it fulfills specific objectives that govern the bicameral system's characteristics. Bicameral legislatures, in other words, are not all made equal. Three interrelated characteristics distinguish bicameral legislatures worldwide, namely the purpose, composition, and power.

A review of bicameralism in Bahrain and Oman finds no harmony between the second house's purpose, composition, and power, in contrast to many other bicameralisms worldwide. Because the constitutions of both countries, 2002 Bahrain and 1996 Oman, were established unilaterally by the executive power without public input, establishing the second chamber in both countries lacks public democratic consent. Furthermore, all members of the second house are

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<sup>6</sup> Bahrain's National Action Charter's official English translation <https://bahrain.bh/wps/wcm/connect/9d0fa4ed-dd6c-4b82-b521-afab47e6c0d7/National+Action+Chapter+Kingdom+of+Bahrain.pdf?MOD=AJPERES> (last visited January 31, 2022).

appointed by the government. Despite lacking democratic legitimacy, the second house has the same symmetrical legislative power as the lower house, which is wholly elected.

Only over 40% of international legislatures are bicameral, according to the Inter-parliamentary Union.<sup>7</sup> The essential goal of creating a second house is to provide additional inputs and checks over legislative decision-making by allowing a distinct sort of representation in the second house. The level of checks and contributions made by the second house in the legislative process is determined by its form of representation and power. The representations could be used for various purposes, ranging from simple review and reflection to democratic contestation and checks and balances.

The bicameral legislature of today has its roots in England. Due to a power conflict between classes inside the Great Council in the fourteenth century, the bicameral parliament in England first emerged unintentionally.<sup>8</sup> The Lords, which represented hereditary nobility and aristocracy, and the Commons, which represented the ordinary populace, made up England's bicameral parliament. The majority of England's colonies in North America were impacted by its bicameral parliament, which had two houses. As a result, it was not unexpected that the American Founding Fathers chose a bicameral legislature, albeit a distinct model. The Senate, the second chamber of the U.S. Congress, was created to give the union's states subnational representation. Some nations also offer socio-cultural representation, such as linguistics, ethnicities, or indigenous groups, as well as a vocational model, such as workers and farmers, in addition to class and territory representation.

The composition and purpose of the upper house often balance one another. When the goal is to have a high level of democratic contestation, the second house is frequently elected by a direct

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<sup>7</sup> *Infra* note 25.

<sup>8</sup> *Infra* note 11.



general election. As contestation and checks decreased, the compositional process became more casual. As a result, some second houses are chosen through a limited or indirect election. Second houses, composed by appointment and frequently acting as a house of review and reflection, are at the other end of the spectrum.

Given the influence of the second house, the issue of democratic legitimacy is extremely important. The majority of second houses around the world are either appointed or indirectly elected, which raises this issue.<sup>9</sup> The power of the second house is primarily determined by the compositional process. The Lords of the U.K. is an example of an appointed house that is typically weak. While houses that are directly elected are more likely to be strong, like the current U.S. Senate. Between those two extremes, there is a variety of second houses with power that relatively matches the method of their composition.

It would be challenging to create a comprehensive theory for bicameralism in all of its varieties, given its complexity. Lijphardt is the strongest supporter of bicameralism as a political idea since he considers it one of the essential components of consensual democracy.<sup>10</sup> However, strong bicameralism is necessary for it to contribute to consensus democracy. According to Lijphart, strong bicameralism necessitates that the upper house is made up of different interests than the lower house ("incongruent" in his terms). The upper house must possess the significant authority to affect policies and oversee the lower house ("symmetrical.") Given its importance, it is crucial to examine bicameralism in Bahrain and Oman in light of Lijphart's theory.

Accordingly, this Chapter examines the bicameralism models of Bahrain and Oman compared to those of other bicameral legislatures. Thus, despite its criticism of the models used in Bahrain and Oman, this Chapter does not attempt to argue for or against bicameralism in general.

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<sup>9</sup> *Infra* note 12.

<sup>10</sup> *Infra* note 95.

Instead, it creates generalized images of bicameral legislatures worldwide to comprehend their essential characteristics and situate Bahrain and Oman's bicameralism in context. For that purpose, the background on the bicameral legislative system's inception is given in the first section of this Chapter. In a manner, learning about the origin of bicameralism lays the groundwork for further consideration of the traits that distinguish one bicameral legislature from another. The three sections that follow then look at the three critical aspects of a bicameral legislature: the purpose and representation, the composition process, and democratic legitimacy and power. The last two sections examine Lijphart's account of strong bicameralism and then look at bicameralism in Oman and Bahrain, using that account to show how distinct it is compared to other bicameral legislatures.

## **1.2 The emergences of the bicameral legislative structure.**

Today's bicameral legislature finds its origin in the U.K. bicameral Parliament, which appeared in the Fourteenth Century.<sup>11</sup> The democratic evolution of institutions in the U.K. started with an absolute monarchy. The need to increase legitimacy and facilitate tax imposition led the absolute monarchy to rely on feudal figures across the country and summon them irregularly. This arrangement eventually resulted in the Great Council.<sup>12</sup> The newly appeared council grew in power

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<sup>11</sup>Ancient Athens and Rome had bicameral-like councils which practiced dual deliberation. However, today's bicameral legislatures cannot be traced back to these ancient councils but rather to England's two-house parliament. England's two-chamber parliament is not an extension of the ancient councils. The contribution of the Athens and Rome era to the topic of bicameralism comes from two aspects: first, it provided the name Senate, which is given to the upper house in some countries; and second, Aristotle's theory on mixed government, which later was used to justify England's bicameral legislature. According to the theory of mixed government, the best form of government combines the rule of the one, the few, and the many: monarchy, aristocracy, and democracy, respectively. George Tsebelis & Jeannette Money, *Bicameralism* 17-18 (1<sup>st</sup> ed. 1997); Meg Russell, *the Contemporary House of Lords* 42 (1<sup>st</sup> ed. 2013); Donald Shell, *The History of Bicameralism*, *seven the Journal of Legislative Studies*. 5, 6 & 17 (2001).

<sup>12</sup> Tesebils and Money, *Supra note 11*, at 22.

vis-à-vis the monarch. In 1215, the Great Council was successful in making King John sign the Magna Carta, which required the king, among other things, to obtain the consent of the Great Council before imposing any tax.<sup>13</sup> The increased tax requests necessitated expanding the parliament's membership to include knights and burgesses.<sup>14</sup> Thus, parliament consisted of the nobility, who represented themselves as life and hereditary peers, and those who represented the people, i.e., knights and burgesses.<sup>15</sup> The representation of a different interest required the knights and burgesses to have separate meetings from the regular parliamentary sessions to deliberate to advance their interests.<sup>16</sup> These meetings occurred frequently but did not take a recognizable structure until 1377 when the Commons elected its speaker.<sup>17</sup> Hence, the two-chamber parliament emerged for the first time.

In short, the bicameral structure did not appear deliberately. Initially, the Commons was a weak institution compared to the Lords. The title of "upper house" had a literal meaning, and the Commons, the lower house, was just a petitioner to both the monarch and the Lords, who were the decision-makers. This led to a power struggle between the two houses that took several centuries.<sup>18</sup> However, the power of the Commons increased steadily, representing vast constituencies. The British Civil War (1642 – 1651) was a defining moment in the power struggle between the Commons and the Lords, after which the Commons came as a more vital institution.<sup>19</sup> The Commons gradually expanded its power and contained the Lords. The gradual containment over

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<sup>13</sup> Tesebils and Money, *Supra note 11*, at 22; Abhinay Muthoo & Kenneth Shepsle, *The Constitutional Choice of Bicameralism* 5825 MPRA Paper. 259, 252 (2007).

<sup>14</sup> The record shows that the word "parliament" was used for the first time during the 1230s to describe the Great Council. See Russell, *Supra note 11*, at 15.

<sup>15</sup> Russell, *Supra note 11*, at 15; Tesebils and Money, *Supra note 11*, 22-23.

<sup>16</sup> Russell, *Supra note 11*, at 15; Donald, *Supra note 11*, at 7.

<sup>17</sup> Donald, *Supra note 11*, at 7.

<sup>18</sup> *Id.*, at 15; Miguel Herrero de Miñón, *The Passing of Bicameralism*, 23 *The American Journal of Comparative Law*. 236, 244 (1975).

<sup>19</sup> Russell, *Supra note 11*, at 18.

the Lords involved restraining its power over financial bills as in 1671<sup>20</sup> and 1911<sup>21</sup>. It also involved controlling its composition, as in 1719<sup>22</sup> and 1999<sup>23</sup>. At the same time, it involved strengthening the Commons by enlarging its franchise, as in the Great Reform Act of 1832.<sup>24</sup>

Despite the power struggle in the British Parliament, the notion of a bicameral structure of the parliament was influential, mainly to the British colonial power during the eighteenth and nineteenth centuries. The British bicameral parliament influenced many bicameral legislatures around the world, such as the American colonies. As discussed in the next section, distinct models of bicameral legislatures appeared following the British bicameral legislature but differed in the purposes they served.

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<sup>20</sup> The Commons passed a law giving the House of Commons the privilege over financial bills and forbidding the Lords from making any changes to financial bills. *See Russell, Supra* note 11, at 19.

<sup>21</sup> At this point, the Lords had suspensory power over the money bill. However, after a disagreement with the Lords over the 1909 People Budget Bill, the Commons passed the Parliament Bill of 1911, which abolished the Lords' suspensory veto over money bills and authorized the Commons to pass financial bills without the Lords' consent. *See Bruce K. Murray, The Politics of the People's Budget*, 16 *The Historical Journal*. 555, 557 (1973).

<sup>22</sup> The Commons introduced the Peerage Bill in 1719 to cap the size of the House of Lords. Although this bill did not become law, the creation of new peers in the House of Lords became subject to the prime minister's advice to the king during this period. The House of Lords remained politically significant because it influenced the election in the lower chamber, and most of the ministers were chosen from the Lords. *Russell, Supra* note 11, at 21.

<sup>23</sup> The second half of the nineteenth century onwards witnessed a tendency toward appointing former political personnel, public figures, civil servants, and military leaders to the House of Lords. This tendency has gradually changed the nature of the House of Lords from one of aristocracies to one of expertise. The new character was strengthened by the 1999 House of Lords Act, which removed most of the hereditary peers from the house. The 1999 reforms and the practice of appointing people with significant achievements made the Lords akin to being a house of expertise. *Russell, Supra* note 11, at 32, 36 & 37.

<sup>24</sup> The Act was intended to decrease the influence of the Lords over the election of the members of the House of Commons by widening the franchise on the one hand and, on the other hand, abolishing some boroughs where members of the House of Commons had been chosen by a very few voters, mainly peers. *John A. Phillips & Charles Wetherell, The Great Reform Act of 1832 and the Political Modernization of England*, 100 *The American Historical Review*. 411, 411(1995); *Russell, Supra* note 11, at 22.

### 1.3 The Purpose and Basis of Representation on the Second House.

Based on the data of the Inter-Parliamentary Union, 40.93% of the world's parliament are bicameral, i.e. 79, bicameral legislatures.<sup>25</sup> Although understanding the rationale for adopting a bicameral legislature is culturally specific, there is some commonality in the purpose of bicameralism.<sup>26</sup> Creating a second house often aims to provide an additional layer of checks over and inputs in the legislative decision-making process by enabling a distinct form of representation in the second house.<sup>27</sup> Nevertheless, adopting bicameralism and determining its characteristics is not a mere outcome of theoretical contemplation.<sup>28</sup> It is also a product of political reality, shaped by the bargaining power and compromises of the players involved.<sup>29</sup> In England, the bicameral structure of the parliament is a result of a social division.<sup>30</sup> The Lords' Council served bulwark to guard the aristocracy against the egalitarian tendencies of the Commons.<sup>31</sup> In other words, the role of the lords was to contest and check the power of the Commons. However, the Lords lost their power steadily to the Commons because of their lack of democratic legitimacy. The steadily falling of the Lords as an institution made John Stuart Mills downplay the role of the second house in the representative government.<sup>32</sup> In his view, the only good argument for a second house might be

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<sup>25</sup>The Inter-Parliamentary Union date on parliaments' structure, [https://data.ipu.org/compare?field=country%3A%3Afield\\_structure\\_of\\_parliament#map](https://data.ipu.org/compare?field=country%3A%3Afield_structure_of_parliament#map) (last visited February 1, 2022). The current figure is 78 following the collapse of Afghanistan's institutions post the withdrawal of the American troops in 2021.

<sup>26</sup> Russell, *Supra note 11*, at 52-53.

<sup>27</sup> Bulmer, *Supra note 3*, at 9.

<sup>28</sup> Kiren Chaudhry, *The Price of Wealth Economics and Institutions in the Middle East* 12 (1997).

<sup>29</sup> *Id.*

<sup>30</sup> Miñón, *Supra note 18*, at 236.

<sup>31</sup> John Coakley, *the Strange Revival of Bicameralism*, 20 *the Journal of Legislative Studies*. 542, 246 (2014); Muthoo & Shepsle, *Supra note 13*, at 253; Miñón, *Supra note 18*, at 237.

<sup>32</sup> John Stuart Mill, *Consideration on Representative Government* 352 (1993).

related to the concentration of power, which, under certain circumstances, might lead to a despotic state. Hence, having another contested house might reduce the danger of undivided authority.<sup>33</sup>

As discussed further below, in 1787, the U.S. Constitution came up with an advanced notion of the bicameral legislature, an upper house based on territorial representation and sovereign states in the context of a federal system.<sup>34</sup> The mandate of the second house is to provide strong checks and balances to the lower house, based on popular representation, so that no house dominates the other.<sup>35</sup> Thus, all legislative outcomes would result from the consent of the majority in both houses.

Generally speaking, the bicameral arrangement of the legislature could promote either one or both of the following: democratic contestation and political inclusivity.

The democratic contestation:

Democratic contestation to the power of the second house is a form of checks and balances within the legislature, which requires a symmetrically powerful second house. The political factor is often the main reason for adopting a bicameral legislature with equal representation in the second house. It is, as Mill suggested, dividing power between different institutions to avoid despotism.<sup>36</sup> Some literature suggests that abolishing the second house in Peru and Venezuela in 1992 and 1999, respectively, was part of the executive's scheme to consolidate power.<sup>37</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> Muthoo & Shepsle, *Supra* note 13, at 252.

<sup>35</sup> Alexander Hamilton; James Madison & John Jay, the Federalist Papers 322 (2001).

<sup>36</sup> Mill, *Supra* note 32, at 352.

<sup>37</sup> The goal given to the public for abolishing the second house is simplifying the legislative process and cost reduction, which could be plausible if not for the political context under which the abolition occurred. See Muthoo & Shepsle, *Supra* note 13, at 56.

The prominent example of democratic contestation second house existed within the federal system, such as in the United States of America, Australia, and Brazil.<sup>38</sup> In many of these countries, the sub-national units are equally represented in the second house regardless of the population of each unit. Moreover, many federal states tend to be geographically expansive with large populations, which could increase the need to broaden the representation.<sup>39</sup> The strong bicameralism in the federal system finds its roots in federal-state-building. The sovereign units that create the federal states often tend to retain part of their sovereignty through an equal territorial representation in the upper house of the parliament. Thus, the bicameral parliament in the federal state accommodates two principles, the independence of state units and the federal nation's sovereignty.<sup>40</sup>

A typical example of a federal bicameral legislature is the Congress of the United States. The Founding Fathers had two different perceptions regarding the new union. Some envisioned a union under which each state retained much of its sovereignty. Some envisioned a unified nation under which the people of the states became citizens of one new government. These two concepts have contradictory implications when making law. The independence of states' units' principle means the states, not the inhabitants, will decide what the law of the union is, whereas the principle of sovereignty of the nation means that the inhabitants of the union will determine the law of the union. Here came the Great Compromise.<sup>41</sup>

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<sup>38</sup> Other federal countries with bicameral legislatures include Argentina, Austria, Belgium, Bosnia and Herzegovina, Canada, Germany, India, Malaysia, Mexico, Nepal, Nigeria, Pakistan, Russia, and Switzerland. Drexhage, *Supra* note 3, at 6; Coakley, *Supra* note 31, at.550.

<sup>39</sup> Coakley, *Supra* note 31, at.550; Drexhage, *Supra* note 3, at 9.

<sup>40</sup> Henry Reeve"trans.", *Democracy in America* 132 (2004).

<sup>41</sup> During the American Revolution (1765-1783), the colonies felt the importance of having a unified government under which states could deliberate on various issues, most importantly, the war efforts against Brittan. To this end, the Articles of Confederation were first debated and then ratified in 1781. The Articles established a one-chamber Congress without an executive or a judiciary. Moreover, the Confederate Congress had no power to enforce the law, nor did it have the ability to create taxes or finance war. The

During the Philadelphia Convention of 1787, representatives from both Virginia and North Carolina proposed a two-house legislature, with proportional representation in both houses ("Virginia Plan.")<sup>42</sup> The premise of this proposal was that the American people were familiar with bicameral chambers because all thirteen states, except Pennsylvania, had bicameral legislatures.<sup>43</sup> Moreover, this proposal addressed the defect of the Confederate Congress, i.e., that it did not represent the people directly.<sup>44</sup> The less populated states, like Delaware, opposed this plan because they saw it as forfeiting their sovereignty and power entirely and permanently for the benefit of the bigger states.<sup>45</sup> The delegation of New Jersey submitted an opposing plan to the Convention, hence known as the "New Jersey Plan." This New Jersey Plan proposed to maintain the unicameral legislature of the Articles, with equal representation for all states, and suggested increasing the power of this unicameral legislature by introducing some amendments to the Articles. New Jersey Plan was rejected because it required unanimous approval by the states.<sup>46</sup> The Convention then debated the Virginia Plan.<sup>47</sup> The proportional representation in both houses was a deal-breaker for the smaller states, which led the delegates from Delaware to threaten to withdraw from the Convention on behalf of smaller states.<sup>48</sup> The delegate from Connecticut, Roger Sherman,

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states retained all the authorities, each with only one vote, determined by its state legislature. Given their experience with British rule and their desire to be independent, the colonies did not want a strong, unified government. However, it was clear that the Confederate Congress was not adequate, and new arrangements were needed if these colonies wanted to achieve collective prosperity. The goal of the Philadelphia Convention in 1787 was to revise the Articles of Confederation. During the Convention, the attendees deliberated in secrecy to form a new government rather than modify the Articles. The Articles of Confederation, <https://www.ourdocuments.gov/> (last visited January 16, 2020); Jack N. Rakove, *The Great Compromise: Ideas, Interests, and the Politics of Constitution-Making*, 44 *The William and Mary Quarterly* 424, 428 (1987); Reeve, *Supra* note 40, at 125-127.

<sup>42</sup> Charles W. Shull, *American Experience with Unicameral Legislatures* 3 (December 1937).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Rakove, *Supra* note 41, at 428; Reeve, *Supra* note 40, at 132-133.

<sup>46</sup> Rakove, *Supra* note 41, at 438.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*



proposed a third plan, later known as the "Connecticut Compromise" or "Great Compromise."<sup>49</sup> This proposal addressed the objections to the previous two plans. It suggested a two-house legislature in which the first house consisted of proportional representation and the other house consisted of an equal representation by each state. This plan won the Convention.<sup>50</sup>

#### Political inclusiveness:

This type of second house tends to accommodate interests underrepresented in the lower house, widening the representation base in legislative decision-making.<sup>51</sup> This inclusiveness could add layers of review and reflection to ensure better legislative outcomes.<sup>52</sup> A prominent example of this type of representation is vocational-based and socio-cultural representation.<sup>53</sup>

In vocational representation, the second house primarily comprises various vocational groups like industrial, commercial, educational, and agricultural.<sup>54</sup> This representation is built on the pivotal role these sectors play in any country and the significance of their inputs in the policymaking process.<sup>55</sup> The prime example of this type of representation is the Senate of Ireland.<sup>56</sup> Forty-three members out of eighty are elected from five vocational panels, i.e., administrative, agriculture, culture and education, industrial and commercial, and labor.<sup>57</sup> A similar arrangement

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<sup>49</sup> Shull, *Supra* note 42, at 4; Rakove, *Supra* note 41, at 427.

<sup>50</sup> Shull, *Supra* note 42, at 4

<sup>51</sup> Russell, *Supra* note 11, at 44-45.

<sup>52</sup> Tsebelis & Money, *Supra* note 11, at 15-16.

<sup>53</sup> Bulmer, *Supra* note 3, at 12.

<sup>54</sup> *Id.*

<sup>55</sup> Russell, *Supra* note 11, at 45.

<sup>56</sup> Constitution of the Republic of Ireland 1937, amended 2012, art.18.

<sup>57</sup> *Id.*

applied in Morocco's House of Councilors, where two-fifths of its members represent vocational groups.<sup>58</sup> The National Council of Slovenia is also applying partial vocational representation.<sup>59</sup>

The socio-cultural representation accommodates linguistic, ethnic, religious, or indigenous minorities.<sup>60</sup> This type of representation aims to embrace the diversity within the country and ensure some level of participation of various cultural and ethnic groups in policymaking.<sup>61</sup> The Senate of Belgium's composition is designed to embrace the linguistic diversities in the country's federal units.<sup>62</sup> The Nepal National Assembly, the upper house, assigned strict quotas of its seats to women and some minority groups in the country.<sup>63</sup>

#### **1.4 The Methods of Composing the Second House.**

The method of composing the second house largely depends on the purpose.<sup>64</sup> The second house that intends to provide democratic contestation tends to be established through a direct general election.<sup>65</sup> In the modern age, it would be challenging to provide meaningful democratic contestation over the power of the popularly elected second house by a second house that lacks democratic legitimacy.<sup>66</sup> The prominent examples of the directly elected second house are the U.S. Senate and the Japanese House of Councilors. The U.S. Senate was composed of indirectly elected

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<sup>58</sup> Constitution of Kingdom of Morocco, 2011, art.63.

<sup>59</sup> Constitution of Slovenia of 1991, amended 2013, art.96.

<sup>60</sup> Drexhage, *Supra* note 3, at 8 & 11.

<sup>61</sup> Russell, *Supra* note 11, at 45; Bulmer, *Supra* note 3, at 12.

<sup>62</sup> Constitution of the Kingdom of Belgium 1831, amends 2014, art.67.

<sup>63</sup> Constitution of the Federal Democratic Republic of Nepal, 2015, art.86.

<sup>64</sup> Bulmer, *Supra* note 3, at 11.

<sup>65</sup> Tsebelis & Money, *Supra* note 11, at 32-33; Russell, *Supra* note 11, at 48.

<sup>66</sup> Meg Russell, *Rethinking Bicameral Strength: A Three-Dimensional Approach*, 19 the Journal of Legislative Studies. 370, 371 (2013).

members by states' legislatures until 1992, when the Seventeenth Amendment adopted direct election by states' population.<sup>67</sup> Along with the co-equal legislative power with the House of Representatives, the Senate has some exclusive powers, such as trying impeachment, ratifying international treaties, and approving appointments.<sup>68</sup> In this type of bicameral legislature, each house cannot unilaterally override the decision of the other house.<sup>69</sup> Thus, the legislative outcome requires the agreement of most of the members in both houses. On the contrary, in the bicameral legislature, where the second house intends to provide political inclusiveness mainly, the second house tends to be composed through appointment or limited-electoral or indirect election.<sup>70</sup> Although the second house in this type of bicameralism provides a degree of review and reflection, the power allocation often ensures the dominance of the lower house. The indirect election of the second house is applied by the Senate of France and the Senate of Belgium.<sup>71</sup> In both countries, the subnational elected bodies appoint the members of the national Senate. The limited constituency election is often applied in second houses with vocational representation like the Slovenian National Council. The U.K. Lords and the Canadian Senate are prominent examples of appointed second houses.<sup>72</sup>

Besides composing the second house, other elements distinguish the second house vis-à-vis the lower house, such as the electoral system, longer and staggered terms, and age requirements.

Some countries, like Australia, the Czech Republic, and Poland, apply a majoritarian

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<sup>67</sup> U.S. CONST. amend. XVII; Constitution of Japan, 1946, art.46.

<sup>68</sup> U.S. CONST. art. I, § 3.

<sup>69</sup> Mariana Llanos & Detlef Nolte, *Bicameralism in the Americas: around the extremes of symmetry and incongruence*, 9 Journal of Legislative Studies. 54, 57 (2003).

<sup>70</sup> *Id.*

<sup>71</sup> Constitution of the Republic of France 1958, amended 2008, art.24; Constitution of the kingdom of Belgium 1831, amended 2014, art.67.

<sup>72</sup> David C. Docherty, the Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About, 27 Journal of Legislative Studies. 27, 27 (2002).

electoral system in the lower house and proportional electoral systems in the upper house. The majoritarian system often results in a one-party system, whereas proportional representation allows more political parties to gain seats in the house.<sup>73</sup>

The minimum age requirement to serve in the upper house is often higher compared with the lower house. The higher age requirement is more of a symbolic gesture that shows the upper house as a venue of reflection and sober thought.<sup>74</sup> Furthermore, the lower house is always elected at one time, whereas some of the second houses are elected in halves, like in Australia and Chile, or thirds, like in the U.S. and Argentina.<sup>75</sup> The staggered terms in some of the upper houses aim to retain some form of continuity and stability in the legislative process, as opposed to the relatively continuous change in the lower house.<sup>76</sup>

### **1.5 The Democratic Legitimacy and Power of the Second House.**

Democratic legitimacy means, in this context, whether the second house is generally elected on a universal, equal franchise.<sup>77</sup> The relevance of this point comes from the fact that only 35% of the upper houses are directly elected.<sup>78</sup> The other upper houses are either partially or indirectly elected or appointed. Thus, contesting the decisions of the lower elected houses by indirectly elected or appointed upper houses raises legitimacy issues.<sup>79</sup> As discussed in the

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<sup>73</sup> Russell, *Supra* note 11, at 48.

<sup>74</sup> Llanos & Nolte, *Supra* note 69, at 61.

<sup>75</sup> Russell, *Supra* note 11, at 48.

<sup>76</sup> In Federalist No.61, Madison suggested that the Senate has less propensity to "yield to the impulse of sudden and violent passions..." Hamilton; Madison & Jay, *Supra* note 26, at 322; Shell, *Supra* note 2, at 11; Tesebils and Money, *Supra* note 11, at 37.

<sup>77</sup> Russel, *Supra* note 66, at 374-375.

<sup>78</sup> Drexhage, *Supra* note 3, at 18; Russell, *Supra* note 11, at 47-48.

<sup>79</sup> Russel, *Supra* note 66, at 374

previous section, these concerns are, to a certain extent, mitigated by limiting the upper house's power. In other words, the legitimacy of the second house, in most cases, dictates the limits of its power vis-à-vis the lower house.<sup>80</sup> The power allocation ensures some dominance of the lower houses, where the upper house is appointed or indirectly or partially elected.

The power of second houses falls along the spectrum from being robust, like the U.S. Senate and Swiss Sta"nderat's, to a weak house, like the British Lords or the Polish or Irish Senates.<sup>81</sup> Democratic legitimacy is a complex issue that may extend beyond simple elections, as in the case of the U.S. Senate. Despite being directly elected after the Seventeenth Amendment, there is still controversy over the composition of the Senate vis-à-vis the composition and power. The equal representation of the states in the Senate, irrespective of the population, renders the inhabitants of smaller states more powerful than states with a larger population.<sup>82</sup> The U.S. Senate's composition issue is exacerbated by the filibuster, which "includes any tactics aimed at blocking a measure by preventing it from coming to a vote."<sup>83</sup>

A lack of democratic legitimacy frequently impacts the substantive and procedural authority of the upper houses.<sup>84</sup> Some upper houses' power is limited over constitutional matters,

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<sup>80</sup> Bulmer, *Supra* note 3, at 10.

<sup>81</sup> Tesebils and Money, *Supra* note 11, at 32-33.

<sup>82</sup> Tocqueville noted that American bicameralism resulted from joining "by force two systems theoretically irreconcilable." These two systems or principles were the independence of states and the nation's sovereignty. He highlighted that during his visit, New York had Forty representatives in the house, whereas Delaware had only one representative. Considering that the two houses had symmetrical powers and that both states were represented equally in the Senate, the result was that the inhabitants of Delaware had more power when compared to the inhabitants of New York. The numbers today are different, but the gap is still significant. New York has 27 Representatives in the house, whereas Delaware has 1. The point is that the gap between the least and most populist states has kept increasing since the ratification of the Constitution. Some states have one representative only, e.g., Delaware, Montana, Alaska, North Dakota & South Dakota. On the other hand, there are populace states like California, Texas, and N.Y., with 53, 36 & 27 representatives, respectively. Alexis De Tocqueville, *Democracy in America: The Complete and Unabridged Volumes I and II* (2000). The U.S. House of Representatives, <https://www.house.gov/representatives> (last visited October 4, 2020); Reeve, *Supra* note 40, at 132.

<sup>83</sup> Valerie Heitshusen & Richard S. Beth, *Filibusters and Cloture in the Senate 1* (2017).

<sup>84</sup> Docherty, *Supra* note 72, at 27; Russel, *Supra* note 66, at 385.

like the Belgian Senate and the Austrian Federal Council.<sup>85</sup> Like the German Bundesrat, other upper houses have suspensory veto power over ordinary legislation while maintaining absolute veto power over constitutional bills.<sup>86</sup> Furthermore, like the Lords, many upper houses have no power over the budget and financial bill.<sup>87</sup>

Bicameral legislatures often apply one or mixed mechanisms of dispute resolution.<sup>88</sup> Those mechanisms include the navette system, where bills shuttle forth and back between the two houses until agreeing on the final draft.<sup>89</sup> It also includes other mechanisms like conference committees and joint sessions.<sup>90</sup> In many legislatures where the upper house is appointed or indirectly or partially elected, the dispute resolution mechanisms are designed to give some dominance to the lower house.<sup>91</sup> In French Parliament, for example, applies the shuttle and committee, but in all cases, the lower house has the final decision.<sup>92</sup> Other parliaments, like in Japan and Germany, apply similar mechanisms, and if the two houses did not reach an agreement, the lower house could pass its decision by two-thirds votes.<sup>93</sup> In some other legislatures, the number of members of each house is decisive. Generally, the second house's members are mostly lower than those in the lower house, with few exceptions, including the Lords, Kazakhstan, and Burkina Faso pre-2013 reforms.<sup>94</sup> Thus, many lower houses could play a deceptive role in the legislatures that apply joint sessions as a dispute resolution mechanism, like the Moroccan parliament.

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<sup>85</sup> Constitution of the Kingdom of Belgium 1831, amends 2014, art.75 & 77; Constitution of the Commonwealth of Australia 1920, amended 2009, art.42.

<sup>86</sup> Constitution, the Federal Republic of Germany 1949, amended 2014, art.78 & 79.

<sup>87</sup> Tesebils and Money, *Supra* note 11, at 27.

<sup>88</sup> Llanos & Nolte, *Supra* note 69, at 58.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Bulmer, *Supra* note 3, at 10.

<sup>92</sup> Drexhage, *Supra* note 3, at 24.

<sup>93</sup> Bulmer, *Supra* note 3, at 12.

<sup>94</sup> *Id.*, at 18.

In short, the democratic legitimacy of the second house is pivotal in determining the power of the house. It is also fundamental in understanding the role of bicameralism in the first place and a fundamental pillar in categorizing different bicameral legislatures around the world.

Given their complexity, it would be challenging to create a comprehensive theory for bicameralism in all of its varieties. The most robust defender of bicameralism as a political construct is Lijphardt, discussed in the next section.

### **1.6 Lijphart Account on Strong Bicameralism.**

Lijphart's interest in bicameralism derived from his advocacy for consensus democracy instead of majoritarian democracy.<sup>95</sup> Consensus and majoritarian democracies differ fundamentally in how inclusive their legislative decision-making processes are. In a consensus democracy, various viewpoints are considered in the decision-making process. In contrast, the majoritarian system's design allows for ignoring minority ideas and concentrates legislative decision-making on vote-winning majorities. Lijphart found that bicameralism is one of the features associated with consensus democracy.<sup>96</sup> Whereas unicameralism and weak bicameralism are often associated with majoritarian democracies. Bicameralism's contribution to consensus democracy is contingent on being strong.<sup>97</sup> In Lijphart's account, strong bicameralism requires the upper house to be elected on a different basis from the lower house ("incongruent" in his terms), and the upper house has to have actual power vis-a-vis the lower house ("symmetrical.")<sup>98</sup>

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<sup>95</sup> Arend Lijphart, *Patterns of Democracy* ix (2ed ed. 2012).

<sup>96</sup> *Id.*, at 3.

<sup>97</sup> *Id.*, at 192.

<sup>98</sup> *Id.*, at 193.

The rationale for the first feature is self-evident. If the second house has no power, it would be redundant.<sup>99</sup> The second house's power does not have to be as precise as the lower house, but it has to be powerful enough to influence the lower house's policymaking. For the second feature, the second house has to be composed on a different basis than the lower house, allowing representation of different interests.<sup>100</sup> Bicameralism, as such, would allow an extra layer of the check and balance principle. The first layer involves the three main branches of government: executive, legislative and judicial.<sup>101</sup> The second occurs within the legislative branch because the legislature is the center of the government.<sup>102</sup>

Literature highlights the upsurge in adopting bicameral legislature by unitary states from 1996 until 2014. Nineteen adopted bicameral legislatures in the Middle East and Africa, four in Asia, five in Europe, and the former USSR states.<sup>103</sup> The issue is that most of these states where the bicameral legislature is adopted lack well-established liberal democratic principles. Nevertheless, no one could automatically conclude that the bicameral structure was adopted to boost liberal democratic principles, in particular in favor of consensus democracy, or thwart them, as Oman and Bahrain had done. It all depends on the contribution of the bicameral legislature to the political process and its relations to democratization.<sup>104</sup>

In light of an earlier discussion of Lijphart's account of bicameralism and the alleged harmony between the purpose, the representation, and the power of the second chamber, the following section examines Bahrain and Oman bicameralism.

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<sup>99</sup> Coakley, *Supra* note 31, at.562.

<sup>100</sup> Lijphart, *Supra* note 95, at.194.

<sup>101</sup> Tesebils and Money, *Supra* note 11, at 18-19.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*, at 549.

<sup>104</sup> *Id.*, at 558.



## 1.7 Bicameral Legislatures of Bahrain and Oman.

Bahrain and Oman's bicameral legislature lacks harmony with most bicameral legislatures as it concerns the purpose, composition, and power. In both countries, the constitutional choice of bicameralism was not popularly demanded because the constitutions were promulgated unilaterally by the authority without public participation.<sup>105</sup> Both countries' constitutions established bicameral legislatures with a strong upper house that was not elected. Even though Bahrain and Oman have a strong second house, Lijphart's description of strong bicameralism is not met by their form of bicameralism. A strong second house, despite having no democratic legitimacy, weakens bicameralism because it would constrain rather than expand consensus democracy.<sup>106</sup>

Bahrain's bicameral legislature was adopted in the 2002 Constitution.<sup>107</sup> The monarch has absolute authority over the appointments in the upper house, the Shura Council.<sup>108</sup> Moreover, the monarch has the discretion to decide the term that those appointees serve in the council. In other words, it is not a life appointment, unlike the Lords. It could mitigate the monarch's influence over the council's members if it were a life appointment. Being a temporary appointee renders the Shura Council members, more or less, government employees. Nevertheless, the Shura Council regulation portrays the council as an expert house, similar to the Lords' post-1999 Reforms. However, unlike the Lords, the Shura Council is powerful despite the lack of democratic legitimacy.

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<sup>105</sup> Wehrey, *supra* note 2, at 119.; Marc Valeri, *Liberalization from Above: Political Reforms and Sultanism in Oman*, in *Constitutional Reform and Political Participation in the Gulf* 187, 190 (Abdulhadi Khalaf & Giacomo Luciani ed., 2006).

<sup>106</sup> Coakley, *Supra* note 31, at.543 & 549.

<sup>107</sup> Constitution of Kingdom of Bahrain 1973, amends 2002, art.51.

<sup>108</sup> *Id.*, art.52.

The Shura Council has no control over questioning ministers or voting of no-confidence against one minister. However, the Shura has dominance over the Deputies vis-à-vis the vote of no cooperation with the prime minister. Although the Deputies can only initiate a vote of no cooperation with the prime minister, the motion would not pass without the two-thirds votes of both houses. Here, the number of Shura members plays out because the Shura always has a similar number as the Deputies. This means that the non-cooperation vote is dead because the Shura would vote on such a deceptive issue as one block. In other words, the Deputies would not achieve a two-thirds vote, even if all the Deputies voted for the no-confidence for the sake of argument. Thus, the power distribution between the two houses ensures that the monarch consolidates power by empowering the upper house.

Furthermore, the Shura has similar authority over the lawmaking process as the Deputies, including initiating all kinds of bills, including constitutional amendments. In case of disagreement between the two houses over a bill, the two houses would have a joint session. Furthermore, voting in the joint session could instead give an advantage to the upper house, where its members are more likely to vote in the same manner. The speaker of the Shura Council presided over the joint session, which gave symbolic dominance to the appointed upper house.

**Table 1 Bahrain's National Assembly's Power under the 2002 Constitution**

	<b>The Shura Council (the Upper House)</b>	<b>The House of Deputies (the Lower House)</b>
<b>Questioning</b>	No	Yes (Art.65)
<b>A no-confidence vote in a minister</b>	No	Yes (Art.66)
<b>No-cooperation vote with the PM</b>	Yes (Art.67) Initiated only in the Deputies by two-thirds votes, but the final decision shall be taken by the two-thirds votes of both chambers	
<b>Forming Commissions of inquiry</b>	NO	Yes (Art.69)
<b>Legislating And Initiating bills</b>	Yes (Art.70 & 92)	Yes (Art.70 & 92)
<b>Constitutional Amendment</b>	Yes (Art.92)	Yes (Art.92)

Oman's bicameral legislature holds less power compared to its Bahraini counterpart.<sup>109</sup> Oman's 1996 Constitution adopted Oman's bicameral legislature. Under the 1996 Constitution, the two-house legislature, Oman Council, had a consultative authority but no actual legislative power. In October 2011, under the influence of the 2011 uprisings, the late Sultan issued the Royal Decree No.99/2011, formally granting the Oman Council limited legislative power. Although this was a step ahead, it was on a small scale. Like its Bahrain counterpart, Oman's upper house, the State Council, is fully appointed. Although the law of the State Council portrays it as a house of experts, the Sultan has absolute discretionary power over who can serve as a member and for how long. As is the case with Bahrain, this fact made the members of the State Council, more or less, employees of the government instead of a member of the legislature. Thus, it is more likely that those members would follow the government leaders in voting, especially on controversial bills.

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<sup>109</sup> Constitution of Sultanate of Oman, 1996, art.58.

Each house has the power to approve, reject or amend the bill. Similar to the Bahraini legislature, disagreement between the two houses is dissolved in a joint session called and presided over by the chair of the State Council, the upper house. This mechanism gave a symbolic authority to the upper house. Moreover, the number of upper house members is similar to their counterparts in the lower house, the Shura Council. Article 58.43 gives the Shura Council power of interpellation, but it is limited to the service ministers. It is worth noting that in the first legislative term 1997 -2003, the number of the State Council was half of the Shura Council, under Art.11.a of Royal Decree No., 86/1996.<sup>110</sup> No matter what the findings of an interpellation are, the only action the council can take is to submit those findings to the Sultan. The Sultan, in his turn, is not obliged to take any further action. Unlike Bahrain's 2002 Constitution, Oman's 2011 Amendment does not include provisions for a no-confidence vote, no cooperation vote, and passing a constitutional amendment.

**Table 2 Oman Council's Power under the 1996 Constituion, Amend 2011.**

	<b>The State Council (the Upper House)</b>	<b>The Shura Council (the Lower House)</b>
<b>Questioning</b>	No	Yes (Art. 58.43), but limited to the service ministers
<b>A no-confidence vote in a minister</b>	No	
<b>No-cooperation vote with the PM</b>	No	
<b>Forming Commissions of inquiry</b>	NO	No
<b>Legislating And Initiating bills</b>	Yes	Yes
<b>Constitutional Amendment</b>	No	No

<sup>110</sup> Said Al-Julandi, Oman Bicameral legislature 65-66 (2020) (Unpublished master dissertation, Sultan Qaboos University) (on file with Sultan Qaboos University Library).

It is worth noting that the Hand Book of the National Legislatures granted Bahrain and Oman a Parliamentary Power Index (PPI) score of (.19) and (.16), respectively.<sup>111</sup> The Handbook was released before Oman's 2011 constitutional revision. According to the formula used to determine the PPI Score, Oman's legislature would most likely have a better score but unquestionably a lower PPI than Bahrain's, considering the slight differential in power.

### **1.8 Conclusion.**

This Chapter demonstrated how Bahrain and Oman's bicameralism differs from other bicameral legislatures. The distinction between the Bahrain and Oman model of bicameralism derived from the lack of harmony between the purpose, the composition, and the power of the second house. Most bicameral legislatures established their second house to add a layer of democratic scrutiny or widen the base of legislative decision-making by accommodating under-represented interests. Thus, the second house is often composed in a way that matches the purpose of its establishment. The purpose and composition method often dictate the second house's power. The bicameral legislature in Bahrain and Oman is not popularly demanded. The constitutions under which bicameralism was adopted were promulgated unilaterally by the government, without any public participation. Besides, there was no apparent underlying reason to adopt a bicameral system, like being a federal state. Both Countries are unitary states with a small populations and limited geography. Furthermore, the second house is entirely appointed by

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<sup>111</sup> The PPI score is calculated by summing the number of powers the national legislature possesses and dividing by thirty-two. The PPI ranges from zero (least powerful) to one (most powerful). M. Steven Fish and Matthew Kroenig, *The Handbook of National Legislatures: A Global Survey*, (2009).

the monarch. In other words, the second house lacks democratic legitimacy. The broad discretionary power of the monarch over the appointment of the upper house members and their term render them more employees than parliamentarians. Thus, they are subject to the government's directions vis-à-vis their legislative work. All of this promotes authoritarianism.

The effect could be limited if not for the third feature, the second house's power. The power of upper houses often correlates with the method of composition. The directly elected upper houses tend to be powerful, whereas the appointed or indirectly elected upper houses tend to have limited power vis-à-vis the lower house. It would be a legitimacy issue if an appointed house challenged the decision of the popularly elected house. Bahrain and Oman's upper house deviated from other houses by being very powerful despite being fully appointed by the monarch. The legislative power of the upper house is co-equal to the second house. Although Bahrain and Oman's second house is powerful, their bicameralism is weak. Contrary to Lijphart's account of strong bicameralism, Bahrain and Oman's bicameralism, at its face value, is about limiting democracy instead of achieving consensus democracy.

## **2.0 Chapter Two: Adopting the bicameral legislative system in Bahrain and Oman.**

### **2.1 Introduction:**

A new constitution has to be adopted by both governments for several reasons. Bahrain's and Oman's governments alone decided on the bicameral layout of their respective legislatures. However, this choice resulted from the political reality in each country. In the case of Oman, the bicameral legislature with an appointed upper house was the government's compromise to reinstate or initiate a Constitution. In Bahrain, the compromise was more evident and impending than in Oman. As a result, those governments created constitutions that gave them considerable influence over the legislative branch.

In the past 70 years, there have been two constitutions for Bahrain and Oman. Bahrain's first constitution was adopted in 1973, and its second was adopted in 2002. The legislative branch was unicameral under the 1973 Constitution. The 2002 Constitution established a bicameral legislature. At the same time, Oman's constitutions of 1996 and 2021 included a bicameral legislature. Except for Bahrain's 1973 Constitution, three constitutions were enacted unilaterally and without following a democratically recognized process. The competent authority behind closed doors wrote the three constitutions, and unlike, for example, the US Constitution, they were not even put to the vote by the public.

The powerful Bahraini national movement of the twentieth century impacted Bahrain's Constitution of 1973. This national movement manifested itself in four significant political events, all demanding the establishment of a representative council. These events occurred in 1923, 1938, 1953, and 1971. The Bahraini government was compelled by the national movement's demand and

other factors to call for elections to establish the Committee in charge of drafting the constitution. The public was then given a chance to vote on the constitution draft. Like Kuwait's 1962 Constitution, the 1973 Constitution's Committee envisioned a unicameral legislature. Because the government dissolved it in 1975, Bahrain's first legislature under the new constitution only lasted briefly. In 1992, the authority created a fully appointed council to placate the public and replace the absent legislative branch. Bahrain nevertheless slid into significant upheavals from 1994 to 1999.

The uprisings in the 1990s had a terrible impact on Bahrain's political and economic prospects. The government was required to implement a new political plan to stabilize the nation. The chance presented itself upon the Amir's demise in 1999. The National Action Charter was introduced by the new Amir, Hamad, as a guide for upcoming political reforms. The 2002 Constitution was unilaterally enacted by the authority in 2002 and adopted a bicameral legislature with a strong and wholly appointed second house. The Bahraini government was under intense public pressure to permit genuine political involvement, but it was powerful enough to dictate the terms independently. Because of this, the government introduced a bicameral legislature with an entirely appointed upper house.

In comparison, Oman's divisive politics in the 20th century were archaic because they were ingrained in the nation's tribal structure. Oman was ruled by the Sultanate and the Imamate, two rival governments, until the 1950s of the 20th century. The regimes fought three wars in 1869, 1913, and 1955. Ultimately, the Sultanate regime prevailed and created a single national government. The Dhofar Revolution, on the other hand, broke out in the northern region of Oman in the 1960s.



The Sultan's son organized a coup d'état against his father in 1970 with British assistance, and as a result, he became the new Sultan. The Sultan was able to put down the Revolution because of his military experience, diplomatic assistance, and oil wealth. Given the Marxist roots of the Revolution that was thwarted, this victory raised the new Sultan's reputation. The government described the triumph as a Muslim leader defeating the Marxist infidels. As a result, the Sultan ascended to total power thanks to increased oil rent. Thus, there was no justification for establishing a constitution or a truly representative body.

The primary motivation for the 1996 Constitution's adoption was to improve the nation's reputation for the economic vision of Oman 2020. In other words, because there was no public uproar, promulgating the constitution was not a compromise in the classic sense. As a result, the government ensured its control over the legislature in two ways when it drafted the constitution. First, the legislature received no significant powers from the constitution. Second, a fully appointed upper house shares the limited consultative authority granted to the legislature.

Although the bicameral system established by the 1996 Constitution lacks actual legislative authority, it may be seen as a reinforcement of the government's power. This structure, tested in the 2011 uprising, guaranteed the government's power even if it had to transfer power to the people. For the first time, the government gave the legislature some real legislative authority in 2011 due to public demand. The government saw the bicameral system, which has a strong and appointed upper house, as a risk-control device that helped limit the effects of the new authority granted to the legislature by the 2011 Constitutional Amendment.

There are two parts to this chapter. Bahrain is covered in the first part, broken down into two main subsections. The first subsection examines Bahrain's 1973 Constitution's adoption of a unicameral legislature. In light of this, it explores the rise to power of Bahrain's Khalifa royal

family. It talked about the four major political controversies that occurred in 1923, 1938, 1953, and 1971 and how they influenced the adoption of the 1973 Constitution and shaped its features. The second subsection explores the fallout from the 1973 Constitution's suspension and the 1975 dissolution of the legislature. This section discusses the significant occasions that led to the 2002 Constitution's adoption, such as the 1992 Shura Council, the 1990s uprisings, and the 2001 New Amir's National Action Charter. The introduction of a bicameral legislature with an appointed upper house is then explored in the context of the 2002 Constitution.

The second part analyzes Oman's 1996 Constitution's adoption of a bicameral legislature with an appointed upper house. It discusses the changes in power dynamics since the Busaids, the Omani royal family, seized power to achieve that goal. It focuses on several topics, including the struggle for control in Oman between the Sultanate and the Imamate. Three military battles occurred between the two regimes in 1869, 1913, and 1955. Additionally, it talks about the 1960s Dhofar Revolution in Oman and how it relates to the 1970 palace coup d'état, which brought Qaboos into power. Finally, this section analyzes the power structure in Oman under Qaboos and the circumstances that led to the 1996 Constitution and its bicameral legislature.

## 2.2 Bahrain.

### 2.2.1 Early History of the Khalifas in Bahrain (1783-1900)

The Khalifa House has ruled Bahrain since 1783.<sup>112</sup> The Khalifa derived from the Banu Utub, a critical tribal coalition in the Gulf sheikdoms during the eighteenth century, to whom the ruling Sabah family in Kuwait also claimed lineage.<sup>113</sup> Due to internal and foreign circumstances, the rule of Khalifa over Bahrain initially was not that stable.<sup>114</sup> Externally, Bahrain battled two regional expansionist nations—Saudi Arabia and Oman—who posed a serious threat to the Khalifa at the time.<sup>115</sup> An internal power struggle among the Khalifa resulted in confrontations between several factions of the Khalifa.<sup>116</sup>

The signing of the 1861 treaty between Bahrain and Britain was noteworthy during this time.<sup>117</sup> The British imperial power was interested in controlling the Persian Gulf and ensuring secure trade routes. Thus, it signed several protection treaties with Gulf sheikdoms. These treaties stipulated that in exchange for Britain defending these sheikdoms from any external dangers, each sheikdom's foreign policy decision had to be made by Britain alone. Bahrain benefited from both domestic and external political stability thanks to this deal.<sup>118</sup>

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<sup>112</sup> Ahmed Mustafa Abu Hakima, *History of Eastern Arabia 1750-1800 the Rise and Development of Bahrain and Kuwait* 25-26, (1<sup>st</sup> ed. 1965); Omar H. Al-Shehabi, *The Contested Modernity: Sectarianism, Nationalism, and colonialism in Bahrain* 40, (1<sup>st</sup> ed. 2019); Miriam Joyce, *Bahrain from the Twentieth Century to Arab Spring* 83 (1<sup>st</sup> ed. 2012); Abdulhadi Khalaf, *Unfinished Business Contentious Politics and State Building in Bahrain* 9, (1<sup>st</sup> ed. 2000).

<sup>113</sup> Jill Crystal, *Oil, and Politics in the Gulf, Ruler, and Merchants in Kuwait and Qatar* 18, (1<sup>st</sup> ed. 1995).

<sup>114</sup> Al-Shehabi, *Supra note 112*, at 53; Abu Hakima, *Supra note 112*, at 68; Fuad I. Khuri, *Tribe and State in Bahrain: The Transformation of Social and Political Authority in an Arab State* 37, (1<sup>st</sup> ed. 1980).

<sup>115</sup> Al-Shehabi, *Supra note 112*, at 53; Abu Hakima, *Supra note 112*, at 68; Khuri, *Supra note 114*, at 37.

<sup>116</sup> Al-Shehabi, *Supra note 112*, at 46.

<sup>117</sup> *Id.*, at 51-53.

<sup>118</sup> Al-Shehabi, *Supra note 112*, at 53; Khuri, *Supra note 114*, at 37 & 39.

None of the conventional regional adversaries dared to oppose the new British order. On a domestic level, Britain meddled in local disputes and chose Khalifa's rulers.<sup>119</sup> This new arrangement provided stability required for any economic growth. Bahrain became the most significant pearling center in the Gulf as a result of the entrepôt trade flourishing throughout the remainder of the nineteenth century.<sup>120</sup>

The eighteenth century in Bahrain had essentially two realities. The first occurred in Bahrain's two largest cities, Manama and Muharraq, where the pearling business is based. The rulers enforced free trade principles, minimal taxes, and an impartial dispute resolution body for trade-related problems to create an inviting atmosphere for entrepôt trade.<sup>121</sup> Sunni Arabs from tribes of the Huwala, who migrated to the eastern bank of the Gulf throughout the eighteenth and nineteenth centuries, made up the majority of the merchant class.<sup>122</sup>

In contrast, fiefdoms were established in the interior villages, where farming was the primary occupation.<sup>123</sup> An agent of the ruler governed each fiefdom.<sup>124</sup> The agent used his judicial approach. The only thing that mattered from the ruler's standpoint was that the taxes from each fiefdom continued to fill his coffers. Unlike pearl traders, farmers could not leave their homes to pursue greater economic freedom elsewhere.

This arrangement subjected the farmers to crucial and unjust policies imposed by the ruler's agent. Agents frequently used coercion to rob farmers of their surplus output. The divisions between the villagers and the rulers grew deeper under this arrangement. Most Shiite villagers

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<sup>119</sup> For example, in 1868 British deposed the ruler Mohammed Bin Khalifa after accusing him of breaching the 1861 agreement by attacking Qatar. See Al-Shehabi, *Supra note 112*, at 52.

<sup>120</sup> *Id.*, at 53.

<sup>121</sup> *Id.*, at 37-38.

<sup>122</sup> Al-Shehabi, *Supra note 112*, at 39; Abu Hakima, *Supra note 112*, at 35; Khuri, *Supra note 114*, at 34.

<sup>123</sup> Khuri, *Supra note 114*, at 83-84; Frederic M. Wehrey, *Sectarian Politics in the Gulf from Iraq War to Arab Spring 11*, (1<sup>st</sup> ed. 2014).

<sup>124</sup> Agents were often members of the ruling family.

considered themselves native Bahrainis, hence the name Baharna, which translates to "the Bahrainis."<sup>125</sup> The injustice and the many occupations, ancestries, sects, and accents have shaped the villagers' overall identity.<sup>126</sup> They viewed the Khalifas as intruders who had wrongfully taken their country and oppressed them.<sup>127</sup>

## **2.2.2 The 1973 Constitution.**

### **2.2.2.1 The Path to the 1973 Constitution.**

Between 1911 and 1972, Bahrain's people made several demands for democratic and constitutional rule, but the ruling class constantly resisted them, frequently with assistance from the colonial powers. Bahrain conducted a brief semi-representative experiment in 1911.<sup>128</sup> Some prominent Bahraini figures proposed the creation of a semi-representative council in 1911, intending to restrict British intrusions into Bahrain.<sup>129</sup> The ruler agreed to it because he believed the Council would strengthen him against the British.<sup>130</sup> However, the British persuaded the ruler that this Council threatened his rule and ordered its rapid dissolution.<sup>131</sup> The 1911 council was significant despite the flaws in this experiment and the absence of widespread public support. It was the first time in the Gulf—not just in Bahrain—that a body was established with some resemblance to a modern-day legislative body. The Bahraini intelligentsia, which arose after the flourishing of the pearl industry, was largely credited with playing this pioneering role.<sup>132</sup>

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<sup>125</sup> Wehrey, *Supra note 122*, at 11.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Al-Shehabi, *Supra note 112*, at 155-156.

<sup>129</sup> These events will be discussed in Chapter 4.

<sup>130</sup> These events will be discussed in Chapter 4.

<sup>131</sup> Al-Shehabi, *Supra note 112*, at 155-156.

<sup>132</sup> The Nahda Movement inspired the Bahraini intelligentsia. The word Nahda means awakening. The movement appeared at the beginning of the nineteenth century. It erupted as a shock from the Arabic world's

By the end of World War One, Britain had decided to play a more direct role in Bahrain and had implemented several administrative reforms.<sup>133</sup> Isa bin Ali, the ruler, did not appreciate the increased British meddling. Britain viewed Isa as weak and unable to maintain the British reforms in Bahrain.<sup>134</sup> Britain replaced Isa bin Ali with his son Hamad. The chance to overthrow him came in 1923 amid several sectarian confrontations in Bahrain. Some Bahraini elites sponsored a petition titled "Legislative National Congress" in response to British interference, demanding fundamental political reforms and the creation of an elected representative council, among other things.<sup>135</sup> Because Britain had already assumed full control over Bahrain at that moment, this plea was unsuccessful.

The 1929 oil discovery in Bahrain and the subsequent economic recession resulted in a massive power change in Bahrain.<sup>136</sup> Nearly all of the ruler's dependence on the merchants, especially the pearl traders, was eliminated by oil revenue.<sup>137</sup> The introduction of oil also led to an increase in foreign workers in Bahrain. As a result, the Bahrainis gradually began to feel disenfranchised and alienated. In 1938, these causes were the impetus behind Bahrain's first

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backwardness compared to the western world. The Nahda figures initiated modernization attempts in different fields, including education, religion, politics, and literature critique; Al-Shehabi, *Supra note 112*, at 107-108; Albert Hourani, *The Arabic Thought in the Liberal Age (1798-1939)* 34, 67 & 103, (1<sup>st</sup> ed. 1983).

<sup>133</sup> The British's interest in the Gulf increased, and Bahrain was the center of their presence due to its economic weight. More strategically, Britain saw a possibility of oil discovery in the area, especially with the oil discoveries in neighboring Iran and Iraq. Mahdi Abdallah Al-Tajir, *Britain the Shaikh and the Administration of Bahrain (1920-1945)* 36, (1986); Al-Shehabi, *Supra note 112*, at 164-165 & 204; Khuri, *Supra note 114*, at 51.

<sup>134</sup> Omar AlShehabi, *Political Movements in Bahrain Across the Long Twentieth Century*, in *The Oxford Handbook for the Contemporary Middle-Eastern and North African History* 537, 542 (J. Hanssen and A. Ghazal ed., 2017).

<sup>135</sup> Al-Shehabi, *Supra note 112*, at xii; Al-Tajir, *Supra note 132*, at 83.

<sup>136</sup> Besides the global economic crisis between the two world wars in the gulf countries, the pearling industry collapsed after discovering the Japanese cultured pearls. Therefore, the pearling sector lost its legacy as the principal employer, and many people found themselves jobless; Al-Tajir, *Supra note 132*, at 160; Khuri, *Supra note 114*, at 127; Al-Shehabi, *Supra note 112*, at 206.

<sup>137</sup> Al-Shehabi, *Supra note 112*, at 205.

national, nonsectarian movement.<sup>138</sup> This movement created a list of demands for the government, including creating an elected legislature, a union for all Bahraini employees, and recruiting Bahrainis into the judicial system and police force.<sup>139</sup> Although the government brutally suppressed the 1938 movement, the National Union Committee of the 50s carried out similar demands.

Sunni and Shiite notables discussed public concerns after the sectarian fighting in 1953 and the cab drivers' strikes in 1954.<sup>140 141</sup> The Higher Executive Committee was established due to the meeting (Later known as the National Union Committee.)<sup>142</sup> One hundred twenty elected people comprised the Higher Executive Committee, which was presided over by eight members—four Shiites and four Sunnis.<sup>143</sup> The public demands, which included establishing an elected legislature, and a national labor union, reforming the court, and enacting modernized legal codes, were identical to those of 1928 and 1938.<sup>144</sup>

The government rejected the Committee's demands. The Committee could only force Bahrain's government to enact the country's first labor law.<sup>145</sup> The Committee had planned several

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<sup>138</sup> Khuri, *Supra note 114*, at 205.

<sup>139</sup> Al-Shehabi, *Supra note 112*, at 207-208.

<sup>140</sup> Khuri, *Supra note 114*, at 209; Omar AlShehabi, Divide and rule in Bahrain and the elusive pursuit for a united front: the experience of the Constitutive Committee and the 1972 Uprising, 21 *Historical Materialism* 94, 101 (2013).

<sup>141</sup> The strike was against the British monopoly over the car insurance business. Khuri, *Supra note 114*, at 206 & 209; AlShehabi, *Supra note 140*, at 101; Fred H. Lawson, Bahrain, the Modernization of Autocracy 61, (1st ed. 1989).

<sup>142</sup> Emile Nakhleh, Political Development in a modernizing society 78, (1<sup>st</sup> ed. 1976); AlShehabi, *Supra note 140*, at 101.

<sup>143</sup> Nakhleh, *Supra note 142*, at 78; Lawson, *Supra note 141*, at 66; AlShehabi, *Supra note 140*, at 101.

<sup>144</sup> One of the demands is the removal of the British officer Charles Belgrade. AlShehabi, *Supra note 140*, at 56; Lawson, *Supra note 141*, at 64; Nakhleh, *Supra note 142*, at 78; Joyce, *Supra note 112*, at 21; Also, here is a report prepared by BBC about the Committee activities, which includes an interview with Abdulaziz Al Shamlan, one of the Committee's leaders, available at <https://www.youtube.com/watch?v=UNS7liyK2U> (last visited August 2, 2022).

<sup>145</sup> For example, the government tried establishing a countering committee composed exclusively of Shiite notables, but its attempt was ineffective. See AlShehabi, *Supra note 134*, at 545.

strikes to force the government to embrace their demands. One of the strikes was motivated by the Second Arab-Israeli War, often known as the Suez Crisis of 1956. The government informed the Committee of the impending strike and requested it is called off. The Committee disregarded this advice and carried out the strike as planned. The strike and the protests were ended by the Bahraini government, which was supported by the British. The government detained many Bahrainis, including the Committee's leaders, who were later prosecuted and exiled.<sup>146</sup>

The government suppressed the National Union Committee without responding to its widely supported demands, which paved the way for Bahrain to enter a new era of controversial politics. Many Bahraini activists switched to underground movements in the 1960s and 1970s.<sup>147</sup> A section of the intelligentsia seized the chance to begin public and legitimate political activity after Bahrain gained its independence in 1971. The founding of labor unions was permitted by Bahrain's Labor Law of 1958, but only with the state's permission.<sup>148</sup> As a result, a group of activists formed the General Federation of Workers, Craftsmen, and Tradesmen in Bahrain Constitutive Committee. The Constitutive Committee, in contrast to the 1954 Committee, was founded on secular and national principles rather than on racial or religious ones.<sup>149</sup>

The Committee applied to form a union eight days after the declared Independence Day.<sup>150</sup> By the time the Committee applied to the labor department, there were 2500 signatories.<sup>151</sup> The Amir promised the people a constitution for their newly independent country in a public statement

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<sup>146</sup> Nakhleh, *Supra note 142*, at 79; Joyce, *Supra note 112*, at 20-25; AlShehabi, *Supra note 134*, at 545.

<sup>147</sup> During this period, Bahrain's two main popular movements were the National Liberation Front and the Movement of Arab Nationalists. Both movements hold leftist ideology, which helped recruit Bahrainis from different social, religious, and economic backgrounds. This secular and non-ethnic-based political mobilization paved the way to the most important national project in modern Bahraini history: the Constitutive Committee of 1971. AlShehabi, *Supra note 134*, at 546.

<sup>148</sup> Nakhleh, *Supra note 142*, at 80; AlShehabi, *Supra note 140*, 118.

<sup>149</sup> AlShehabi, *Supra note 140*, 118.

<sup>150</sup> *Id.*, at 96.

<sup>151</sup> *Id.*, at 121.



he released in December 1971 before the government ruled on the license application.<sup>152</sup> Nevertheless, a strike that started at the airport halted the entire procedure.<sup>153</sup> The Bahraini strikers stated their goal of preventing being replaced by foreign labor. The situation worsened due to the government's harsh response to this strike.

Numerous organizations, including the oil company, the shipping yard, and the aluminum smelter, had struck.<sup>154</sup> More than 100 people were detained by the government when it sent its military out onto the street.<sup>155</sup> The government first refrained from detaining the Committee's leaders to appease the public and explained its reform agenda.<sup>156</sup> Nevertheless, by mid-April 1972, all Committee leaders had either been placed under custody or had left the country.<sup>157</sup>

#### **2.2.2.2 The main characteristics of the 1973 Bahraini Constitution:**

The Amir established a constituent assembly to draft the nation's constitution by issuing Decree No.12/72 in June 1972. The Amir issued Decree No. 13/72 regarding the election of the Constituent Assembly in July 1972. The Constituent Assembly comprised three groups, as per this Decree: 12 members of the Ministerial Council, ten or fewer government-appointed members, and 22 elected members. The Decree created eight electoral districts across the nation.

The Decree restricted voting to males who were at least 20 years old. Women were denied the right to vote by the Decree despite their active lobbying.<sup>158</sup> Only literate males at least 30 years

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<sup>152</sup> Nakhleh, *Supra note 142*, at 117.

<sup>153</sup> AlShehabi, *Supra note 140*, at 124; Khalaf, *Supra note 112*, at 55.

<sup>154</sup> AlShehabi, *Supra note 140*, at 125; Khalaf, *Supra note 112*, at 55.

<sup>155</sup> AlShehabi, *Supra note 140*, at 125; Khalaf, *Supra note 112*, at 55.

<sup>156</sup> *Id.*, 128.

<sup>157</sup> AlShehabi, *Supra note 140*, at 125; Khalaf, *Supra note 112*, at 55.

<sup>158</sup> For more on the women's campaigns, see Nakhleh, *Supra note 142*, at 143-144.

old and had been citizens for at least 15 years following the Citizenship Law of 1963 were eligible to run for election.

Additionally, only males who earned citizenship for more than ten years following the enactment of the Citizenship Law of 1963 were eligible to vote. Police and military forces were not allowed to vote or run. The election was held on December 1, 1972, and on December 10, 1972, the results were made public. The Constituent Assembly held its inaugural meeting on December 16, 1972. There were 42 members, including 12 ministers and 22 elected, and eight appointed members.

The Ministerial Council was tasked with creating a draft of the constitution within four months of the Decree's entry into effect, as stated in Art.6 of Decree No.12/72. The government had six months to create a final document and present it to the Amir for approval after presenting the initial text to the Constituent Assembly. The Assembly approved the final draft on June 9, 1973, and the Amir gave his approval on December 6 of the same year, according to Art. One hundred nine of the new constitution would go into effect on the same day as the National Assembly's inaugural session, provided that session began no later than December 16, 1973.

The National Assembly is Bahrain's unicameral legislature established under the 1973 Constitution. Ministers were ex officio members of the legislature, which was elected directly by universal suffrage and secret vote. Without defining whether membership was only open to men, the constitution stated that a member should be older than 30. Decree No. 10/1973, however, restricted the ability to vote to men only. Decree No. 10/1973's discrimination against women was invalid because the constitution's voting rights provisions were gender-neutral.

No bill passed the National Assembly without a majority vote, and the members had the authority to introduce bills. Additionally, the legislature had a wide range of powers to supervise

the executive branch, including the ability to question officials, interrogate them, cast votes of no confidence in them, and refuse to cooperate with them. Adopting a constitution with a somewhat powerful parliament represented a substantial compromise for an absolute monarchy like the Khalifa. The issue then becomes what caused this concession. To believe that such a compromise was made voluntarily would be unrealistic.

### **2.2.2.3 Understanding the adoption of the 1973 Constitution.**

Amir Isa stressed the necessity of Bahrain's constitution in his first speech following the country's declaration of independence.<sup>159</sup> He added that he had given the Council of Ministers the task of creating a draft.<sup>160</sup> The government hinted at its intention to provide much more than the movement sought during a meeting with the Constitutive Committee in March 1972.<sup>161</sup> Government action might be paradoxical. Although it suppressed a populist movement, the government allowed a constitution to be written that gave rise to a powerful parliament. This may be attributed to the government's crisis of legitimacy.

The Bahraini Constitution was ratified in an effort by the government to increase its legitimacy. The Khalifa, however, highlighted during the early phases of the constitution's development that it was a grant to their subject and in no way a response to popular demands.<sup>162</sup> Thus, the entire process “did not occur within a broad popular base, [it] began at the apex of the pyramid of power [of the Khalifa].”<sup>163</sup> The course of events made it clear that the government was not particularly aware of the consequences of the upcoming constitutional life.

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<sup>159</sup> Nakhleh, *Supra note 142*, at 117.

<sup>160</sup> *Id.*

<sup>161</sup> AlShehabi, *Supra note 140*, at 127.

<sup>162</sup> Nakhleh, *Supra note 142*, at 125.

<sup>163</sup> It was evident from the turn of the vents that the government was not very conscious of the repercussions of the coming constitutional life; Nakhleh, *Supra note 142*, at 125.

Nevertheless, it was evident that significant changes were occurring in Khalifa's way of rule as Bahrain got closer to becoming a state. Throughout history, the Khalifa relied on coercion, divide and conquer, and external power sources. Iran's assertion of its authority over Bahrain has compounded the dilemma of legitimacy. Due to the Khalifas' weaknesses, they agreed to a procedure that would entail substantial public participation, which forced a compromise result that the 1973 Constitution best represents.

- The Khalifas' style of rule in Bahrain.

After ousting Nasr Al-Madhkur, Bahrain's previous King, the Khalifas established themselves as settler-rulers.<sup>164</sup> In other words, they used force to seize control of Bahrain and coercion to maintain that power. This form of government persisted even after Bahrain became a city of commerce. Although individuals who worked in trade and pearling enjoyed some independence, most villagers were subject to the ruler's agents' repression. Shiites comprised most of the villages, all living in similar socioeconomic circumstances. They view the Khalifa house as intruders and themselves as native Bahrainis.<sup>165</sup> The Khalifas' authority in Bahrain thus differs in three ways from that of the Sabah of Kuwait, the other Banu Utub clan.

The first factor has to do with how power is acquired. The Sabah were not ruler-settlers like the Khalifa. The Sabah and other Utubs' journey to Kuwait from Najjed was a typical nomadic movement in Arabia at the time. The socioeconomic circumstances that prevailed in Kuwait had a role in the Sabah's acquisition of economic and political dominance. Put another way, and the Sabah did not occupy Bahrain by force. Second, once the Sabah came into power in Kuwait,

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<sup>164</sup> Khalaf, *Supra note 112*, at 22.

<sup>165</sup> Wehrey, *Supra note 123*, at 11.

coercion was less effective than cooperation, especially with merchants. Contrarily, the Khalifa's form of government was characterized by compulsion, particularly in the villages. Third, unlike the Khalifas, the Sabah did not have to deal with a sizable group of Kuwaitis who believed they were the natives and the rulers were invaders. The tension between the Khalifas and the villagers was worsened by disparities in the sect and other socioeconomic considerations.

Besides that, both reigning dynasties engaged in some form of divide-and-conquer politics. As a result, the rulers always see their subjects as a collection of distinct ethnic and religious groupings. The authority relied on social divisions for its strategies and alliances. "Tribalism [itself] was a strategic rather than an ideological option."<sup>166</sup>

- External sources of power.

At the start of the 20th century, the British got involved in Bahraini politics on a direct level. The Khalifa's entire survival was heavily reliant on the British. Due to their reliance on Britain and the fluctuating oil rent, the Khalifas were unwilling to make concessions to find an internal source of legitimacy. The fact that the Khalifas' legitimacy did not originate from within the society made them ideal for the British. As a result, they required the British constantly. Because of this reliance on the British, the British have unrestricted authority to interfere in Bahrain to advance their regional objectives. This helped explain why the Khalifa survived despite the numerous local obstacles they faced throughout the 20th century.

However, Britain declared its decision to leave the Gulf in 1968 due to numerous economic issues. To persuade Britain to stay, Shaikh Isa offered to forego the annual payment of 350 000 pounds made by Britain to Bahrain. In their eyes, this choice shocked the Khalifa or perhaps a

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<sup>170</sup> Khalaf, *Supra note 112*, at 49.

betrayal of the Gulf.<sup>167</sup> However, Britain had already made a choice. In order to adjust to the new stage of Bahrain's history, Khalifa launched a new strategy.

- Iran's claim and independence.

Numerous significant events occurred in Bahrain between 1968 and 1971.<sup>168</sup> Further reforms were necessary on several levels due to independence and statehood. The main goal was to seek greater legitimacy from within the nation. The Khalifas had an excellent opportunity to interact with Bahrainis freshly, thanks to Iran's persistent assertion of Bahrain's sovereignty. Britain was anxious to resolve Iran's claim before its formal withdrawal from Bahrain. There were no talks to resolve this issue.

The United Nations was tasked with looking into and resolving the Bahraini issue by the Shah of Iran in March 1970.<sup>169</sup> The UN mission aimed to look into whether Bahrain's population wanted to become independent or annex their country to Iran. The Khalifa nearly anticipated this outcome of the probe, but they made a concerted effort to reach out to various segments of Bahraini society in a campaign-like manner.<sup>170</sup> When the UN commission asked for everyone's input, the Khalifas were designed to ensure everyone was on the same page. The Khalifas generously promised these groups what an independent Bahrain under the Khalifas would entail, including the promise of a participatory government, during this campaign. According to the UN

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<sup>167</sup> Joyce, *Supra* note 112, at 31.

<sup>168</sup> Khalaf, *Supra* note 112, at 48.

<sup>169</sup> Joyce, *Supra* note 112, at 32; Prasanta Kumar Pradhan, *Arab Spring and Sectarian Fault lines in West Asia: Bahrain, Yemen, and Syria*, Pentagon Press, India 50-51, (1<sup>st</sup> ed. 2017).

<sup>170</sup> Khalaf, *Supra* note 112, at 49.

Commission's report, most Bahrainis preferred independence.<sup>171</sup> The Security Council approved this resolution in May 1970.<sup>172</sup>

#### **2.2.2.4 The 1973 legislative structure: the Kuwaiti effect and the compromise during the Constituent Assembly.**

Kuwait's model was highly influential in determining the characteristics of the legislature under the 1973 Bahraini Constitutions.<sup>173</sup> Given the social, political, and economic parallels between the two countries, it seemed most likely that this influence occurred on its own. The two governing families had tight ties because they were part of the Utub, a coalition of tribal groups.<sup>174</sup>

Three significant arguments were made against using the Kuwaiti model, nevertheless.<sup>175</sup> First, despite being an oil-producing nation, Bahrain is not as wealthy as Kuwait. Consequently, the franchise was expanded. Second, compared to Kuwait before 1962, Bahrain's national movement was wealthier and more politically aware. The ruling class in Bahrain requested a parliament as early as 1911. The Nahda Movement (1938), National Union Movement (1954), and Constitutive Committee Movement (1971) came after this.

Finally, compared to Kuwait, Bahrain's labor unions were more developed. The members of the Constituent Assembly reached a compromise on the ultimate layout of the legislature.<sup>176</sup> Liberals argued for a fully elected legislature, while some conservatives sought a wholly appointed

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<sup>171</sup> *Id.*

<sup>172</sup> Joyce, *Supra note 112*, at 32; Pradhan, *Supra note 169*, at 50-51.

<sup>173</sup> All articles regulating the legislative branch in Kuwait Constitution (1962) and Bahraini Constitution (1973) are the same, save for two points: (1) In Bahrain, the Prime Minister shall preside over the first sitting of the National Assembly until the speaker is elected. In Kuwait, the eldest member shall preside. (2) In Bahrain, the jurisdiction over an election dispute falls under the Supreme Civil Court of Appeal. Whereas, in Kuwait, the jurisdiction is for the Assembly itself.

<sup>174</sup> Nakhleh, *Supra note 142*, at 117.

<sup>175</sup> *Id.*, 128.

<sup>176</sup> Khalaf, *Supra note 112*, at 59-60.

one. They ultimately settled on an elected legislature with ex officio ministers, akin to the National Assembly of Kuwait.

### **2.2.3 The Path to the 2002 Constitution**

#### **2.2.3.1 The 1975 Dissolution of the National Assembly and the Suspension of the 1973**

##### **Constitution.**

The twenty-two elected members of the National Assembly were a mix of independents, urban leftists, and rural religious Shiites.<sup>177</sup> Because it needed less than a third to secure a majority, the government believed it could persuade the legislature to act in its interests.<sup>178</sup> Given their ideological differences from leftists, the government relied on the Shiite religious group's members to back its agenda alongside the 14 ex officio ministers.<sup>179</sup>

Given their experience in the two decades prior to the constitution's promulgation, the government viewed the leftists with profound distrust.<sup>180</sup> From the first session of the newly formed legislature, the government tapped into the conflict between leftists and religious fundamentalists. The race for National Assembly secretary featured both leftist and religious candidates. The religious candidate received the support of the government's ministers and was elected.<sup>181</sup>

The government's wager on the conflict between leftists and religious members did not hold up for long.<sup>182</sup> Most of the National Assembly's elected members came from the same social

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<sup>177</sup> Khalaf, *Supra note 112*, at 57; Khuri, *Supra note 114*, at 219.

<sup>178</sup> Khuri, *Supra note 114*, at 231.

<sup>179</sup> Khalaf, *Supra note 112*, at 558; AlShehabi, *Supra note 140*, at 127.

<sup>180</sup> Joyce, *Supra note 112*, at 54-55.

<sup>181</sup> Khalaf, *Supra note 112*, at 58.

<sup>182</sup> Khalaf, *Supra note 112*, at 63; AlShehabi, *Supra note 140*, at 127.



groups: the working class, the lower middle class, and the professions.<sup>183</sup> The legislators came together as a result of this circumstance. All elected members of the National Assembly progressively embraced the idea of serving as the people's representatives.<sup>184</sup> On numerous political issues, elected representatives from diverse blocs collaborated, compromised, and worked together.<sup>185</sup> The government found this to be worrying.<sup>186</sup>

The government's strength and reliance on the populace and their representatives weakened due to the 1974 oil boom.<sup>187</sup> The National Assembly repeatedly demonstrated the government's displeasure with it and its intrusive role in the government's eyes.<sup>188</sup> The government detained one of the elected members who belonged to the Khalifas family in 1974.<sup>189</sup> He went to the aluminum smelting company's strike. His behavior crossed a boundary that was unacceptable to the government. The government disregarded the constitutional processes governing the arrest of any members of the National Assembly.

The State Security Decree of 1974 and the extension of MIDEASTFOR's lease were two government-sponsored legislation that the National Assembly rejected, which marked the height of the conflict between the legislative and the executive.<sup>190</sup> Although the government intended for the text of the State Security Decree to appeal to the Assembly's religious members, they and the leftists and independents opposed it.<sup>191</sup>

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<sup>183</sup> Khalaf, *Supra note 112*, at 60 & 61; Khuri, *Supra note 114*, at 231.

<sup>184</sup> Khalaf, *Supra note 112*, at 60 & 61; Khuri, *Supra note 114*, at 231.

<sup>185</sup> Khalaf, *Supra note 112*, at 60 & 61; Khuri, *Supra note 114*, at 231-232.

<sup>186</sup> Khalaf, *Supra note 112*, at 61; AlShehabi, *Supra note 140*, at 127; Khuri, *Supra note 114*, at 232.

<sup>187</sup> Khalaf, *Supra note 112*, at 75; AlShehabi, *Supra note 140*, at 125.

<sup>188</sup> Joyce, *Supra note 112*, at 75.

<sup>189</sup> Khalaf, *Supra note 112*, at 56.

<sup>190</sup> Khuri, *Supra note 114*, at 231-232; AlShehabi, *Supra note 140*, at 125.

<sup>191</sup> For example, its text included criminalizing heretical principles. Khalaf, *Supra note 112*, at 62-63; Khuri, *Supra note 114*, at 232.

The State Security Bill was crucial in helping the government legalize how its security service apparatus operated. The government also relied heavily on MIDEASTFOR, the American Forces in the Middle East.<sup>192</sup> The Americans assumed control of their role in the region after the British left the Gulf. The USA rented a naval facility in Bahrain to be MIDEASTFOR's operation base.<sup>193</sup> The elected officials opposed having foreign soldiers in Bahrain. They were incredibly hostile to the US because of their stance in the Arab-Israeli conflict.<sup>194</sup>

The cabinet resigned in response to the National Assembly's votes on the State Security Bill and extending the lease for the Naval facility.<sup>195</sup> The Amir dissolved the National Assembly, and then he restored the cabinet.<sup>196</sup> Although Amir had the authority to dissolve the Parliament under Article 65 of the 1973 Constitution, his action severely violated the constitution. The Amir was compelled by Article No. 65 of the Constitution to call for new elections within two months of the dissolution, among other things. Instead, the National Assembly was permanently dissolved by the government. Numerous National Assembly members were also detained. Some of the members were successful in leaving the country.<sup>197</sup> The government also forbade trade unions and censored the media.<sup>198</sup>

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<sup>192</sup> Khalaf, *Supra note 112*, at 41-42; AlShehabi, *Supra note 140*, at 125.

<sup>193</sup> The American force's existence in Bahrain developed in 1995 by creating the US Navy's Fifth Fleet and choosing Bahrain for its operational headquarter. Joyce, *Supra note 112*, at 36 & 109.

<sup>194</sup> Khalaf, *Supra note 112*, at 64.

<sup>195</sup> Andrzej Kapiszewski, *Elections and Parliamentary Activity in the GCC States: Broadening Political Participation in the Gulf Monarchies*, in *Constitutional Reform and Political Participation in the Gulf* 108, 112 (Abdulahdi Khalaf & Giacomo Luciani ed., 2006); Wehrey, *Supra note 112*, at 118.; Joyce, *Supra note 112*, at 59-60.

<sup>196</sup> Khalaf, *Supra note 112*, at 64.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

### 2.2.3.2 The Shura Council of 1992.

The subsequent years of the 1970s were peaceful, despite a few protests. Nevertheless, the Iranian Revolution of 1979 had a profound impact on the entire Gulf region and beyond.<sup>199</sup> Since a Shii cleric oversaw the Iranian Revolution, there was a general worry that Shiis throughout the Gulf States might support its specific revolutionary objectives more strongly. According to several accounts, the Revolution in Bahrain was unsettling. It first demonstrated that having great power does not always protect from a popular uprising.<sup>200</sup> The second and more important factor was the new revolutionary regime's theological foundation. Shiites are the majority in Bahrain, despite the fact that there is no accurate study that reveals their specific percentage.<sup>201</sup>

Bahrain was vulnerable to cross-national mobilization for two reasons. The suspension of the constitution and the public's loss of voting rights was the first cause. The second factor was Bahrain's dismal economic state and high unemployment rate. Bahrain produces oil, but its oil revenues are insufficient to provide the majority of Bahrainis with employment prospects. Because of this, the Bahraini government was wary of any foreign influence over its Shiite subjects.<sup>202</sup> Moreover, Bahrainis' unemployment rate did not significantly decline due to Bahrain's economy's diversification into financial services.<sup>203</sup>

After being put down by the government, leftist groups in Bahrain rapidly decreased.<sup>204</sup> Shiite organizations took over as the dominant Bahraini government opposition during the 1980s.<sup>205</sup> The Shirazi movement and al-Da'wa were the two primary organizations.<sup>206</sup> While the

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<sup>199</sup> Wehrey, *Supra note 123*, at 22-23.

<sup>200</sup> Joyce, *Supra note 112*, at 85.

<sup>201</sup> Al-Shehabi, *Supra note 112*, at 21.

<sup>202</sup> Joyce, *Supra note 112*, at 55.

<sup>203</sup> *Id.*

<sup>204</sup> AlShehabi, *Supra note 134*, at 551.

<sup>205</sup> *Id.*

<sup>206</sup> AlShehabi, *Supra note 134*, at 551; Wehrey, *Supra note 123*, at 28-29.

Shirazi movement was extremist and sought to imitate Iran's example in Bahrain, al-Da'wa was moderate.<sup>207</sup> The Bahraini government announced the uncovering of a plan to overthrow the government violently in December 1981.<sup>208</sup> The government charged the Shirazi movement's Islamic Front for the Liberation of Bahrain. This incident resulted in more than 73 arrests. Iran was accused of supporting this plot as well.<sup>209</sup>

The drop in oil prices from the 1980s global oil glut worsened Bahrain's dismal economic plight.<sup>210</sup> The country's political impasse and deteriorating economic situation prompted the Bahraini elite to act.<sup>211</sup> The chance presented itself in 1991 following the Desert Storm operation. The Kuwaiti elite restored the existence of parliament under the 1962 Constitution after liberating Kuwait from Iraq. After this win in Kuwait, the Bahraini elite had an excellent opportunity to push for the 1973 Constitution's reinstatement.<sup>212</sup>

The Bahraini Government saw the need to make some cosmetic changes to somewhat fill the political void. Thus, some private discussions introduced the Shura Council, a fully appointed advisory council.<sup>213</sup> Some of the Bahraini elite knew about the government plan. They, therefore, believed it was essential to bypass the government and present the Amir with a widespread petition. More than 300 eminent Bahrainis signed and sent the "Elite Petition"—later known as such—to the Amir in November 1992.<sup>214</sup>

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<sup>207</sup> AlShehabi, *Supra note 134*, at 551; Wehrey, *Supra note 123*, at 13 & 28-29.

<sup>208</sup> Wehrey, *Supra note 123*, at 28; Joyce, *Supra note 112*, at 105-106.

<sup>209</sup> Joyce, *Supra note 112*, at 105-106.

<sup>210</sup> Abdullah AlSadiq, Bahrain's Economy and the Total Factor Productivity 5, Bahrain Center for Studies and Research, (2001).

<sup>211</sup> Khalaf, *Supra note 112*, at 87.

<sup>212</sup> AlShehabi, *Supra note 134*, at 552.

<sup>213</sup> Khalaf, *Supra note 112*, at 87.

<sup>214</sup> Wehrey, *Supra note 123*, at 41; AlShehabi, *Supra note 140*, at 124; Khalaf, *Supra note 112*, at 87.

Among other things, the petition urged the restoration of the Constitution and the National Assembly, the release of political prisoners, and improved the economy. Unfortunately, the government did not react, and the Shura council, a fully appointed advisory council, was founded in December 1992.<sup>215</sup> There are 30 male members of the Shura Council—15 Sunnis and 15 Shiites. This Council is a classic example of the Khalifas being reluctant to embrace the popular demands in Bahrain.

### **2.2.3.3 The 90s uprisings.**

Several political factions founded the Popular Petition Committee in April 1994 to gather public support for a new petition.<sup>216</sup> On December 16, Bahrain National Day, the "Popular Petition" was supposed to be delivered to the Amir.<sup>217</sup> The 22,000 Bahrainis who signed the petition reaffirmed the identical demands of the Elite Petition. Ten days prior to the national day, the government intervened and detained numerous petition leaders. Shiite religious leaders and other activists were detained.<sup>218</sup> These detentions sparked unrest throughout the nation and conflicts between the security forces and unarmed residents. The unrest, which came to be known as the 90s rebellion, persisted until 1999.<sup>219</sup>

The government claimed Iran incited and supported the demonstrators, playing the sectarian argument to justify its ruthless crackdown.<sup>220</sup> The government was vested in portraying the rebellion as "Sunni v. Shiite."<sup>221</sup> This antiquated strategy aimed to set the Shiite opposition

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<sup>215</sup> Joyce, *Supra note 112*, at 109.

<sup>216</sup> Khalaf, *Supra note 112*, at 91; Kapiszewski, *Supra note 195*, at 108.

<sup>217</sup> Khalaf, *Supra note 112*, at 91.

<sup>218</sup> Joyce, *Supra note 112*, at 109; Wehrey, *Supra note 123*, at 11, 13 & 44; Kapiszewski, *Supra note 195*, at 108.

<sup>219</sup> AlShehabi, *Supra note 140*, at 124.

<sup>220</sup> Khalaf, *Supra note 112*, at 93.

<sup>221</sup> Wehrey, *Supra note 123*, at 30-31.

apart from all other opponents. Additionally, it offered the government the possibility of both internal and external backing. Although substantial, the sectarian role in Bahrain's controversial politics was neither the only nor the most important.<sup>222</sup>

Most Shiite-populated villages served as the backbone of the revolt in the 1990s.<sup>223</sup> These communities were deeply aware of their marginalization, disenfranchisement, and grievances.<sup>224</sup> Shiite politics served as the primary mobilization vehicle since it was much more intense than what was felt in the urban areas.<sup>225</sup> During the revolt in Bahrain in the 1990s, the government killed, imprisoned, and tortured numerous people. Even the government was accused of utilizing collective punishment in the protestors' villages, a tactic crucial in ending the rebellion in 1999.<sup>226</sup> According to the government, the need to enact new political changes or arrangements in order to restore stability was economically urgent.<sup>227</sup> The financial sector, offshore banking, tourism, and some heavy industries were significant drivers of Bahrain's economy. Any additional upheaval would have destroyed the economy.<sup>228</sup> In March 1999, the long-serving Amir, Isa, passed away. Hamad, his son, took the throne.<sup>229</sup>

There was nothing new about the "new" Amir. He had collaborated with his father for a considerable time and actively managed the defense apparatus since the late 1960s.<sup>230</sup> In other words, the government's attitude toward maintaining its solid hold on power has not changed

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<sup>222</sup> Khalaf, *Supra note 112*, at 11-12.

<sup>223</sup> Al-Shehabi, *Supra note 112*, at 230.

<sup>224</sup> Wehrey, *Supra note 123*, at 11.

<sup>225</sup> Wehrey, *Supra note 123*, at 74-75; AlShehabi, *Supra note 140*, at 120.

<sup>226</sup> Wehrey, *Supra note 123*, at 13.

<sup>227</sup> *Id.*, at 10.

<sup>228</sup> AlSadiq, *Supra note 210*, at 6; Wehrey, *Supra note 123*, at 9 & 10.

<sup>229</sup> Wehrey, *Supra note 123*, at 11; Nebil Husayn, *Mechanisms of Authoritarian Rule in Bahrain*, 37:1 Arab Studies Quarterly. 33, 33 (2015).

<sup>230</sup> Khalaf, *Supra note 112*, at 37.

fundamentally. Nevertheless, new times called for fresh approaches. As a result, the Amir envisioned Bahrain entering a new political era and unveiled a series of reforms.<sup>231</sup>

At the beginning of his rule, the new Amir freed political prisoners, pardoned exiles, repealed the State Security Law of 1974, fired infamous British security officer Lan Henderson, and allowed the formation of political organizations. The new Amir's principal undertaking is the National Action Charter, made public after a referendum in 2001.<sup>232</sup>

#### **2.2.3.4 The National Action Charter and the 2002 Constitution.**

The National Action Charter's primary objective was to convey the government's vision for Bahrain's political landscape. The constitution specified that Bahrain would be a constitutional monarchy where the people would be in charge. Additionally, it restored the life of the legislative branch and guaranteed fundamental rights and liberties, the Rule of Law, and the judiciary's independence. The Charter recommended a bicameral legislature for the legislature, stating that "many deep-rooted democracies are bicameral ones." <sup>233</sup>

By the Charter, the legislature should consist of "two chambers, namely one that is constituted through free, direct elections and whose mandate will be to enact laws, and a second chamber that would have [appointed] people with experience and expertise who would advise as necessary."<sup>234</sup> According to the Charter, "This proposed legislative council system would require a constitutional amendment."<sup>235</sup> The 1973 Constitution is the one to which the Charter referenced. The government put the Charter forward for a referendum.

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<sup>231</sup> Joyce, *Supra note 112*, at 111; AlShehabi, *Supra note 134*, at 552.

<sup>232</sup> AlShehabi, *Supra note 140*, at 123.

<sup>233</sup> The National Action Charter, <https://www.bahrain.bh>, accessed on March 11, 2021; English translation, <https://www.peaceagreements.org/viewmasterdocument/1437> (last visited on March 11, 2021).

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

The leaders of the opposition were hesitant to embrace the Charter because they had severe concerns about how the government saw the legislature. They were cautious enough to decide against moving forward until they had two guarantees from the government.<sup>236</sup> Any modification to the Constitution of 1973 had to follow the procedures outlined in Article 104. First, voting on the National Action Charter differs from any future votes to amend the constitution. Second, the proposed system would only grant the lower chamber legislative authority; the second chamber, which was appointed, would not have such authority.

The Amir met with certain opposition leaders for this reason, and while he accepted the opposition's demands, he initially balked at providing a written affirmation. Nevertheless, the Amir reaffirmed his agreement with these principles during a well-reported visit to a significant Shiite scholar.<sup>237</sup> During his visit, the host read the opposition's concerns on the Charter and asked the Amir for a written promise. The King accepted the printed demands list and signed the same document.

As a result, the opposition openly backed the referendum, which was held on February 14 and 15, 2001.<sup>238</sup> Over 90% of voters cast ballots, and over 98 percent of them supported the referendum.<sup>239</sup> The 1973 Constitution needed to be amended as the next step. This amendment, according to the preamble of the 2002 Constitutions, "implements the people will be represented in the principles established in the National Action Charter." the government unilaterally altered the constitution behind closed doors and issued it in 2002 without observing Article 104 shocking

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<sup>236</sup> See an interview with Ali Salman, the leader of ALWefaq, Bahrain's most prominent opposition group. AlHurra Channel conducted the Interview in 2012 at the Gulf Talk program, [https://www.youtube.com/watch?v=GIvUrn0kt\\_o](https://www.youtube.com/watch?v=GIvUrn0kt_o), accessed on March 11, 2021.

<sup>237</sup> A short video shows the discussion during the visit, <https://www.youtube.com/watch?v=BVs2PRSCiB0>, accessed on March 11, 2021.

<sup>238</sup> This Paragraph is discussed in more detail in Chapter Four.

<sup>239</sup> The International Foundation for Election Systems, Election Today 9:3, 26 (2001).



the opposition leaders. In contrast to what they promised, the legislature's two houses enjoy equal legislative authority.<sup>240</sup> The Charter did not allow the government to amend the 1973 Constitution unilaterally. Therefore, the government was required to implement Article 104 of the 1973 Constitution to change the constitution.

The bicameral structure chosen by the government under the 2002 Constitution reflects Bahrain's political landscape. The uprising of the 1990s prompted the government to implement some political changes because any further uprising would jeopardize the stability and prosperity of the economy. However, the government was powerful enough to deny the real opposition power. International and regional powers supported the Government of Bahrain. Additionally, the government's negotiating position was bolstered by the increase in oil prices starting in 2001.

Constitutional life has to be restored as a result. However, because it could result in a strong legislature, the government could not return to the precise parliamentary structure of 1973. The government sought to compromise between restoring parliamentary life and maintaining its total control. As a result, the government could check the legislature through the upper house. The 2002 Amendment's bicameral legislature may be a smart move by the government to limit and keep the opposition in check. The objective was to get the opposition involved in parliamentary life under Government supervision and within the set parameters. Additionally, it was an effort to improve the regime's reputation externally and internally.

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<sup>240</sup> English translation to the 2002 Constitution, [https://www.constituteproject.org/constitution/Bahrain\\_2002.pdf](https://www.constituteproject.org/constitution/Bahrain_2002.pdf), accessed on March 11, 2021.

## 2.3 Oman.

### 2.3.1 Historical background of Oman under Busaid's rule 1741-1970.

There has not been much of a shared governance or consultation tradition in contemporary Omani history; instead, there has been authoritarianism and strife. The present ruling family, the Busaidis, came to power in 1741, beginning the slow transition from the imamate system to the sultanate system.<sup>241</sup> The Ibadite Imamate is the form of government the Ibadite Islamic minority group follows. In this system, the ruler is chosen by a council of illustrious religious and tribal leaders. In Omani history, this change had repercussions for generations to come.<sup>242</sup> In Oman, the first Ibadite Imamate was established in 893.<sup>243</sup> Since then, with a few interruptions, this system has been in place for centuries.

As the Yarubi dynasty came to an end (1624–1741), Oman descended into a bloody civil war that lasted over two decades.<sup>244</sup> The most well-known politician after the Civil War was the merchant and governor of Sohar City, Ahmed bin Said.<sup>245</sup> Business considerations drove Ahmed's mission to establish a state. He defeated Ibadite scholars, the dominant traditional power in the nation, by boosting the nation's commercial interest. The successive sultans, the title given to the

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<sup>241</sup> Hussein Ghubash, *Oman the Islamic Democratic Tradition* 68, (1<sup>st</sup> ed. 2006).

<sup>242</sup> Adam R. Gaiser, *The Origin and Elaboration of first Ibadite Imamate Traditions* 8, (1<sup>st</sup> ed. 2010).

<sup>243</sup> *Id.*, at 10.

<sup>244</sup> Ghubash, *Supra note 241*, at 68.

<sup>245</sup> Ahmed played a significant role in liberating Oman from the Persians, who invaded Oman in 1739 after being requested to by one civil war faction. Post expulsion of the Persians, Ahmed established himself as the most prominent political figure in Oman. He was able to secure the support of tribal and religious groups to name him as the country's new ruler in 1741. Jeremy Jones and Nicholas Ridout, *A History of Modern Oman* 28-29 (1<sup>st</sup> ed. 2015); Ghubash, *Supra note 241*, at 65-66.

rulers, were no longer required to consult or cooperate with Ibadite scholars. In a sense, authoritarian inclinations were established as a result.<sup>246</sup>

Omani ports saw prosperity at the end of the 18th century and the first part of the 19th century. The volume of trade with the Indian and East African ports increased significantly.<sup>247</sup> Oman became commercial and maritime power in the Indian Ocean. This power, a thalassocracy, involved the collection of ports, islands, and associated territories.<sup>248</sup> The thalassocracy in Oman reached its zenith with the rule of Said bin Sultan (1806–1856), who permanently transferred the capital from Muscat to Zanzibar in 1820.<sup>249</sup> The Omani-African state, however, came to an end with his passing in 1856.<sup>250</sup>

Thuwayni and Majed, Said's kids, became bitter about who should become their father.<sup>251</sup> The British supported a resolution between the two brothers in 1861.<sup>252</sup> Through this agreement, Oman and Zanzibar were divided, with Majed becoming Zanzibar's ruler and Thuwayni becoming Oman's ruler.<sup>253</sup> In addition, Zanzibar was required to give Oman a yearly sum of money.<sup>254</sup>

Economically, the split devastated Oman when trade in the Gulf ports declined. The rise of steamboat traffic in the Indian Ocean and the gradual replacement of a system controlled by the British with one dominated by Indian manufacturing were the causes of the economic downfall.<sup>255</sup> This division had two political repercussions. The majority of the traders first moved to Zanzibar

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<sup>246</sup> Ghubash, *Supra note 241*, at 72.

<sup>247</sup> Jones & Ridout, *Supra note 245*, at 35.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*, at 51.

<sup>250</sup> Robert Geran Landen, *Oman Since 1856 Disruptive Modernization in a Traditional Arab Society* 271 (1<sup>st</sup> ed. 1967).

<sup>251</sup> *Id.*

<sup>252</sup> Ghubash, *Supra note 241*, at 103.

<sup>253</sup> *Id.*

<sup>254</sup> Jones & Ridout, *Supra note 245*, at 77.

<sup>255</sup> Jones & Ridout, *Supra note 245*, at 64; Fahad Ahmed Bishara, *The Sea of Debt Law and Economic Life in the Western Indian Ocean (1780– 1950)* 115-116 (1<sup>st</sup> ed. 2017).

from Oman. As a result, Oman lost a wealthy elite that could have created checks on the ruler's authority akin to those in the Kuwaiti model. Second, Oman eventually became a rentier economy because the rent extracted from Zanzibar served as the primary source of income for the country's severely damaged economy.

The imamate system as an ideology did not vanish with the transition to the sultanate system, particularly in Oman's interior. Busaid's reign over Oman was more concentrated in the coastal regions, with less power and influence in the interior. The interior of Oman was mainly autonomous; there, tribal customs and the influence of scholars predominated. The interior found cause to advocate for a united Oman under the imamate system with the secession of Zanzibar, the deteriorating economic conditions, and the disproportionate British meddling in Oman's internal affairs.<sup>256</sup> The Revolution of Azzan Bin Qays served as a representative of this movement (1869-1871). The Sultanate crushed the Revolution with the help of the British.

In the interior of Oman, there was yet another attempt to revive Imamate in 1913.<sup>257</sup> The new movement successfully conducts a military campaign towards Muscat, the nation's capital. This movement was restrained by British meddling, which made them retreat inside. The 1920 Seeb treaty between the Sultanate and the Imamate was the outcome.<sup>258</sup> This treaty recognized the Sultanate and Imamate governments. Additionally, it arranged the political and economic ties between the two territories.

After the 1920 Treaty, Oman experienced tremendous poverty and had two political regimes. With weak Sultans, the British almost completely controlled the sultanate system.<sup>259</sup> The

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<sup>256</sup> Ghubash, *Supra note 241*, at 118-119.

<sup>257</sup> J. E. Peterson, *Oman in the Twentieth Century Political Foundations of an Emerging State* 167 (2ed ed. 2016); Ghubash, *Supra note 241*, at 159.

<sup>258</sup> Ghubash, *Supra note 241*, at 169; Peterson, *Supra note 257*, at 181-182.

<sup>259</sup> Linda Pappas Funsch, *Oman Reborn Balancing Tradition, and Modernization* 49, (1<sup>st</sup> ed. 2015).

imamate system, controlled by a prehistoric mechanism, was almost completely isolated simultaneously. Oil corporations intended to operate in the Imamate's territories after they could not find any crude oil on the Sultanate's territory. Nevertheless, the Seeb Treaty was broken in 1954 by the British and the Sultanate.<sup>260</sup> The Imamate opposed oil explorations in their territory. In response, Britain started a significant military operation to destroy the imamate system.<sup>261</sup> In 1959, this campaign defeated the imamate forces in the last conflict that came to be known as the Green Mountain War.<sup>262</sup>

The 1963 Dhofar Revolution presented the sultanate regime with another huge challenge in the southern region of Oman. The weak economy of the south and Said bin Taimur's (1932–1970) severe restrictions on citizens' liberties catalyzed the Revolution.<sup>263</sup> Pan-Arab nationalism served as the Revolution's initial inspiration.<sup>264</sup> The rebellious movement embraced Marxism, Leninism, and scientific socialism as its official ideologies in 1968, expanding its scope to include all Arab Gulf nations.<sup>265</sup> This Marxist ideology ensured that the People's Democratic Republic of Yemen supported the Revolution, giving the Dhofari rebellions a reliable logistical path.

The movement attracted more fighters from other nations, particularly Bahrain, by broadening its cause. The movement received much backing from China and the Soviet Union thanks to the new ideology.<sup>266</sup> The uprisings led to numerous wins and the conquest of numerous districts in Dhofar. Sultanate forces were degrading and becoming overburdened at the same time.

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<sup>260</sup> Peterson, *Supra note 257*, at 287.

<sup>261</sup> W.Lynn Rigsbee & Calvin. H. Allan, *Oman Under Qaboos From Coup to Constitution (1979-1996)* 15 (1<sup>st</sup> ed. 2013); Peterson, *Supra note 257*, at 288-290.

<sup>262</sup> Peterson, *Supra note 257*, at 292; Rigsbee & Allan, *Supra note 261*, at 21.

<sup>263</sup> Rigsbee & Allan, *Supra note 261*, at 1; Funsch, *Supra note 259*, at 55.

<sup>264</sup> Abdel Razaq Takriti, *Monsoon Revolution, Republicans, Sultans and Empires in Oman (1965-1976)* 63 (1<sup>st</sup> ed. 2013).

<sup>265</sup> Takriti, *Supra note 264*, at 262; Peterson, *Supra note 257*, at 189 & 193; Rigsbee & Allan, *Supra note 261*, at 27.

<sup>266</sup> Funsch, *Supra note 259*, at 55.

The British organized a coup d'état in 1970 and installed the Sultan's son, Qaboos, as ruler in retaliation for the Sultan's poor handling of the war.<sup>267</sup>

### **2.3.2 Oman from the 1970 Constitution until the 1996 Constitution.**

#### **2.3.2.1 Oman's political landscape after the coup d'état in 1970.**

Tariq, Said's younger brother, joined the resistance during the final four years of his life. In 1967, Tariq drafted a new constitution intending to turn Oman into a constitutional monarchy after Said.<sup>268</sup> <sup>269</sup> Tariq called off his campaign when the British made good on their intention to remove Said and replace him with Qaboos. Tariq agreed to the British plan with the premise that the new government would be constitutional.<sup>270</sup> <sup>271</sup> Qaboos, the new monarch, did not, however, exactly agree with this understanding. In Qaboos's vision, Oman would be a developed nation governed in an absolute manner.

Tariq left Germany following the victorious coup d'état in 1970 and came back to Oman. Despite accepting Tariq's appointment as prime minister under British pressure, Qaboos opposed any constitutional government.<sup>272</sup> In addition, Tariq was kept helpless by Qaboos.<sup>273</sup> By 1971, Tariq had given up on Oman's attempt at constitutional reform, resigned, and returned to his self-

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<sup>267</sup> Peterson, *Supra note 257*, at 201; Rigsbee & Allan, *Supra note 261*, at 29.

<sup>268</sup> Rigsbee & Allan, *Supra note 261*, at 26; Basmah Al-Kiyumi, *The Omani Constitution a Critical Analysis* 47 (2011) (Unpublished master dissertation, University of Manchester) (on file with the University of Manchester Library).

<sup>269</sup> The draft's preamble suggested this constitution was temporary until the people created their own constitution. Under this draft, the Sultan has a ceremonial rule, and the executive branch resided by an elected prime minister; Takriti, *Supra note 264*, at 206; Al-Kiyumi, *Supra note 268*, at 48 & 58 & 62-63; Peterson, *Supra note 257*, at 233.

<sup>270</sup> Al-Kiyumi, *Supra note 268*, at 49.

<sup>271</sup> *Id.*, at 50.

<sup>272</sup> Al-Kiyumi, *Supra note 268*, at 50; Rigsbee & Allan, *Supra note 261*, at 35.

<sup>273</sup> Takriti, *Supra note 264*, at 206; Al-Kiyumi, *Supra note 268*, at 51.

imposed exile.<sup>274</sup> The fact that Tariq's constitutional project was essentially a personal dream is what led to its downfall. Other elites could not be rallied around it by him. Qaboos was strong enough to avoid submitting his absolute power to respond, let alone relegating it to a ceremonial position, even after obtaining the premiership.

The Arab League and the UN recognized Oman as a sovereign state in 1971. The main opposition parties were either defeated or on the verge of defeat. Due to his father's flawed policies, most Omanis were illiterate and living in difficult conditions. Most people desire to improve their financial, physical, and educational circumstances. Qaboos could meet these wants thanks to oil profits without having to answer to anyone for their actions. As the Sultan who overthrew communists and won the Dhofar War, he gained further credibility among many of the Omanis.<sup>275</sup> The contemporary absolute state was constructed in the years that followed the Dhofar victory.<sup>276</sup>

### **2.3.2.2 The public participation, the 1996 Constitution, and the bicameral legislature.**

From 1970 until 1996, the Omani Government relatively embodied the concept of public participation in three different institutions. The Government looked at those institutions as phases of a larger gradual evolvement of public participation in general affairs. In 1996, Oman promulgated its first Constitution, which adopted a bicameral legislature.

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<sup>274</sup> Takriti, *Supra note 264*, at 195; Rigsbee & Allan, *Supra note 261*, at 35.

<sup>275</sup> In 1979, a televised ceremony showed one of the ex-imamate leaders, Abdulah Al Kahlil, praising Qaboos for his victory against “the infidel communists”: <https://www.youtube.com/watch?v=SKxLNXnXcjA>, (last visited on March 20, 2021).

<sup>276</sup> Takriti, *Supra note 264*, at 194.

#### **2.3.2.2.1 Public participation from 1979 until the 1996 Constitution.**

The official narrative has always claimed that Omanis were gradually brought into Government matters.<sup>277</sup> It created the Agriculture, Fishing, and Industry Council in 1979. The Royal Decree No. 19/79's preamble and Art. 2 allude to the Council's goal of involving the public in these sectors' decision-making. There were 12 appointed members of the Council, three ministers, and nine held no official position in the government. In 1981, the government founded another council, the Advisory Council of the State. The Royal Decree No. 84/82's preamble recommended that the Advisory Council continue the government's efforts to get the public ready to voice their opinions on government initiatives.

The Consultative Council became the Advisory Council of the State in 1991, according to Royal Decree No. 94/91. The Advisory Council comprised 45 appointed members: 17 from the government, 11 from business, and 17 from the sections of the country. The 59 members of the Consultative Council were chosen through elections that were only partially free. Three candidates are chosen from each electoral district, and the government then chooses, regardless of the votes, one of those three to serve in the Council. As its name implied, the Council's role concerning the authorities was strictly advisory.

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<sup>277</sup> The gradual path the government implemented did not mean it wanted to reach a point of a fully democratic regime. The gradualism in creating bodies that allowed the public to participate in public affairs might merely respond to globalism and the country's image internationally. Sulaiman F. Al-Farsi, *Democracy and Youth in the Middle East: Islam, Tribalism and the Rentier State in Oman* 82 (1<sup>st</sup> ed. 2013); Abdullah Juma Alhaj, *The political elite and the introduction of political participation in Oman*, 7:3 Middle East Policy. 97, 98-99 (Jun 2000).



#### 2.3.2.2.2 The 1996 Constitution.

It appears odd that Oman would promulgate its first written constitution at this time. Nations frequently adopt constitutions following significant historical events like independence, post-revolution, or post-civil war.<sup>278</sup> It would have seemed more natural if Oman had enacted its first constitution in 1970. Instead, the Sultan unilaterally promulgated Oman's first written constitution in 1996. Many commentators hypothesized that a confluence of security and economic considerations led to the constitution's adoption.<sup>279</sup> The security aspects were overemphasized by implying that they were a response to a "stormy political context."<sup>280</sup>

The alleged stormy political context most likely refers to the arrests made in 1994. After intercepting a letter criticizing Omani-Israeli relations in May 1994, the Omani security forces made hundreds of arrests.<sup>281</sup> According to the official narrative, those detained were Islamic extremists seeking to topple the government. With the trials in August 1994, the government made the tale official. The majority of the detainees were found guilty by the Security Court. The punishments ranged from imprisonment to death.

Given Israel's reputation in the Arab world, especially after the first Intifada (1987-1993), discontent with relations with Israel was anticipated. The absence of any plot was known to the government. Nevertheless, the government emphasized the narrative to convey to the populace that it tolerates no resistance to its policies.<sup>282</sup> Contrasting the 1994 events with Kuwait is essential

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<sup>278</sup> Al-Kiyumi, *Supra note 268*, at 68.

<sup>279</sup> Valeri, *Supra note 105*, at 191; Al-Kiyumi, *Supra note 268*, at 68; Marc J. O'Reilly, *Omani balancing: Oman Confronts an Uncertain Future*, 52:1 Middle East Journal. 70, 82 (Winter, 1998).

<sup>280</sup> Valeri, *Supra note 105*, at 191; Al-Kiyumi, *Supra note 268*, at 87.

<sup>281</sup> O'Reilly, *Supra note 279*, at 83; Jones & Ridout, *Supra note 245*, at 61-62; Valeri, *Supra note 105*, at 189 U. Rabi, *Majlis al-Shura and Majlis al-Dawla: Weaving Old Practices and New Realities in the Process of State Formation in Oman*, 38:4 Middle Eastern Studies. 41, 47 (2002).

<sup>282</sup> Oman has maintained clandestine relations with Israel since the early 70s. However, in late 1993, both parties initiated public communications. By the end of 1994, Isaac Rabin, then Israel's Prime Minister, made his first public visit to Oman. See <https://www.haaretz.com/israel-news/.premium-the-oman-file-inside->

to put them in perspective. The Popular Conference to Resist Normalization with Israel was founded in Kuwait by civil activists, and it was regularly covered by KUNA, the country's official news outlet.<sup>283</sup> The Omani Government, on the other hand, viewed comparable activity in Oman as a coup attempt. It is important to note that after a few months, Qaboos released everyone who had been convicted, even those who had been given the death penalty.

Regarding economic motivation, the 1996 constitutional text itself did not remedy Oman's economic predicament, which its rentier economic model brought on. Instead, it was a formal prerequisite for the country's upcoming transition to a new economic phase. By the middle of the 1990s, Oman had to diversify its economy and lessen its reliance on oil. It was necessary to liberalize the market, welcome foreign investment, and update the law to diversify the economy.<sup>284</sup> Additionally, diversification required joining the World Trade Organization and integrating its market with world trade.<sup>285</sup>

Regardless of its features, the state needed a document known as a constitution to accomplish these objectives. The Visions for Oman's Economy - Oman 2020 conference was organized by Oman in June 1995.<sup>286</sup> The conference aimed to reveal the new strategy for Oman's economy for the following 25 years. Along with other national laws, Oman's proposal for membership included the 1996 Constitution. Oman submitted a WTO application the same year

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the-mossad-s-alliance-with-muscat-israel-s-window-into-iran-1.8414861 (last visited on March 22, 2021); <https://www.washingtonpost.com/archive/politics/1994/12/27/rabin-visits-oman/44d65084-b80f-4a70-a2cd-ecc9bd64a78a/> (last visited on March 22, 2021).

<sup>283</sup> <https://www.kuna.net.kw/ArticleDetails.aspx?id=1257856&language=en> (last visited on March 22, 2021).

<sup>284</sup> Jones & Ridout, *Supra note 245*, at 107.

<sup>285</sup> *Id.*

<sup>286</sup> Jones & Ridout, *Supra note 245*, at 107; Valeri, *Supra note 105*, at 191; Al-Kiyumi, *Supra note 268*, at 90.

the constitution was enacted.<sup>287</sup> According to Article 11 of the Constitution from 1996, the Sultanate's economy is founded on free-market principles.

It is crucial to note that the constitution was not a result of popular pressure or threats to national security.<sup>288</sup> The legislative power was briefly covered in a short article of the Constitution. As a consequence, neither an elected constituent assembly nor, at the very least, a public referendum was used to create the constitution. Additionally, the 1996 Constitution's bicameral legislature only has consultative, non-binding authorities. It is, therefore, difficult to characterize it as a legislative. The Oman Council, a bicameral legislature made up of the State Council and Shura Council, was established by Article 58. The Shura Council was the lower Council with entirely elected members, while the State Council was the upper body with fully appointed members.

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<sup>287</sup> Oman's accession profile at WTO, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/ACCSPEC/OMN7.pdf&Open=True> (last visited on March 22, 2021).

<sup>288</sup> One factor, albeit minor, behind promulgating the constitution in the mid-90 was that Oman was the only Gulf country without Constitution after Saudi promulgated its constitution in 1992. Nikolaus A. Siegfried, *Legislation and Legitimation in Oman: The Basic Law, 7:3 Islamic Law, and Society*. 359, 368 (2000).

#### **2.3.2.2.3 The bicameral structure of the 1996 Constitution.**

When the 1996 Constitution was being drafted, no publicly available records of the discussions existed. Therefore, it is unclear why a bicameral legislature is preferred over a unicameral one. Both houses lacked legislative authority. Therefore, it was unnecessary to balance the legislature's lower house, which was only partially elected. If the government ever needed to give the legislature more authority, this framework may serve as a future guarantee. This theory might be supported by the uprising in 2011. Because of the 2011 uprising, the government gave the legislature some legislative authority in response to public pressure.<sup>289</sup> The government could control the lower house and, by extension, the entire legislature with the support of the appointed upper house in the bicameral legislature. If the 1996 legislature had only one chamber or two elected chambers, it would be harder to keep things under control.

The only difference between the Shura Council and the legislature of the 1996 Constitution was the expansion of the franchise. The Sultan issued Royal Decree No. 86/97 on the Oman Council a year after the constitution was enacted. Electoral districts with more than 30,000 voters qualified for two representatives under Article 21 of this Decree. However, voters in each electoral district would choose twice as many candidates as they had the right to. Then, regardless of how many votes a candidate received, the government would decide who among those elected would become a member. This system persisted until 2002 when the government declared that the Shura members would be chosen directly by the electorate via universal suffrage and secret votes.<sup>290</sup> The 2003 Shura election was Oman's first free election.

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<sup>289</sup> The 2011 uprising in Oman is discussed in the next part in detail

<sup>290</sup> Marc Valeri, Election Report of Oman Consultative Council 2, Agency for International Cooperation and Development, (2011).

## **2.4 Conclusion.**

This chapter explains how Bahrain and Oman came to have bicameral legislatures that included an appointed upper house. This justification was provided by examining each nation's political past, including all divisive political facets. Oman and Bahrain have recently established bicameral legislatures in 1996 and 2002, respectively. However, a deeper investigation of political history focused on the moment that each royal family—the Busaidi in Oman and the Khalifa in Bahrain—took power. The rationale is that many current political concerns, such as the relationship between the Khalifa and the Shiite villages or the interactions between the sultanate system and the imamate system in Oman, are rooted in long-standing historical events.

The analysis reveals that the government chose the bicameral configuration of each nation's legislature. This decision was influenced by the political climate in each nation, though. In the case of Oman, the bicameral legislature with an appointed upper house was the government's compromise to reinstate or initiate a Constitution. The compromise was more apparent and imminent in Bahrain than in Oman. For several reasons, both governments had to ratify a new constitution. These governments consequently drafted constitutions that granted them significant legislative branch control.

The power struggle between various political figures in each nation up until the adoption of the bicameral parliamentary system is covered in this chapter. The rulers of both nations, Qaboos and Hamad, shared the absolutist ideologies of their predecessors. However, both aspired to fuse modernity with the absolutist aesthetic. This means the development of weakly constructed representative bodies in the setting of representative bodies. A bicameral legislature with an appointed upper house is the result. This was Bahrain's government's lesson from 1973 when a

unicameral legislature questioned the monarchy. Hamad could not have recreated the identical incident in the 2002 Constitution twenty years later.

Likewise, Qaboos in Oman was a continuation of his father's unmistakable style of rule. He cited a lack of public readiness as his justification for not introducing genuine public participation. It took him almost 41 years to allow the legislature some, if limited, legislative power. Furthermore, the bicameral structure of the legislature with an appointed upper house could be an intended buffer to the government's power against any future power the legislature ultimately came to hold at a time like 2011.

Overall, The bicameral structure with an appointed upper house reflects the political reality in each country. No ultimate authority would agree to give up some of its power unless necessary, and it would naturally limit or restrict how much power it gives various parties in the country.

### **3.0 Chapter Three: The State of Civil Society and the Political Makeup of Bahrain's National Assembly (2002-2010) and Oman Council (2011-2019).**

#### **3.1 Introduction:**

This Chapter continued where the last Chapter left off. The Previous Chapter analyzed the rationale for adopting bicameral legislatures with appointed upper houses in Bahrain and Oman. This Chapter closely examines both countries' bicameral legislatures' political composition, particularly that of the elected lower houses. Given the confined character of political activity in both countries, reading the political makeup of both legislatures is not a simple process. It would not be sufficient, or possible in the case of Oman, to only examine the political affiliations of the people who won the seats and their alliances, as one might do when the subject is an established democracy.

After the legislature's dissolution in 1975, political affiliations of any type were outlawed and made illegal in Bahrain. Only in 2001, when the Bahraini government chose to reinstate the Constitution and allow for widespread public political engagement, was the ban on political associations overturned. The Omani government, in contrast, has firmly outlawed all political affiliations and made them a major crime. In other words, Bahrain's and Oman's official political affiliations are either brand-new or nonexistent. Thus, it is important to research how civic societies are doing in both countries.

Among other factors, the civil society in a given nation plays a role in revealing two aspects of a bicameral parliament. The first point is that it helps explain why a nation opted to have a

bicameral legislature and why it was built with particular features. The United States of America's Congress, which was covered in Chapter 1 of this dissertation, serves as the best illustration. Understanding the arguments made by the United States Founding Fathers and the compromises reached during the 1787 Constitutional Conventions is only the beginning of understanding the Constitutional debates and the composition of Congress. Investigating the nature of the communities and organizations that existed in the American colonies is necessary for a thorough understanding. The dynamics of the societies can then be used to illustrate how the Founding Fathers came to be in a position to discuss the future of the colonies.<sup>291</sup>

Second, assessing the functioning and prospects of a bicameral legislature is made easier by the state of civil society in a given nation, particularly in cases where such arrangements, as in Bahrain and Oman, were not the outcome of a democratically accepted process. The bicameral U.K. Parliament might be able to clarify this point. The bicameral structure of Parliament in the U.K. was a spontaneous development; it was not the outcome of a democratic process in the contemporary sense.<sup>292</sup> The U.K.'s thriving civil society, among other things, assisted the House of Commons in redefining the power structure in its favor.<sup>293</sup> After a protracted process of consolidating power, the House of Lords and the monarchy were reduced to ceremonial status.<sup>294</sup>

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<sup>291</sup> Tocqueville, one of the pioneering analysts, came into these specifics in his groundbreaking book *Democracy in America*. Given their similar status as immigrants, he discussed how common the idea of equality of conditions was among colonial settlers. The settlers' participation in creating the townships—voluntary self-governing entities—was made easier by equal conditions. The self-governing townships were able to produce unity in the form of a state while still functioning as self-relied units, which helped a voiding centralize the power. These states later engaged in debates about creating a federal government, which had the same central issue of dividing the power and to what extent the states gave up their independence for the sake of the federal government. Tocqueville, *Supra note* 82, at 00.

<sup>292</sup> George Tsebelis & Jeannette Money, *Bicameralism* 22 (1<sup>st</sup> ed. 1997); Meg Russell, *the Contemporary House of Lords* 42 (1<sup>st</sup> ed. 2013).

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*



The situation in Bahrain and Oman is somewhat comparable to that in the U.K. in that there was not a truly democratic referendum over the bicameral legislative structure. Instead, the governments chose the bicameral form of the legislature in Bahrain and Oman by a centralized decision. This characteristic increases the likelihood that the two houses will eventually engage in a power struggle to redefine the power distribution.

Bahrain and Oman offer two distinct examples of how their human capital might participate willingly in interest-based organizations separate from the authority. A thriving civil society has played a crucial role in Bahrain's democratic elements. This is clear from the numerous significant associations and public movements throughout the 20th century, not to mention the explosion of associations after the National Action Charter of 2001. Bahraini civic associations survived despite repeated attempts by the authorities to dismantle them through disproportionate force and restricted regulations. In comparison, civic associations are scarcer and have less sway in Oman. In addition to the government's limits on civic associations, Oman's society as a whole, compared to its Bahraini counterpart, has a lower propensity to participate voluntarily in civic associations.

The political makeup of the Oman Council (2011-2019) and Bahrain's National Assembly (2002-2010) was impacted by the state of civil society in both countries. Because the members of the upper chamber in both countries are appointed, it is challenging to discuss their political makeup. However, the Bahraini and Omani governments routinely nominate moderates who have previously held important positions in the executive branch. On the other side, the lower house is elected by the general public. Assessing the political makeup of Bahrain's lower house to that of the Omani lower house is easier. All candidates in Oman must run as independents because political parties are forbidden. Bahrain, on the other hand, tolerates political organizations and

allows them to identify and campaign for their candidates. Nonetheless, the major opposition parties boycotted the first election in 2002 before deciding to contest in the 2006 election.

Despite Oman's lack of party affiliations, the 2011 election drew passionate members to the lower chamber due to the movement's enthusiasm. The Omani Government had strengthened its control by the 2015 election, however, and prevented numerous members from standing again, allegedly for security reasons.

Accordingly, there are two sections in this Chapter. Three subsections in the first section cover the civil society in Bahrain and Oman. A quick theoretical examination of the concept of civil society in the context of Oman and Bahrain comes first. It also explores the pre-oil period relationships between the state and society. Thirdly, it analyzes the effects of oil on the interactions between the state and society. Fourth, it looks into how often the government uses laws and regulations to impede, restrict, and manage civil society. The political makeup of Bahrain's National Assembly (2002–2010) and the Oman Council (2011–2019) is covered in the second section.

### **3.2 The theory of civil society in the context of Bahrain and Oman.**

Literature defines the concept of civil society by three main aspects: 1) a public sphere, 2) relatively located out of the Government, market, and family 3) voluntarily created by individuals

through interest-based public actions and associations.<sup>295</sup> Being a public arena where people with different interests can interact and influence each other makes civil society a political phenomenon.<sup>296</sup> The concept focuses on individuals, not on the organizations, in the sense that the organizations or public actions, for that matter, are a mere result of the individual's propensity to engage in interest-based actions or organizations.<sup>297</sup>

Civil society, as a concept, finds its deep roots in western philosophy.<sup>298</sup> A long history lies behind the concept of civil society, including continued evolution in understanding its scope and role.<sup>299</sup> In classical thought, such as that seen in Aristotle's writings, the state or the formalized political commonwealth was equated with civil society.<sup>300</sup> According to Habermas, the modern idea of civil society did not emerge until 18th-century Europe.<sup>301</sup> Prior to it, the feudal era's organizational system made it difficult to distinguish between the public and private spheres as well as between the state and society.<sup>302</sup> A new type of public authority is made possible by the demise of feudalism and the decline of ecclesiastical influence.

The bourgeois public sphere served as the public power's initial analog. In the 18th century, a middle class with the means to participate in public discourse arose in Europe. The majority of

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<sup>295</sup> Michael Edwards, *Introduction: Civil Society and the Geometry of Human Relations*, in *The Oxford Handbook of Civil Society* 7, 3 (Michael Edwards ed., 2011); Thomas Carothers and William Barndt, *Civil Society*, 117 *Foreign Policy* 18, 18 (Winter, 1999-2000); Carmen Malena and Volkhart Finn Heinrich, *Can We Measure Civil Society?*, 17:3 *Development in Practice*, 338, 340 (Jun. 2007).

<sup>296</sup> Malena and Heinrich, *Supra* note 295, at 340.

<sup>297</sup> *Id.*

<sup>298</sup> Malena and Heinrich, *Supra* note 295, at 341; Michael Edwards, *Civil Society* 5, (3ed. 2014).

<sup>299</sup> Edwards, *Supra* note 295, at 6-8.

<sup>300</sup> Adam B. Seligman, *The Idea of Civil Society* 71-74, (1<sup>st</sup> ed. 1992).

<sup>301</sup> Craig Calhoun, *Civil Society, and the Public Sphere*, in *The Oxford Handbook of Civil Society* 311, 313 (Michael Edwards ed., 2011).

<sup>302</sup> *Id.*, at 2012.

the discussions took place in numerous coffee shops, literary clubs, and voluntary organizations. Press coverage and the distribution of pamphlets also helped debate topics reach a wider audience.

The booming industrial revolution was the cause of all those changes in the European societies of the eighteenth century.<sup>303</sup> This fact makes the concept, to a certain degree, a reflection of “an anthropological stage of history rather than a clearly delineated sphere or zone of human conduct.”<sup>304</sup> As alluded to earlier, the contemporary understanding of civil society started building in by the late 18<sup>th</sup> century; civil society was synonymous with the political community.<sup>305</sup> Adam Smith was one of the key theorists who looked at civil society as a structural category.<sup>306</sup> He suggested that economic processes constituted civil society.<sup>307</sup> Smith’s theory indicates that society evolved through four epochs: Hunter-gathering, pastoral nomadic, agriculture, and commercial. Each of these stages has a distinct set of economic, political, moral, and legal institutions.<sup>308</sup> The crucial aspect in the commercial stage is replacing the rule of force with a basic law system.<sup>309</sup> Furthermore, this phase is marked by the “increasing formalization of rules and the transformation of personalistic relationships into contractual relationships.”<sup>310</sup>

Thus, civil society is more than just a collection of institutions that operate in conjunction with the market and the state.<sup>311</sup> The tendency of people to participate in interest-based activities or associations outside of family or the government is instead a cultural aspect supported by certain

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<sup>303</sup> Omar G. Encarnación, *Assisting Civil Society and Promoting Democracy*, in *The Oxford Handbook of Civil Society* 468, 472 (Michael Edwards ed., 2011).

<sup>304</sup> Richard Boyd, Adam Smith on Civility and Civil Society, in *The Oxford Handbook of Adam Smith* 444, 443 (Christopher J. Berry, Maria Pia Paganelli, Craig Smith eds., 2013)

<sup>305</sup> Seligman, *Supra* note 300, at 71-74.

<sup>306</sup> *Id.*, at 445-446.

<sup>307</sup> Edwards, *Supra* note 295, at 21.

<sup>308</sup> Boyd, *Supra* note 304, at 444-443.

<sup>309</sup> *Id.*

<sup>310</sup> Boyd, *Supra* note 305, at 446-447; Edwards, *Supra* note 295, at 18.

<sup>311</sup> Malena and Heinrich, *Supra* note 295, at 339; Edwards, *Supra* note 298, at 70.

societal relations. A lengthy and continuous process of modernization has led to this capacity for the open exchange of ideas, discussion of matters of public interest, the development of public opinion, and the transfer of this opinion to official authorities.<sup>312</sup> Modernity is a social learning process because it requires releasing social rationalizations from their oppressive side. In Habermas's account, a constitutional state built on representative governments, democratic legitimacy, and the rule of law could emerge as a result of this process.<sup>313</sup>

The political importance of civil society is found in its capacity to strive for a long-term change in the power structure by acting as a check on the authority of the state.<sup>314</sup> Early proponents of civil associations, like James Madison and Alexis de Tocqueville, saw civil society as a safeguard against the state's unforeseen interference with the rights and freedoms of individuals.<sup>315</sup> In spite of any potential conflicts of interest, civil society institutions function as separate sectors alongside the government.<sup>316</sup> Because it is a distinct sector, civil society has the ability to spark the kind of widespread and long-lasting progress like democratization and poverty alleviation that calls for political empowerment and social mobilization.<sup>317</sup>

Long-term political reforms can be influenced by civil society, even though it is not necessarily a fundamental part of every civil society. The structure, dynamics, and interactions of each civil society with the state are only a few examples of the many variables that affect this capacity. The crucial concept in regard to the efficiency of civil society is the public sphere. Habermas developed the notion of the public sphere by arguing the presence of a discursive public

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<sup>312</sup> Nicolas Granham, *Habermas and the Public Sphere*, 3:2 Global Media Communication. 201, 203 (2007).

<sup>313</sup> *Id.*, at 203-204.

<sup>314</sup> Edwards, *Supra* note 295, at 6.

<sup>315</sup> ALEXANDER HAMILTON, JAMES MADISON, and JOHN JAY, *The Federalist Papers* 48-50 (ed., Lawrence Goldman, 2008); Tocqueville, *Supra* note 82, at 134-135; Edwards, *Supra* note 298, at 7.

<sup>316</sup> Edwards, *Supra* note 295, at 21.

<sup>317</sup> Edwards, *Supra* note 295, at 6 & 12; Edwards, *Supra* note 298, at 67.

sphere.<sup>318</sup> In the ideal public sphere, every individual has equal access to information and chances to participate in dialogues about common issues in a non-violent manner. These qualities are necessary for the public sphere to be regarded as democratic and hence capable of delivering substantial effects.<sup>319</sup>

Applying the discussion about how the concept of civil society emerged and theorizing the concept of the public sphere to Bahrain and Oman raises two issues. The first issue refers to the historical foundations of Bahrain's and Oman's current civil societies, while the second concerns the barriers that tainted those societies' public spheres.<sup>320</sup>

Oman and Bahrain did not experience the same economic, political, and social transformations as many non-developed or poor states, as is the case in many industrialized ones. Many of these nations struggle with the fundamentals of creating constitutional states. Some Bahraini intellectuals labeled this predicament as "contested Modernity."<sup>321</sup> and "unfinished business."<sup>322</sup> Both descriptions indicate the possibility of a real state building, but the authorities halted the modernity process. Both Bahrain and Oman experienced the "oil curse."<sup>323</sup> After discovering oil and gas resources, the rent that fills each state's coffers decreased the authority's

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<sup>318</sup> Eberhard Kienle, *Civil Society in the Middle East*, in *The Oxford Handbook of Civil Society* 147, 146 (Michael Edwards ed., 2011).

<sup>319</sup> Edwards, *Supra note 298*, at 8-9 & 68-69.

<sup>320</sup> Kienle, *Supra note 318*, at 147.

<sup>321</sup> Al-Shehabi, *Supra note 112*, at 107.

<sup>322</sup> Khalaf, *Supra note 112*, at 37.

<sup>323</sup> According to Michel L. Ross's book *The Oil Curse*, nations with high petroleum production have less democracy, less economic stability, and more civil wars than nations without such a resource. Michel L. Ross, *The Oil Curse, How Petroleum Wealth Shapes the Development of Nations* (2012).

propensity to enact significant structural changes. Instead, it used a portion of the rent to strengthen and consolidate its influence at the expense of other national political institutions.<sup>324</sup>

Controlling the public domain by dominating society and removing any competing power centers is essential to maintaining the authority's hold over the state.<sup>325</sup> To rule the public domain, the authority frequently employs two strategies. The first strategy involves creating a set of rules that have an impact on fundamental elements of a healthy public sphere, such as the free and equal opportunity to express and exchange ideas.<sup>326</sup> The second strategy involves two ways of clouding the public sphere:

The first strategy is actively participating in the public arena and using influence to emphasize the government's agenda. The main agenda stresses the state's paternalism, in which the head of state assumes the role of a father figure and acts in the best interests of his children.<sup>327</sup> In Bahrain and Oman, a sizeable segment of the population, especially the older generations, could connect easily to this narrative.<sup>328</sup> The official narrative is compelling to many people because the government is the largest employer in the nation, thanks to rent revenue.<sup>329</sup> In addition, the

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<sup>324</sup> According to the author, the fate of civil society has been directly correlated with the political regimes in place and how they have changed or not through time in various Middle Eastern nations. Kienle, *Supra* note 322, at 146.

<sup>325</sup> Kienle, *Supra* note 322, at 146; Edwards, *Supra* note 298, at 8.

<sup>326</sup> Edwards, *Supra* note 298, at 7-8.

<sup>327</sup> Abd AlNabi ALEkry, The Gulf from the Patriarchal Rentier State to the Spoils State, ALwasat News February 6, 2015, available at <http://www.alwasatnews.com/news/959430.html>; Mohammed Ubaid Ghabash, Five Concepts of Authority in the Gulf, Gulf Center For Development Policies August 3, 2004, available at <https://gulfpolicies.org/2019-05-18-07-14-32/92-2019-06-25-12-45-40/794-2019-06-26-09-34-45>.

<sup>328</sup> *Id.*

<sup>329</sup> Ennis, *Supra* note 5, at 63.

government runs welfare programs, including free education, free health care, and monthly stipends for low-income families.<sup>330</sup>

The governments of both nations are disseminating their messages through a variety of media. The primary T.V., radio, and newspapers in both nations are either directly controlled by the government or supported by the government in a way that forces those media institutions to adhere to rigorous government regulations.<sup>331</sup> As was the case with the Bahraini Wasat Newspaper and the Omani Za'mn Newspaper, the government shut down the few independent media outlets and imprisoned the owners.<sup>332</sup>

Additionally, a number of Gulf regimes deployed an electronic army, also known as electronic flies by its critics.<sup>333</sup> In contrast to other Gulf Cooperation Countries, which implement this electronic activity in social media on a smaller scale, the Kingdom of Saudi Arabia uses it extensively.<sup>334</sup> On social media sites, electronic flies are fraudulent accounts that impersonate real accounts.<sup>335</sup> These accounts seek to spread false information about particular subjects or invent

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<sup>330</sup> Jessie Mortiz, *Oil and Societal Quiescence: Rethinking Causal Mechanisms in Rentier State Theory*, in *The Politics of Rentier States in the Gulf* 40, 41-42 (Michael Herb and Marc Lynch ed., 2019).

<sup>331</sup> Report of Defend Rights End Culture of Impunity Organization, On World Press Freedom Day, the Gulf Countries Remain Areas of Grave Concern, May 3, 2018, available at <https://www.adhrb.org/2018/05/on-world-press-freedom-day-the-gulf-countries-remain-areas-of-grave-concern/> (last visited February 6, 2023).

<sup>332</sup> *Id.*

<sup>333</sup> Nouredine BENSOUA, *Electronic Flies and Public Opinion*, 11:1 *Al-Naciriya: Journal of Sociological and Historical Studies*. 195, 196 (June 2020); Marc Jones, *Fake News, Twitter Bots, and the Weaponization of Social Media in the Arabic-Speaking Middle East*, Middle East Institute (July 28, 2019), <https://www.youtube.com/watch?v=fnzZSB4O1wg>

<sup>334</sup> Louisa Loveluck and Ghalia al-Alwani, *Saudi electronic army floods Twitter with insults and mistruths after Khashoggi's disappearance*, Washington Post, October 19, 2018, at 7:59 p.m., [https://www.washingtonpost.com/world/saudi-electronic-army-floods-twitter-with-insults-and-mistruths-after-khashoggis-disappearance/2018/10/19/98044874-d311-11e8-a4db-184311d27129\\_story.html](https://www.washingtonpost.com/world/saudi-electronic-army-floods-twitter-with-insults-and-mistruths-after-khashoggis-disappearance/2018/10/19/98044874-d311-11e8-a4db-184311d27129_story.html)

<sup>335</sup> *Id.*



trends to draw attention away from pressing issues.<sup>336</sup> The 'electronic army' or 'electronic flies' aim at advancing the government's political agendas and harassing the government's opponents.<sup>337</sup>

The second strategy the governments of Bahrain and Oman employ to taint public discourse is to establish or support institutions of civil society.<sup>338</sup> The purpose of the government out of establishing civil society institutions is to selectively redefine liberties in order to cushion external pressures for political liberalization.”<sup>339</sup> In other words, this support of organizations in civil society is simply a component of state branding. Institutions supported by the government are not autonomous from it, which calls into doubt the claim that they are part of civil society. The women's associations in Oman are one example of this kind of institution, which will be covered later. As a result, Bahraini and Omani civil society's capacity to effect change is constrained.

The next sections provide an examination of the state of civil society in Bahrain and Oman by focusing more closely on the development of state-civil society ties. The analysis describes this relationship and its underlying socio-economic and sociocultural factors.

### **3.3 State and society in the pre-oil era: Bahrain and Oman.**

The individuals' inclination to engage in collective actions or arrangements preexisted in the existence of the state itself. Yet, the critical point lies in the ability of these associations to coexist with the state and maintain their significance. In Bahrain and Oman, the authority in the pre-oil era was very central and limited in its resources; therefore, it had little impact on the day-

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<sup>336</sup> Jones, *Supra* note 333.

<sup>337</sup> *Id.*

<sup>338</sup> Wehrey, *Supra* note 123, at 58.

<sup>339</sup> Kienle, *Supra* note 322, at 146-147.

to-day people's needs. Naturally, people came up with certain arrangements to work collectively around certain interests.<sup>340</sup> These arrangements typically evolved around specific sectors like agriculture, fisheries, pearl, and pastoral areas. Besides these artificial arrangements, natural grouping as family and tribe played a pivotal role in both countries, along with associations that evolved around religious creeds. Obviously, family-based associations are not part of civil society. The impact of the sector-based associations in Bahrain during the twentieth century was more politically pivotal compared to Oman than familial/religious-based associations.

### 3.3.1 Bahrain

The prevalence of the sector-based civil society in Bahrain, compared with Oman, could be attributed to three factors combined. First, the flourishing of the entrepôt trade in Bahrain and not Oman. Second, Bahrain is a city-state with intense social diversity, whereas Oman is more rural and homogenous. Third, the early exposure to administrative reforms, the so-called 1920s British Administrative Reforms in Bahrain, which have no counterpart in Oman.

First, the flourishing of the entrepôt trade:

As alluded to in Chapter 3, the Khalifas descended from the Utub, the tribal coalition behind the prosperity of Kuwait city as a trade hub during the eighteenth century.<sup>341</sup> When the Khalifas clan moved to Zabara city in 1766, they replicated Kuwait city in Zubara port.<sup>342</sup> In 1783,

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<sup>340</sup>Munira Ahmed Fakhroo, *Civil Society and Democratic Transformation in Bahrain* 12-13, (1995); Said ALHashmi, *Civil Society Institutions in Oman*, 369 *The Arabic Future Journal*. 90, 93 (2009); Ahmed Mukahini, *Oman Civil Society*, nizwa magazine, March 8<sup>th</sup> 2015, <https://www.nizwa.com/%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A-%D9%81%D9%80%D9%8A-%D8%B9%D9%8F%D9%85%D8%A7%D9%86/> (last visited August 19, 2022).

<sup>341</sup> Crystal, *Supra note* 113, at 18.

<sup>342</sup> AlShehabi, *Supra note* 134, at 37-38; Hakima, *Supra note* 112, at 25-26.

they controlled Bahrain, and again, they did the same with the Bahrain ports. However, the economic stability in Bahrain was limited due to the constant interruptions by its neighboring Saudis and Omanis, along with the internal skirmishes within the Khalifas.<sup>343</sup>

It was only during the Pax Britannica era Bahrain witnessed a better stable environment. Britain had gradually prevented inter-regional aggression and controlled the local authority to the extent that it decided who would be the ruler on some occasions. During this period, Bahrain became a renowned global hub for the pearl industry. This early attachment to world trade made Bahrainis more susceptible to new ideas; thus, the intelligentsia's appearance, whose members often came from the trade class. Trade activities allowed those who engaged to see different places and interact with new people and ideas. The most influential strand in the Arabic world during the mid-nineteenth and early twentieth century was Bahrain's Al-Nahda Movement, arising out of these interactions with world communities undergoing democratic transition.<sup>344</sup> The word Nahda means awakening. It erupted as a shock from the severely underdeveloped condition of Arabia when compared with the western world at the beginning of the nineteenth century.<sup>345</sup>

Modernization attempts were initiated in different fields, including education, religion, politics, and literary criticism.<sup>346</sup> The Nahda movement influenced the Bahraini intelligentsia.<sup>347</sup> During the early twentieth century, those who believed in Nahda discourse implemented its agenda in Bahrain. This implementation covered a variety of critical subjects like anti-colonialism and

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<sup>342</sup> AlShehabi, *Supra note 134*, at 37-38; Abu Hakima, *Supra note 112*, at 25-26; Khuri, *Supra note 114*, at 33.

<sup>343</sup> Khuri, *Supra note 114*, at 37 & 39.

<sup>344</sup> AlShehabi, *Supra note 134*, at 107-108.

<sup>345</sup> Hourani, *The Arabic thought in the Liberal Age 1798-1939* 34 (22ed., 2013).

<sup>346</sup> *Id.*, 67 & 103.

<sup>347</sup> AlShehabi, *Supra note 134*, at 107-108.

pan-Arabism.<sup>348</sup> The Nahda movement provided the impetus to increase the activity of civil society in Bahrain. Bahraini launched many civil initiatives during this period, including the first local public library.<sup>349</sup>, the first local school in Muharraq<sup>350</sup>, the Knowledge Council<sup>351</sup> The Committee to Resist British Colonialism, and the Literary Club.<sup>352</sup>

Second, Bahrain is a city-state with intense social diversity.

Bahrain's commercial thriving attracted many people from different backgrounds and ethnicities to reside in the country and engage in its economy. The people in Bahrain belonged to different groups like the Arab Shiite Baharna, the Arab Sunni, Persian Shiite, Huwula Sunni, people from the Indian subcontinent, and a growing number of Europeans.<sup>353</sup> The small size of Bahrain ensured close interaction between these groups, and trade was one of the common denominators between all of them. They needed civil society institutions to hold them together, as traditional links of clan and tribe are not effective among such diverse agents.

Third, the early exposure to administrative reforms, the so-called 1920s British administrative reforms in Bahrain.

The increasing number of foreigners was one of the reasons that made Britain keep a close eye on Bahrain. These foreigners were considered British subjects; hence, they were subject to

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<sup>348</sup> *Id.*

<sup>349</sup> Some of the Bahraini intelligentsia established the public library in 1913. The pearl merchants played a crucial role in supplying the library with periodicals from other Arabic countries.

<sup>350</sup> Al-Hedaya school was established in 1919.

<sup>351</sup> The main purpose of this council was to oversee the school.

<sup>352</sup> This club was established in 1919. It played a crucial role in direct interaction between Bahraini intelligentsia and some Nahda figures, such as Amin al-Raihani from Lebanon, Mohammad al-Shanqiti from Mauritania, 'Abdulaziz al-Th a'alebi from Tunisia, and Khaled al-Faraj from Kuwait.

<sup>353</sup> AlShehabi, *Supra note* 134, at 117.

British jurisdiction.<sup>354</sup> In the late nineteenth century and early twentieth century, Bahrain was a country with dual jurisdiction, British and Bahraini.<sup>355</sup> Jurisdiction disputes constantly occurred between the British and the ruler of Bahrain, especially over the Persian and non-Bahraini Arabs.

In addition, the custom policies in Bahrain's ports were one of the early motivations for the British to carry out some administrative reforms in the country. Both points of disagreement between the British and the ruler created a climate of continued tension, which on some occasions raised to the brink of a forceful confrontation, as in 1905, as discussed in Chapter Two. Britain issued the Bahrain Order in Council in 1913, which gave Bahrain a political status under the British Crown and increased the authority of its political agent in Bahrain. However, the administrative reforms were not launched in full fledge until the end of World War I. The possibility of finding crude oil in Bahrain was yet another motivation to carry out these reforms.

To ensure the successful execution of the reforms, the British had to deal first with the ruler and the growing anti-British sentiments in Bahrain. British saw the Baharna villagers as potential allies. Therefore, the British decided to abolish the feudal system, which the Khalifas had long imposed over the villages.<sup>356</sup> Abolishing feudalism empowered the Baharana, a wide segment of Bahraini society. Meanwhile, it raised agitation among the ruling family. The tensions vis-à-vis the reforms between the two camps eventually led to the ruler's abdication to his son Hamad, who was pro-British, in 1923.<sup>357</sup> The reforms included the customs, judicial system, the Manama

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<sup>354</sup> Al-Tajir, *Supra note 132*, at 36.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*, at 80 & 82.

<sup>357</sup> Omar AlShehabi, *Political Movements in Bahrain Across the Long Twentieth Century*, in *The Oxford Handbook for the Contemporary Middle-Eastern and North African History* 537, 542 (J. Hanssen and A. Ghazal ed., 2017).

Municipality Council, police force, pearl industry, and land reform. The significance of these reforms was in introducing modern bureaucracy to the state of Bahrain.<sup>358</sup>

Following the Administrative Reforms of the 1920s, Bahrain's growing bureaucracy started the process of the society's structural transformation. These changes resembled, in some ways, the structural changes to European society in the 18th century that Habermas described. The reforms of the 1920s created a distinct split between the public and private sectors, as well as between the state and society. This distinct split resulted in the unnatural circumstances under which those reforms were introduced. The British colonizer, who had complete influence over Bahrain's authorities, instead implemented the reforms. In other words, the reforms were not a logical evolution of the process of state-building. As a result, a sizable portion of the Bahraini population, particularly the intelligentsia, became more aware of the distinction between the state and non-state, which led to the emergence of the public sphere in Bahrain. Interest-based social mobilizations were sparked by the reforms of the 1920s as well as other elements, including Bahrain's pre-1973 social diversity and trade prosperity.

### **3.3.2 Oman.**

The dominance of tribal/religious-based associations in Oman, compared to Bahrain, could be attributed to three reasons combined. First, the supremacy of the Ibadites in Oman's political history. Second, the severe decline of trade post-1820. Third, the rigid tribal system.

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<sup>358</sup> Khuri, *Supra note 114*, at 51; AlShehabi, *Supra note 134*, at 164-165.

First: the dominance of the Ibadite through most of Oman's political history.

As alluded to in Chapter 3, Ibadite is a minority Islamic sect that fled the prosecution of the Umayyad Caliphate (661-750) to Oman.<sup>359</sup> The disagreement with the Umayyad was political; hence, the Ibadites took the chance to establish their imamate system in Oman in 750 CE.<sup>360</sup> Although the tribal factor was critical in choosing Oman, the remote location on the southeastern coast of the Arabian Peninsula was significant. Since 750 CE, the Ibadite Imamate had been the default political system in Oman until the 50s of the twentieth century. Even when other players, internal or external, took power in Oman, the Ibadites had always managed to mobilize the Omanis and seize power.<sup>361</sup> In words, Ibadism was the political authority. It is important to note that this approach does not imply that Ibadism prohibited civic institutions in and of itself. Instead, it only clarifies why some associations were more prevalent in Oman than others.

Second, the severe decline of trade post-1861.

The relevant political stability and the maritime locations of the Oman ports ensured an excellent degree of prosperity during most of the 18<sup>th</sup> century and the first half of the 19<sup>th</sup> century.<sup>362</sup> However, Oman ports lost their importance gradually with the development of steamboats and the advent of British dominance over maritime routes.<sup>363</sup> Politically, the separation

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<sup>359</sup> Adam R. Gaiser, *the Origin and Elaboration of First Ibadite Imamate Traditions* 8-10 (2010).

<sup>360</sup> *Id.*, at 10.

<sup>361</sup> Internally, the Ibadite Imamate successfully seized power during the Azan bin Qais Revolution (1869-1871) and Salim bin Rashid Revolution in 1913. Externally, the Ibadite launched a successful campaign to expel the Portuguese from Oman's coastal areas in 1624.

<sup>362</sup> Jones and Ridout, *Supra note 245*, at 35.

<sup>363</sup> Jones & Ridout, *Supra note 245*, at 64; Bishara, *Supra note 255*, at 115-116.

of the Omani-African states in 1861 was devastating to the Oman mainland.<sup>364</sup> The separation also had a cultural dimension. It exacerbated the isolation of Oman. The location of Oman and the deference of the dominating sect in Oman reduced the interaction between Oman and other Arabic countries. Until 1861, trade had been playing an excellent alternative for cultural exchange. However, the atrophy of trade created a stagnated cultural environment in Oman. Most of the merchants moved gradually to Zanzibar, which made the mainland slip slowly into poverty and isolation from trends that would have otherwise fostered civil society development.

Third, the rigid tribal system.

Since the mid of the nineteenth century, Oman has been one state with two regimes, the Sultanate and the Imamate. The two regimes had major confrontations in 1869, 1913, and the 1950s. Part of this contentious environment between the two regimes was severe competition to buy the loyalty of the tribes. This environment made the tribes solid political actors, which dominated the political scene until the advent of oil. The entrenched tribal system eliminated any potential for diversity in civil society in the country. All individuals were supposed to belong to a specific tribe, even if they did not belong to any tribe, and loyalties to other institutions were extinguished. Indeed, this environment caused a tribe-shopping phenomenon, where people kept changing their tribes based on political circumstances.

These three main factors contributed significantly to sustaining the society in a primitive status, which favored natural, blood-based associations over any interest-based associations.

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<sup>364</sup> Robert Geran Landen, *Oman Since 1856 Disruptive Modernization in a Traditional Arab Society* 271 (1967).



### **3.4 State and civil society in the advent of the oil era:**

The advent of oil in Bahrain (the 1930s) and Oman (the 1960s) was a radical change for both countries economically, politically, and socially. The oil rent empowered the states by freeing the rulers from dependency on the people. Indeed, the people gradually became entirely dependent on the state, which became the principal employer in each country. Yet, Bahrain's civil society was able to sustain its sense of independence from the state. Moreover, it found ways to keep up with the Bahraini's Government constant endeavors to contain it. Meanwhile, the oil rent weakened Oman's already fragile civil society by rendering it over-dependent on the state.

#### **3.4.1 Bahrain.**

Bahrain's civil society's resilience in the face of the Government after discovering oil could be attributed to two combined reasons. First: the sense of alienation with a broad segment of the Bahrainis. Second, the difference in religious sects between the rulers and the majority of the Bahrainis.

First: the sense of disenfranchisement and alienation with a broad segment of the Bahrainis.

As discussed in Chapter 3, the relations between Bahrainis and the Khalifas involved a level of distrust. The discovery of oil in Bahrain coincided with the collapse of the pearl industry, the primary sector in the country, for years.<sup>365</sup> Many Bahrainis found themselves without work, and the agitation led to the 1932 divers' uprising. Meanwhile, the emerging oil sector attracted an

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<sup>365</sup> Khuri, *Supra note 114*, at 118; Al-Tajir, *Supra note 132*, at 145.

influx of foreign workers.<sup>366</sup> The Government was cautious about employing many Bahrainis in the industry because that might make it vulnerable to strikes. As a result, the sense of grievance increased among a large segment of the Bahrainis. The shared grievance created a sense of unity among the people. Against this backdrop, a series of continued contentious politics erupted in Bahrain, including three significant events: the 1938 movement.<sup>367</sup>, the National Union Committee Movement 1954-1956<sup>368</sup> and the Constitutive Committee of 1971<sup>369</sup>.

People from different social, religious, and economic backgrounds joined the three mentioned movements; and campaigned for an elected legislature, the right to work, and not being replaced by foreign workers.<sup>370</sup> Although the Government had brutally crackdown on these movements, Bahrainis could still mobilize around the 1974 legislative election. The opposition's ability to control the 1974 legislature and impose checks on the Government instigated the Government to abolish the legislature and suspend the 1973 Constitution. The constitutional suspension exacerbated the Bahrainis and the Government's relations and opened the door for religious mobilization.

Second, the difference in religious sects between the rulers and the majority of the Bahrainis.

It is important to emphasize that the tension between the Shiite groups in Bahrain and the Khalifas is not primarily religious but rather political. The injustice upon the Shiite villages pre-

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<sup>366</sup> Lawson, *Supra note 141*, at 51; Al-Tajir, *Supra note 132*, at 78-79.

<sup>367</sup> Khuri, *Supra note 114*, at 205.

<sup>368</sup> Nakhleh, *Supra note 142*, at 78; AlShehabi, *Supra note 140*, at 537.

<sup>369</sup> Nakhleh, *Supra note 142*, at 80; Omar AlShehabi, *Divide and rule in Bahrain and the elusive pursuit for a united front: the experience of the Constitutive Committee and the 1972 Uprising*, 21 *Historical Materialism*. 94, 101 (2013).

<sup>370</sup> AlShehabi, *Supra note 134*, at 207-208.

the-20s reforms was not religious. In other words, the injustice imposed on the villagers did not actually relate to differences over religious doctrine so much as the subjugation of the other.

Before the late 70s, Shiite groups were active but not at the lead in social activism. Whereas, from the late 70s onwards, Shiite groups were at the center of the contentious politics in Bahrain for two intertwined reasons. First, the strong narrative of being the indigenous people of Bahrain and the majority group who have endured massive injustice by intruders, the Khalifas.<sup>371</sup> Second, the regional politics represented in the 1979 Iranian Revolution.<sup>372</sup> The 1979 Revolution launched a new era of cross-regional sectarian politics in the Middle East. The reactions of the neighboring states were similar in nature but different in degree. The new Iranian revolutionary ideology threatened most surrounding states and motivated the establishment of the Gulf Cooperation Council in 1981. Bahrain was among those countries that were threatened the most, mainly because its majority was Shiite.<sup>373</sup> The religious sentiment was an effective tool of mobilization among the Shiites in the villages, which had suffered from marginalization, compared to the urban areas.

The distrust increased between the Government and the Shiite community over the years. The relations have worsened by the 90s uprising, the 2006 Bander Report, and the 2011 uprising. Meanwhile, the Government has always used the fact that the significant opposition belongs to the Shiite groups to accuse them of being sectarians and agents for Iran.<sup>374</sup>

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<sup>371</sup> Wehrey, *Supra* note 123, at 11.

<sup>372</sup> *Id.*, at 3.

<sup>373</sup> *Id.*, at 21-22.

<sup>374</sup> *Id.*, at 4.

### 3.4.2 Oman

As discussed earlier, the weakness of Oman's civil society finds its roots in the pre-oil era. Modern Oman started in the 1970s with the new ruler, Qaboos, and the influx of oil revenue. By the 70s, the Omanis were suffering from severe poverty and a high illiteracy rate. Moreover, the country was devastated by two major conflicts, the Imamate in the 50s and Dhofar in the 60s. The Government crushed its opponents in both disputes, thanks to the enormous power discrepancies. Thus, the social, political, and economic environment was susceptible to an absolute form of Government. Qaboos rationalized his absolutism by arguing that people were not yet ready for democracy.<sup>375</sup> More importantly, the rapid modernization and oil rent distribution contributed significantly to legitimizing Qaboo's' absolute rule.<sup>376</sup> The formula was trading off welfare for political participation. Entrenching absolutism required, among other things, specific arrangements with four social groups, i.e., tribal leaders, Ibadite scholars, merchants, and the royal family.

The Government aimed to dilute the significance of the tribal leaders and separate them from their social base. The state apparatus gradually substituted the political and economic roles of tribal leaders. Thus, the traditional intermediary role of tribal leaders between the state and the people eventually disappeared. Furthermore, most key tribal leaders received preferential treatment from the Government. They were appointed to high-ranking positions, providing them with direct allowances and granting them easy yet profitable business opportunities. This preferential treatment made tribal leaders wealthy. Being rich and super-rich created emotional

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<sup>375</sup> Al-Kiyumi, *Supra note 268*, at 70 (2011) (Unpublished master dissertation, University of Manchester) (on file with the University of Manchester Library).

<sup>376</sup> The urbanization rate grew from 30% in 1970 to 80% in 2020. Naima Benkari, Urban Development in Oman: an Overview, 226 WIT Transactions on Ecology and the Environment. 143, 147 (2017).

alienation between tribal leaders and their social base, most of which belonged to the poor or lower-middle-income class. In addition, most tribal leaders left their interior hometowns to reside primarily in the capital city, Muscat. All these factors diluted the tribal leaders' political significance.

The Ibadite scholars are far more politically significant in Oman because they have often aspired to reinstate the Imamate system. Moreover, they were always an independent and, to a certain extent, decentralized group. After all the constituent failed attempts in the first half of the twentieth century, by the 70s, Ibadite scholars lost hope of reinstating the imamate system. Notwithstanding this political failure, they remained a prestigious group and formed a significant part of Omani civil society. Absolutist state policies post-1970 focused on centralizing the scholars' community in a semi-hierarchical system and making it dependent on and a part of the state apparatus. This goal was achieved through the establishment of the Fatwa Institute and the Ministry of Islamic Affairs. The Fatwa Institute centralized religious authority and created a hierarchy presided over by the Mufti. Besides his religious authority, the official title, the Mufti, provided the Mufti an additional legitimization. The title of Mufti is at odds with the Ibadite history in Oman. There were always muftis but not the Mufti, and, of course, they were independent of the Government. As for the Ministry of Islamic Affairs, its function, among other things, is to contain some different factions of Ibadite scholars.

Merchants' relations with authority during the 20<sup>th</sup> century differed in Oman from that of their counterparts in Kuwait.<sup>377</sup> In Kuwait, the authority had a tacit arrangement with the trading families to withdraw from political life. In exchange, the Government let them run commercial affairs and made sure through oil wealth and other support that, they became immensely

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<sup>377</sup> Rigsbee & Allan, *Supra* note 261, at 34.

wealthy.<sup>378</sup> Those arrangements included supporting the merchant's role at the top of the commercial system by granting them preferential access to government tenders, facilitating their role as agents for anyone seeking to do business in Kuwait, and offering direct loans when needed.

In contrast, the prominent merchant families in Oman were always a part of and dependent on the Government. It is worth remembering that Oman had few merchant families during the first half and the beginning of the second half of the twentieth century.<sup>379</sup> The few trading families who remained or operated in Oman during the first half of the 20<sup>th</sup> century were primarily foreigners and very dependent on the rulers. Some of them represented the commercial interests of the rulers.<sup>380</sup> In other words, their interests were, in many ways, indistinguishable from the rulers' interests. After the coup d'état, the decedents of the same trading families, alongside their businesses, held very high-ranking positions in the new Government.<sup>381</sup> Thus, their power was derived not only from their commercial strength but from their official role, too. In short, the merchants were the Government.

Similar to his father, Qaboos kept his family at arm's length.<sup>382</sup> It is worth noting that discussing the status of the royal family aims to illustrate rigid absolutism. The marginalization of the royal family did not mean depriving them of any high-ranking positions; rather, it meant depriving them of any influential role. Tariq, the brother of Said and Qaboos's uncle, was deliberately marginalized in both Said's and Qaboos' reigns. Qaboos, who had no children, refused to name any heir apparent until his death, to avoid empowering any royal family members.

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<sup>378</sup> Crystal, *Supra* note 113, at 1.

<sup>379</sup> Jones & Ridout, *Supra* note 245, at 64; Bishara, *Supra* note 255, at 115-116.

<sup>380</sup> Jones & Ridout, *Supra* note 245, at 103.

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*, at 11 & 103.

Qaboos's successor, Haitham, served as a Minister of Heritage and Cultural before becoming the Sultan. The same applies to all other members of the royal family.

Overall, containing these four groups, tribal leaders, scholars, merchants, and royal members, was pivotal in creating an absolute state. Although Qaboo's character was an essential element, he would not have succeeded in containing these groups if not for the influx of oil revenue.

The culture of absolutism and over-dependency on the state made the society unable to produce any interest-based collective action. The fragile state of civil society was alarming even to the Government itself. The Omani government desired to reduce society's almost total reliance on the state. If it wants Oman 2020, its economic vision strategy plan, to succeed, it must support civic institutions. The government did not want to relinquish its tight grip over society and its institutions at the same time. In its 2003 Human Development Report, the Ministry of Social Development attributed the weakness of Oman's civil society to two reasons, 1) the welfare state and 2) the tribal structure of the society.<sup>383</sup> The Government tried to encourage and incentivize specific civil society institutions, e.g., women's associations. The Ministry facilitated the establishment of women's associations almost in every city in Oman.<sup>384</sup> Those institutions were under the almost absolute control of the Government. Most of these associations failed to carry out any meaningful activity because they did not appear naturally. In Other words, these associations were not underpinned by the civil society's culture. The headquarters of many of these associations were abandoned houses.<sup>385</sup>

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<sup>383</sup> ALhashmi, *Supra note* 342, at 97.

<sup>384</sup> The official statistics of 2019 of the Ministry of Social Development indicate that there are 65 women's associations in Oman, Ministry of Social Development Website, <https://www.mosd.gov.om/index.php/ar/2019-03-03-10-50-23> (last visited November 11, 2021).

<sup>385</sup> ALhashmi, *Supra note* 342, at 95.

Professional associations like the lawyers and journalists associations fall strictly under the Government's view vis-à-vis all public issues.<sup>386</sup> In 2016, the Government dissolved the only independent newspaper, AlZa'mn, following a publication of a report on alleged corruption in Oman's Supreme Court. Instead of condemning the dissolution of the newspaper, the Lawyers' Associations condemned the newspaper through a public statement for publishing such a report.<sup>387</sup>

### **3.5 Legal environment 2000-2020.**

Bahrain and Oman impose various restrictions on civil society. Although the Bahraini Government has a far worse record of abusing civil liberties than Oman's Government, that does not mean Oman's Government has better policies. Instead, the reason behind Bahrain's infamous history lies in the ability of the Bahraini civil society to impose a more significant challenge compared to Oman's civil society, which barely sets a challenge. In other words, the Omani government has no need to repress like the Bahraini Government to maintain power because civil society presents no similar challenge to it.

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<sup>386</sup> According to the Oman Ministry of Social Development, there are 30 professional associations in Oman, <https://www.mosd.gov.om/index.php/ar/2019-03-03-10-50-23> (last visited November 11, 2021).

<sup>387</sup> The statement was announced on July 28, 2016. Omani Lawyers Association website, at <https://oja.om/>.



**Table 3 Civil society, freedom, and democracy in Bahrain and Oman in some international indexes.**

	Bahrain	Oman
<b>Civil Society Index (Civics)</b>	Closed <sup>388</sup>	Repressed <sup>389</sup>
<b>Freedom House</b>	Not Free <sup>390</sup> Overall score: 12/100 Political rights: 2/40 Civil liberties: 10/60	Not Free <sup>391</sup> Overall score: 23/100 Political rights: 6/40 Civil liberties: 17/60
<b>Democracy Index 2020 By the Economist Intelligence Unit<sup>392</sup></b>	Overall score: 2.49 Rank: 150 Electoral process and pluralism: 0.83 Functioning of Government: 2.71 Political Participation: 2.78 Political Culture: 4.38 Civil Liberties: 1.76	Overall score: 3 Rank: 136 Electoral process and pluralism: 0.08 Functioning of Government: 3.93 Political Participation: 2.78 Political Culture: 4.38 Civil Liberties: 3.82
<b>Rule of Law Index The World Bank<sup>393</sup></b>	Score: 0.49 Rank: 59/192	Score: 0.62 Rank: 50/192

<sup>388</sup> Civicus Organization, Civil Society Index, available at <https://monitor.civics.org/country/bahrain/> (last visited November 24, 2021).

<sup>389</sup> Civicus Organization, Civil Society Index, available at <https://monitor.civics.org/country/oman/> (last visited November 24, 2021).

<sup>390</sup> Freedom House, Freedom Index, available at <https://freedomhouse.org/country/bahrain/freedom-world/2021> (last visited November 24, 2021).

<sup>391</sup> Freedom House, Freedom Index, available at <https://freedomhouse.org/country/oman/freedom-world/2021> (last visited November 24, 2021).

<sup>392</sup> The Economist Intelligence Unit, Democracy Index 2020, available at [www.economist.com](http://www.economist.com) (last visited November 24, 2021).

<sup>393</sup> The World Bank, Rule of Law Index, available [www.govdata360.worldbank.org](http://www.govdata360.worldbank.org) (last visited November 24, 2021).

### **3.5.1 Bahrain (2001-2020)**

The civil society institutions in Bahrain have, so far, two significant moments in the twenty-first century: the National Action Charter of 2001, second, the 2011 uprising. As discussed in Chapter 3, the Bahraini Government instituted 2001 reforms were just new tactics for new times. The so-called reforms included releasing political prisoners, granting amnesty to those in exile, abolishing the State Security Law of 1974, and tolerating the formation of political associations. The Government envisioned a new era where the opposition is engaged in politics but in a manner safely contained by the Government. Thus, the Government had to ensure that all laws were compatible with its end goal of maintaining power.

The 2001 Referendum on the National Action Charter consisted of some ambiguous clauses in respect of the legislature. The people only voted for it after getting some guarantees from the Government in that regard. It also contained clauses with the exact wording of 1973 suspended Constitution, which gave people some assurance. However, the Government introduced the 2002 Constitution unilaterally, contrary to its promises before the vote on the Referendum. The 2002 Constitution amended critical articles in the 1973 Constitution and presented a draft that could give the government legal loopholes. For instance, under Article 27 of the 1973 Constitution, the right to form associations and unions is only guaranteed if "..., the principles of the religion and public order are not infringed...." the Government added the same line to Art.23 on the freedom of expression in the 2002 Constitution.

Furthermore, constitutional rights clauses state that the Constitution guarantees these rights as long as they are executed "according to the conditions and procedures prescribed by the law." In practice, the Government's draft of the regulations comes in a manner that empties the

constitutional rights from their essence, especially with the absence of an independent judiciary. Thus, this would, in practice, render the hierarchy of legal text upside-down, where regulations are more potent than the Constitution.

Accordingly, laws and regulations have been the Government's primary tool to "interfere, restrict, and control."<sup>394</sup> Bahraini civil society. The Government promulgated the current Law of Associations (14/1985) during the state of emergency, with some amendments after 2002. The Law oversees the associations in Bahrain in three stages, registration, operation, and termination. Article 11 gives the Ministry absolute power to reject applications for new associations for various vague grounds. One of these grounds is that if the Ministry thought that the community did not need its services, an association or other associations meet the community's needs in the required field of activity. If the applicant challenges the Ministry's rejection to register the Association, the court's authority is limited to checking the decision's compatibility with the Law (14/1985), not with the Constitution.

After establishing an association, the Ministry has the authority to interfere with its day-to-day operations, including prior approval of all events, foreign guest invitations, receiving or sending donations outside the country, and receiving public contributions.<sup>395</sup> In addition, the Ministry has the authority to nullify board decisions of any association if the Ministry finds that decision is against the Law, the Association's policy, or the public order and morality.<sup>396</sup> Finally,

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<sup>394</sup> Human Rights Watch, *Interfere, Restrict and Control*, a report on Bahrain civil society issued on June 20, 2013, available at <https://www.hrw.org/report/2013/06/20/interfere-restrict-control/restraints-freedom-association-bahrain> (last visited November 4, 2021).

<sup>395</sup> Articles 20 and 21 of Bahrain Associations Law of 14/1985.

<sup>396</sup> *Id.*, Article 28.

the Law authorizes the Ministry to merge two associations and terminate or suspend any association unilaterally.<sup>397</sup>

The Law (14/1985) was not compatible with the official rhetoric post-2001. The Ministry prepared a draft of a revised law in 2007 and took inputs on the drafts from civil society institutions and international organizations.<sup>398</sup> However, the Government submitted the bill to the legislature only in 2013. To the surprise of many stakeholders, the bill consisted of more restrictions than the 1984 law. The Chamber of Deputies, the lower house, requested civil society institutions to provide their feedback on the draft. Around 35 civil society institutions came out against the bill and provided their inputs to make the draft to their aspirations.<sup>399</sup> The alliance between the civil society institutions and the Chamber of Deputies pressured the Government to withdraw it from the legislature.<sup>400</sup>

Although Article.18 of the Associations Law (14/1985) bans any political activity, the Government issued the Political Association law (26/2005) in 2005. Article 1 of the Political Associations law considers it a right for all citizens to form political associations. This Law was relatively good despite some imprecise wording, which gives the government advantage. For example, Article 4 indicates that all political associations have to align with "Islamic principles and national constants." The Law does not allow the Government to suspend or terminate any political association without a judicial decision.<sup>401</sup> However, the critical phase of this Law came after the 2011 uprisings, with a series of amendments targeting the most prominent political

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<sup>397</sup> *Id.*, Article 24, and Article 50.

<sup>398</sup> Arab NGOs Network for Development, Report of Bahrain Civil Society, available at [https://www.annd.org/uploads/publications/Bahrain\\_Report.pdf](https://www.annd.org/uploads/publications/Bahrain_Report.pdf) (Last visited on November 4, 2021).

<sup>399</sup> Human Rights Reports on Civil Society in Bahrain, *Supra* note 394.

<sup>400</sup> *Id.*

<sup>401</sup> Articles 21, 22 & 23.

association in Bahrain, Al Wefaq, which has religious roots. The amendments forbid using any religious forum for campaigning.<sup>402</sup> The members of any association should not handle any religious roles whatsoever, such as preaching.<sup>403</sup> Moreover, the internal policy of each association must forbid the use of state apparatus, public institutions, or religious gatherings for their purposes.<sup>404</sup> The amendments state that the activity of each association should not intend to serve sectarian goals or target the state's public interest or national economy.<sup>405</sup> Any civil society organization, like AlWefaq and Al Wa'ad, that aims to represent Bahrain's marginalized Shi'I community can be effectively silenced by abusing the provision that prohibits advocating for sectarian goals. The Government used those revisions, as was to be expected, to disband Al Wefaq and Al Wa'ad in the wake of the 2011 uprising.

These amendments to the Political Associations law (14/1985), coupled with some critical amendments in the Political Rights Law (14/2002), are known among Bahraini activists as political expulsion law.<sup>406</sup> The amendment of Article 3 of the Political Rights Law bans leaders and members of any association that dissolved for a grave violation of the Bahraini laws from being elected to the Chamber of Deputies. In addition, the amendment also bans from being elected to the Chamber of Deputies "whoever intentionally harms or disrupts the functioning of constitutional or parliamentary life by terminating or leaving the parliamentary work in the Council, or whose membership has been revoked for the same reasons."<sup>407</sup> Thus, the amendment excludes two critical and prominent political associations for political life in Bahrain. These associations are AlWefaq, which was dissolved in 2016, and AlWaad Association, which was disbanded in 2017. The

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<sup>402</sup> Art.4. The amendment was issued by Decree No.34/2014.

<sup>403</sup> Art.5

<sup>404</sup> Art.6

<sup>405</sup> Art.6.

<sup>406</sup> The amendment was issued by Decree No.25/2018.

<sup>407</sup> Art.3 of (14/2002) amended in 2018

amendment excluded members of the 2011 legislature who resigned as a protest to the Government's use of force during the 2011 uprising.<sup>408</sup>

The Government's goal to restrain civil society also included containing two key institutions, the Bahrain Chamber of Commerce and the General Confederation of Bahrain Trade Unions.

Since its establishment in 1939<sup>409</sup>, The Chamber of Commerce had been a relatively independent body and self-governing body, with its general assembly playing as the highest authority. The Government had multiple attempts to penetrate and contain this body, whether by lobbying or subsidizing its operation. When the Chamber decided to build a new headquarter in 2007, the Government granted it empty land without transferring it to the Chamber. Some of the Chamber's members were vigilant enough not to pursue the construction of the new headquarter without getting the title over the land. Then, the Government did transfer the land to the Chamber ownership. In 2008, the Government proposed a bill to regulate the Chamber, but the Chamber's General Assembly rejected it. After adding some changes, the Government submitted the law draft to the Chamber's General Assembly, and the General Assembly refused it again.<sup>410</sup> After the 2011 uprising, the Government pressured the Chamber board to sack some of its members complicit with the uprising. However, those members were reinstated by the General Assembly.

The Government took a bold move by issuing Law No. 48/2012. The Government promulgated the law two-week before the legislature convened, contradicting Article 38 of the

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<sup>408</sup> Salam For Democracy and Human Rights, <https://salam-dhr.org/?p=3495> (Last visited on November 4, 2021).

<sup>409</sup> Bahrain Chamber of Commerce, <https://bahrainchamber.bh/ar/overview-of-bccci> (Last visited on November 4, 2021).

<sup>410</sup> Report on the Independence of Bahrain Chamber of Commerce, Bahrain Center for Studies in London, <http://www.bcsl.org.uk/arabic/?p=128> (Last visited on November 4, 2021).

2002 Constitution. Article 38 of the Constitution allows the King to issue decrees that have the force of law only if there are imminent and urgent reasons. The Chamber of Commerce Law (48/2012) had no urgency to qualify for Article 38 of the Constitution. Article 3 and Article 32 of Law No. 48/2012 placed the Chamber of Commerce under the direct supervision of the Ministry of Commerce. Thus, the Chamber of Commerce lost its independence.

Labor Unions Law (33/2002) was issued in 2002, allowing labor unions to establish a general federation. In 2004, 40 labor unions established the General Federation of Trade Unions in Bahrain. The Federation gained its power from the growing number of workers it represents and its well-direct connection with many international organizations like the International Trade Union Federation. After the 2011 uprising, the Government came up with a tactic to dilute the power of the Federation. Thus, the Government amended Article 8 of the Labor Unions law in 2011. The amendment allows each two unions or more to establish their federations.<sup>411</sup> Creating multiple federations would reduce the power of the General Federation and could make it in a state of competition with the other federations.

### **3.5.2 Oman**

Oman's 1996 Constitution grants all citizens the right to peaceful assembly and the right to form associations, Articles 32 and 33, respectively. However, exercising these rights is subject to

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<sup>411</sup> The amendment was issued by Decree No.35/2011.

the limits of the Law.<sup>412</sup> Similar to Bahrain, the limits of the law “are quite restrictive, to the point where they often annul the essence of the right.”<sup>413</sup>

Despite being a constitutional right, Oman’s old Criminal Law (7/1974) and new Criminal Law (7/2018) consider any public gathering of 10 people and more as a crime if the group intended to cause riots or unrest in the public order.<sup>414</sup> This wide text of the articles can be easily abused by the Government to criminalize any demonstration. It is also a crime if the authority orders the gathering to disperse, but those involved refuse the order. The same applies to forming associations outside of the limits of the association law.<sup>415</sup>

In 2012 and 2013, the Government prosecuted two prominent peaceful protests under Article 137 of the old criminal law (7/1974). The first protest took place in front of the Royal Omani Police headquarters, calling to free the prisoners in the 2011 uprising. Although the protest took place in a parking lot opposite the headquarter, the court ruled against the protesters for disturbing public order.<sup>416</sup> The second demonstration was against the polluting emissions resulting from petrochemical plants in Sohar port. One of the participants was Talib AlMamari, a member of the Shura Council. Although it was a peaceful assembly, the Government arrested the participants, including the Shura member, and charged 10 of them with disturbing the public

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<sup>412</sup> Articles 32 and 33 of Oman’s 1996 Constitution.

<sup>413</sup> Statement By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association At The Conclusion Of His Visit To The Sultanate Of Oman, September 13, 2014, available at <http://freeassembly.net/news/statement-oman/> (last visited on November 5, 2021).

<sup>414</sup> Article 137 of the old criminal law and Article 121 of the new criminal law.

<sup>415</sup> Article 137 of the old criminal law and Article 121 of the new criminal law.

<sup>416</sup> Case 1172/2012/Muscat Primary Court/Criminal Circuit. A copy of the judgment is available at [https://docs.google.com/file/d/0BwZ-OiMt7odiTHFpUGhGa2VXcWs/edit?pli=1&resourcekey=0-Z0dquHtGf\\_5QB-xsW6ABHg](https://docs.google.com/file/d/0BwZ-OiMt7odiTHFpUGhGa2VXcWs/edit?pli=1&resourcekey=0-Z0dquHtGf_5QB-xsW6ABHg) (last visited on November 7, 2021); More details about the case, look at AlHashmi Said, Commentary on the Assembly Case, available at <https://www.alfalq.com/?p=4353> (last visited on November 7, 2021).



order.<sup>417</sup> The ruling drew multiple condemnations of Oman's Government from different international organizations, including Human Rights Watch and Inter-parliamentary Union.<sup>418</sup>

Like Bahrain, State and civil society relations in Oman are relations of “interfere, restrict, and control.”<sup>419</sup> However, Oman's legislations impose slightly tighter restrictions on civil society compared to Bahrain. Oman Civil Associations law (14/2000)<sup>420</sup> prohibits forming any political associations or any involvement in politics by registered associations.<sup>421</sup> Furthermore, there are only five areas on which any association can operate, 1) Orphan care, 2) Child and motherhood care, 3) women-related activities, 4) elderly care, and 5) disabled and special needs care.<sup>422</sup> The Law gives the Minister of the Social Development Ministry the discretion to add further activities after securing the approval of the Council of Ministers. The Ministry could decline the formation of any association for any reason, including if the Ministry thinks that the society does not require that particular association or existing associations are already providing the same services that the new association intends to provide.<sup>423</sup>

In 2011, the Ministry rejected the formation of an environmental association in the southern part of Oman, Dhofar, because there is an existing environmental association in Muscat.<sup>424</sup> The only way to challenge the Ministry's decision in this regard is to appeal to the Minister, and the Minister's decision would be final and unchallengeable in the court.<sup>425</sup> The Government exercises

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<sup>417</sup> AlKarama Organization, Report on the Assembly Case, <https://www.alkarama.org/ar/articles/sltnt-man-mhakmt-shrt-nashtyn-hqwqyyn-bsbb-tzahrhm-alslmy> (Last visited on November 7, 2021).

<sup>418</sup> The United Nations Special Rapporteur, *Supra* note 415; Inter-parliamentary Union, a Statement on Talib AlMamari Case, published on November 30, 2015, available at [http://archive.ipu.org/hr-e/AI\\_Mamari301115.pdf](http://archive.ipu.org/hr-e/AI_Mamari301115.pdf) (last visited on November 7, 2021).

<sup>419</sup> The Human Rights Watch report, *Supra* note 396.

<sup>420</sup> It was amended by Royal Decree No.23/2007.

<sup>421</sup> Article 5 of civil associations law (14/2000).

<sup>422</sup> Article 4 of civil associations law (14/2000).

<sup>423</sup> Article 11 of civil associations law (14/2000).

<sup>424</sup> Statement by The United Nations Special Rapporteur, *Supra* note 415.

<sup>425</sup> Article 11 of civil associations law (14/2000).

excessive control over the registered association. Associations are obliged to get approval, from the Ministry, for all events and activities, including the general assembly meetings.<sup>426</sup> The board of the association is obliged to submit the minutes of their meeting to the Ministry. The association cannot accept public donations or make public parties or charity markets without the Minister's prior approval.<sup>427</sup> The Ministry has discretionary authority to merge two associations without the consent of their members. Moreover, it has the broad power to disband any association.<sup>428</sup>

The previous examination of civil society in Bahrain and Oman is a foundation for the next section on the political composition of Bahrain's National Assembly (2002-2010) and the Oman Council (2011-2019).

### **3.6 The political makeup of Bahrain's National Assembly (2002-2010) and Oman Council (2011-2019).**

Given the style of composition in both countries, it is difficult to discuss the political makeup of the upper house.<sup>429</sup> Nonetheless, administrations frequently appoint moderates who have held high-ranking posts in government.<sup>430</sup> The lower house, on the other hand, is elected by the general population. To gain a better understanding of intra-legislature relations, it is critical to delve into the political makeup of the lower house. It is far easier to investigate the political makeup

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<sup>426</sup> Articles 23, 28, and 32 of civil associations law (14/2000).

<sup>427</sup> Article 44 of civil associations law (14/2000).

<sup>428</sup> Articles 46 and 47 11 of civil associations law (14/2000).

<sup>429</sup> Constitution of Kingdom of Bahrain, 2002, art.53, Constitution of Sultanate of Oman, 1996, art.58.1.

<sup>430</sup> Kapiszewski, *Supra note 195*, at 112; Said Al-Julandi, Oman Bicameral legislature 65-66 (2020) (Unpublished master dissertation, Sultan Qaboos Univeristy) (on file with Sultan Qaboos University Library).

of Bahrain's lower chamber than it is in the Omani parliament. Because political parties and political groups are illegal in Oman, all candidates must run as independents.

Bahrain, on the other hand, tolerates political organizations and enables them to identify and campaign for their candidates. Nonetheless, the major opposition parties boycotted the first election in 2002 before deciding to contest in the 2006 election.

Given the energy of the 2011 movement, despite Oman's lack of political associations, the 2011 election brought enthusiastic members to the lower chamber. By the 2015 election, however, the Omani government had tightened its grip and barred several members from running again, ostensibly for security reasons.

### **3.6.1 Bahrain.**

As discussed in Chapter 3, parliamentary life was reinstated in 2002 after being suspended in 1975.<sup>431</sup> Following his father's death in 1999, Bahrain's new monarch began a period of political liberalization. After reaching an accord with opposition leaders on the structure of Bahrain's political and legal system, the government's effort won widespread support. As a result, the opposition gathered around the National Action Charter, the government's proposed Referendum. The National Action Charter Referendum was approved by 95.4 percent of Bahrain's eligible voters in 2001.<sup>432</sup> The enthusiasm that accompanied the Referendum was shattered by the Government's unilateral announcement of the Constitution in February 2002. The unilateral

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<sup>431</sup> Kapiszewski, *Supra note 195*, at 109.

<sup>432</sup> *Id.*

pronouncement of the Constitution was rejected by the opposition. The opposition, in particular, opposed a bicameral legislature with a powerful upper house nominated by the King.<sup>433</sup>

The Government decided that the Municipal elections would take place in May 2002 and the parliamentary election would be in October 2002. All candidates were initially told to run as independents by the Bahraini government. Political associations, on the other hand, put pressure on the government to advocate for their candidates; otherwise, political associations would be useless.<sup>434</sup> The government then gave political parties the ability to name and campaign for their candidates. The government concession was more of a ploy to get political parties to run in the election.<sup>435</sup> The government interpreted participation as ratification of the Constitution of 2002.<sup>436</sup> Significant opposition groups knew that participation would be construed as a nod of approval. As a result, four major opposition organizations formed the Constitutional Alliance and boycotted the Council of Deputies election in 2002.<sup>437</sup> The Wefaq National Islamic Society, aka Wefaq, the National Democratic Action Society, or Wa'd, the Nationalist Democratic Assembly, and the Islamic Action Society, aka Amal, make up the Constitutional Alliance.<sup>438</sup> The 2002 Deputies Council election saw 53.2 percent of eligible voters turn out.<sup>439</sup>

The election was expected to produce political neophytes with no parliamentary experience due to the parliament's protracted suspension. Only half of the newly elected members

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<sup>433</sup> *Id.*

<sup>434</sup> *Id.* at 111.

<sup>435</sup> *Id.*

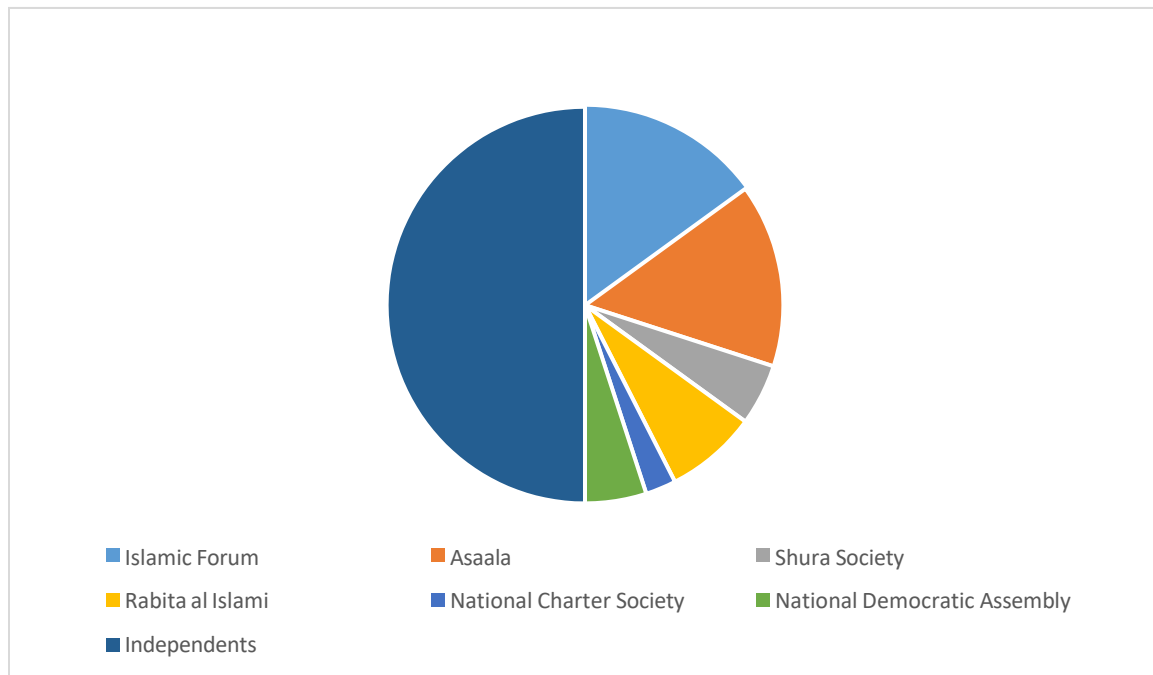
<sup>436</sup> The National Democratic Institute for International Affairs, Bahrain's October 24 and 31, 2002, 10 (2002), available at [https://www.ndi.org/sites/default/files/2392\\_bh\\_electionsreport\\_engpdf\\_09252008.pdf](https://www.ndi.org/sites/default/files/2392_bh_electionsreport_engpdf_09252008.pdf)

<sup>437</sup> Steven Wright, Center for International and Regional Studies Georgetown University School of Foreign Service in Qatar, Fixing the Kingdom: Political Evolution and Socio-Economic Challenges in Bahrain 6 (2010).

<sup>438</sup> Wehrey, *Supra* note 122, at 119; Abd AlNabi ALEkry, Al-Wefaq and the Challenges of Participation in Bahrain, Carnegie Endowment For International Peace (2008), at <https://carnegieendowment.org/sada/20932>.

<sup>439</sup> Kapiszewski, *Supra* note 195, at 111.

were linked with political organizations as a result of the boycott, while the other half were independents. These associations were<sup>440</sup>: 1) the Islamic Forum, a somewhat moderate Sunni Islamic society with six members; 2) Asaala, a fundamentalist Sunni Islamist society with six members; and 3) Asaala, a fundamentalist Sunni Islamist society with six members. 3) Shura Society, a Sunni Islamist society that is relatively pro-government and has two members; 4) Three members have joined Rabita al Islami, a pro-government Shia group. 5) National Charter Society, a pro-government liberal, predominantly Shia organization, received one member, and 6) National Democratic Assembly, a primarily Shia secular organization, received two. The remaining 20 members were all independents.



**Figure 2 Results of 2002 House of Deputies Election - Bahrain**

<sup>440</sup> *Id.* at 14-15.

The opposition understood by the conclusion of the first term that boycotting had failed.<sup>441</sup> On the one hand, the government went through with its plans, and the legislature began working on new legislation for the coming year. The opposition, on the other hand, was unable to give anything or influence any change as a result of the boycott. In other words, the boycott's political costs outweighed its benefits, according to the opposition. Two leaders of the most significant opposition group, Wefaq, have decided to resign from Wefaq and start their own political group, Haq, as a result of the decision. Haq and four other political organizations have decided to keep the boycott going.<sup>442</sup>

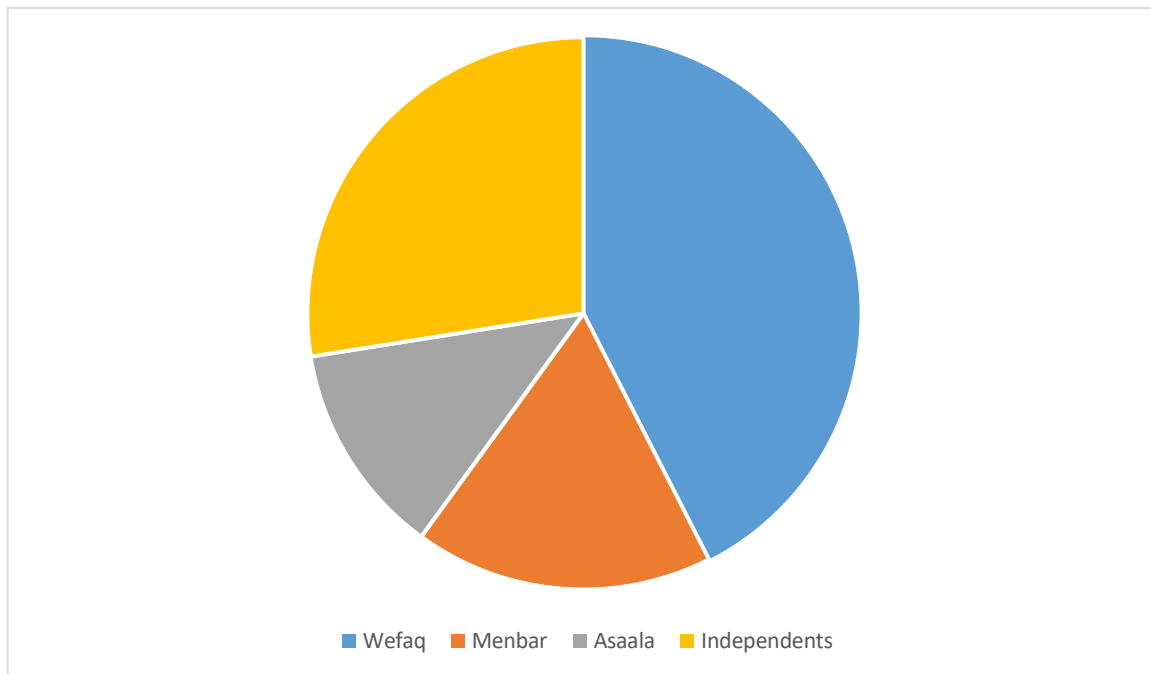
In comparison to the first election, 72 percent of eligible voters cast ballots.<sup>443</sup> Wefaq, the strongest opposition party, which is mostly Shia, won 17 of the 40 seats. It also enabled the W'ed Association, one of its secular allies, to get a seat. Menbar, a Sunni Islamist organization, gained seven seats. Asaala, the other Sunni Islamist party, got five seats. The remaining ten seats were won by independents.

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<sup>441</sup> Wright, *Supra* note 9, at 7-8.

<sup>442</sup> Wehrey, *Supra* note 122, at 123.

<sup>443</sup> Congressional Research Service, Bahrain: Unrest, Security, and U.S. Policy (2018), 9.



**Figure 3 The Results of the 2006 House of Deputies Election - Bahrain**

### 3.6.2 Oman.

The Omani public's engagement in decision-making appears to have followed a progressive route organized from above, according to the literature.<sup>444</sup> The gradual process began in 1979 and progressed through numerous stages under the government's exclusive control.<sup>445</sup> Nothing about this process suggests that it was part of a plan to establish a powerful representative legislative authority in the future. It was a top-to-bottom transformation that was linked to and entirely dependent on the ruler's wishes.<sup>446</sup> For the first time since 1970, the 2011 movement in Oman shattered the entire political structure by signaling aspirations for political change from the

<sup>444</sup> Anoushiravan Etheshami, *Reform from Above: the Politics of Participation in Oil Monarchies*, 79 International Affairs. 53, 64-65 (2003); Mohammed AlYahyai, the Shura and Public Participation in Oman: stages and transformations, Aljazeera Center for Studies (2015), at <https://studies.aljazeera.net/en/node/3955>.

<sup>445</sup> AlYahyai, *Supra* note 16; Al-Julandi, *Supra* note 2 at 33-34.

<sup>446</sup> Kapiszewski, *Supra* note 195, at 118-119.

bottom up.<sup>447</sup> The government gave the legislature some legislative powers in reaction to the 2011 uprising.<sup>448</sup>

The official record perceived the 2011 election as the seventh election and 2015 as the eighth.<sup>449</sup> The 1991 election was considered the first election, the year in which the Shura Council was established.<sup>450</sup> The Shura was created to replace the Advisory Council, established in 1981, and consisted of 45 appointed members, 17 government members, and 28 ordinary citizens.<sup>451</sup> The Advisory Council itself was an enlargement to another body called the Agriculture Fishing & Industry Council, established in 1979 and consisted of 12 appointed members at the time.<sup>452</sup> Three of the members were ministers, with the remaining members being ordinary individuals.



**Figure 4 The progress of public participation in decision-making in Oman 1979 – 1996.**

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<sup>447</sup> Marc Valeri, *The Şuḥār Paradox: Social and Political Mobilisations in the Sultanate of Oman since 2011*, 4 *Arabian Humanities*. 2, 2 (2015).

<sup>448</sup> *Id.*

<sup>449</sup> Oman Shura Council, the Shura Statistic for the Seventh Legislative term from 2011 to 2015, 16.

<sup>450</sup> Abdullah Juma Al-Haj, The Politics of Participation in the Gulf Cooperation Council States: The Omani Consultative Council, 50:4 *Middle East Journal*. 559, 561 (1996).

<sup>451</sup> *Id.*, at 560; AlYahyai, *Supra* note 16.

<sup>452</sup> AlYahyai, *Supra* note 16.



Despite the fact that the 1991 election was not free, it was significant since it was the first time that territory-based representation was used.<sup>453</sup> During the election, tribe leaders in each district selected a voter pool from which three candidates would be elected, one of whom would be chosen by the government to serve on the Council.<sup>454</sup> In the second election, in 1994, tribal leaders lost the right to choose the voter. Depending on the population of the territory, all eligible voters, men, and females over the age of 18, choose two or four candidates.<sup>455</sup> Voters choose four candidates if the population is greater than thirty thousand or two if the population is less than thirty thousand. The government then chooses two or one candidate to serve on the Council, regardless of how many votes they receive.<sup>456</sup> In the elections of 1997 and 2002, there was slow development. The 2003 election was the first to be held in a free, open, and direct manner without the involvement of the Government.<sup>457</sup> Because both councils lacked significant legislative power, the legislatures in 2003 and 2007 were merely ceremonial.

The election of the Shura council in 2011 was notable for two reasons. First, the 2011 movement relatively shifted many voters' allegiances from tribal to civic leaders, particularly those who earned popularity during the uprising.<sup>458</sup> Second, the increased legislative power conferred by the 2011 Constitutional Amendment altered the legislature's purely ceremonial role. Because of both of these causes, general expectations were higher than usual. These two factors could explain the considerable increase in voter turnout from 62 percent to 76.6 percent since the 2007

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<sup>453</sup> *Id.*

<sup>454</sup> Al-Haj, *Supra* note 22, at 561-562.

<sup>455</sup> *Id.*, at 562.

<sup>456</sup> *Id.*

<sup>457</sup> Kapiszewski, *Supra* note 195, at 119.

<sup>458</sup> Valeri, *Supra* note 449, at 11.

election.<sup>459</sup> In addition, the majority of the new members of the Shura council in 2011 were newbies. Out of 84 members, 51 sought re-election, but only 26 were elected.<sup>460</sup>

The lack of any political affiliation makes discussing the political makeup of the lower house difficult. The restriction encompassed forming an alliance or just gathering two candidates in one spot for campaigning, as mentioned in the previous Chapter. The electoral system, while not the only one, helps to reduce the need for coalition building during elections. In contrast to Bahrain, Oman's law does not require a minimum vote to gain a seat. Oman has a plurality election system with first-past-the-post voting.<sup>461</sup>

Following the events of 2011, the government tried to re-establish its power and ensure complete control over state affairs. In other words, it aimed to return the situation to what it was prior to the 2011 uprising. Cutting out the vocal members of the Shura Council, or anybody else for that matter was part of the mission.<sup>462</sup> The government's restrictions on freedom of speech and peaceful protest have risen.<sup>463</sup> In the lower house, a Shura member was arrested in 2013 for his involvement in a non-violent protest.<sup>464</sup> Other members of the government were barred from competing in the 2015 election, ostensibly for security reasons.<sup>465</sup> All of these measures, among other things, enhanced the general public's fear level. This context may help to explain the continuous decline in voter turnout for the Shura Council elections in 2015 and 2019, which were 57 percent and 49 percent, respectively.<sup>466</sup>

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<sup>459</sup> Marc Valeri, OMAN Consultative Council Election October 15, 2011, Agency for International Cooperation and Development (2012), at 5-6.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.*, at 4.

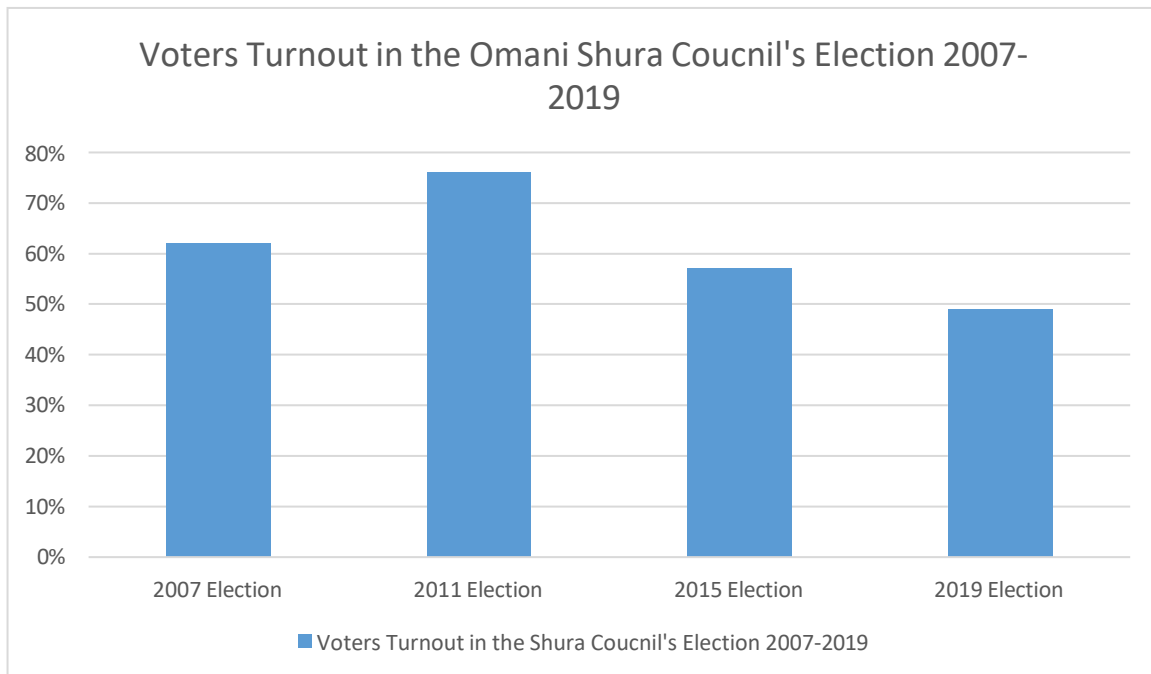
<sup>462</sup> Valeri, *Supra* note 461, at 11.

<sup>463</sup> *Id.*

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

<sup>466</sup> Inter-Parliamentary Union, [https://data.ipu.org/node/127/elections?chamber\\_id=13570](https://data.ipu.org/node/127/elections?chamber_id=13570).



**Figure 5 Voters Turnout in the Omani Shura Council's Election 2007-2019.**

### **3.7 Conclusion**

This Chapter discussed the state of civil society in Bahrain and Oman and the political makeup of the Bahrain National Assembly (2002-2010) and Oman Council (2011-2019). The Chapter began with a brief theoretical review of the concept of civil society in consideration of Bahrain and Oman. Then, the Chapter traced state-civil society relations, in Bahrain and Oman, before the advent of oil, where the state had limited interference in the day-to-day affairs of its people due to its limited resources. People in both countries engaged in collaborative arrangements around specific sectors like agriculture, fisheries, pearl, and pastoral areas.

Furthermore, tribal and religious groups played a pivotal role in both countries. The impact of the sector-based associations in Bahrain during the twentieth century was more politically

crucial compared to Oman than familial/religious-based associations. Whereas tribal/religious associations were a significant player in Oman's politics before the 1970s.

The Chapter observed the state and civil society relations in the advent of oil in Bahrain (the 1930s) and Oman (the 1960s). Disputes the economic and political disruption that the oil brought to this relationship, Bahrain's civil society was able to sustain its independence. Moreover, Bahraini civil society developed a repertoire to keep up with the Government's constant endeavors to contain it. Meanwhile, the oil rent weakened Oman's already fragile civil society through over-dependency on the state.

The Chapter also looked into the legislations of both countries related to civil society. Bahrain and Oman use legislation as a prominent tool to interfere with, restrict and control civil society. Although peaceful assembly and forming associations are constitutional rights, the constitution states that exercising these rights must comply with the respective regulations. However, these regulations often annul the essence of the rights.

The Chapter also explores the political composition of the Bahrain National Assembly (2002–2010) and the Oman Council (2011-2019). Although Bahrain tolerated the political associations, significant political associations boycotted the 2002 election, rejecting the bicameral legislature with a powerful appointed upper house. However, several of these associations made the decision to stop the boycott and take part in the 2006 election. In contrast, Oman outlawed any party affiliations; hence, in the elections of 2011 and 2015, each candidate ran as an independent. Numerous participants in the 2011 activists went on to win seats in the Omani Shura council. Some well-known individuals, including some incumbents, were prohibited by the Omani Government from participating in the 2015 election for purported security grounds.

## **4.0 Chapter Four: Intra-legislature Relations in Bahrain's National Assembly and Oman's Council.**

### **4.1 Introduction:**

This chapter analyzes the intra-legislature relations between the Bahrain National Assembly and the Oman Council. The main goal of examining intra-legislature relations is to see how the composition method affects the legislative process. Bahrain's bicameral legislature was examined from 2002 to 2010. On the other hand, the study of Oman's bicameral legislature runs from 2011 to 2019.

The legislative outcomes achieved by both legislatures throughout the research period show that the composition method employed in each house had a small influence on the legislative process. Both houses have almost comparable general inclinations and methods of operation. Most of the legislation that the government presented to the legislature was passed in its entirety by both houses. However, there were some contrasts because the Deputies were thought to be more responsive to the public and behave somewhat differently than the upper houses. The lower house, for instance, consistently proposes more laws than the upper house. The lower house supported all welfare proposals enthusiastically, although the upper house was more cautious. The upper house, which is closer to the government, was concerned about the state budget, while the lower house, which is closer to the people, continued to call for increased social welfare.

It is important to stress that the upper house's inclinations toward government viewpoints were understandable given the members' backgrounds as former officials. In other words, there was no indication that the government directly meddled in legislative activities using the upper

house. This conclusion may come as a surprise, given that the members of the upper house are directly appointed by non-elected governments. One would have anticipated that the upper house would have had a greater impact, obstructing lower-house legislation. The lower house did not present a serious challenge during the study period. Thus even if it were arguable that the government intended to employ the upper house, there was no reason to do so.

There are two causes for the lower house's weakened position. The first reason, connected to the situation of civil society and the stringent character of the laws governing political and civil associations and the electoral process, was covered in the previous chapter. The second reason concerns the nature of the constitutional limitations on the legislature's authority and activity in passing laws. For instance, the legislature can only introduce laws by submitting law proposals to the government, which the government then incorporates into a bill. Bahrain experienced constitutional disagreement because of this fact.

One of the main issues of contention between the two chambers in Bahrain was whether the legislature could add new clauses to the legislation the government submitted to the legislature for approval. The Bahraini Upper House of Legislature adopted a textual interpretation of the 2002 Constitution that contends that only the Government may insert a new clause into legislation that is being considered by the legislature. Put another way, the legislature must follow the appropriate procedures and propose any additional provisions in the form of a legislative proposal. The Bahraini parliament's lower chamber disagreed with the upper house's position. Thus, those bills were sent to a joint session.

It is worth noting that Bahrain's Legislature exhibited a more apparent case than its Omani counterpart, which was more of a rubber stamper. There could be two explanations for the disparity

between the two legislatures: the legislature's political makeup and the legislative power constraints.

Bahrain's study period from 2002 to 2010 and Oman's from 2011 to 2019 have two things in common. For starters, both times were marked by a rather tranquil political climate. This is not to say that big political events did not occur in Bahrain and Oman. After all, key events such as the boycott of the Constitution and Bandergate occurred in Bahrain from 2002 to 2010. The same can be said about Oman, which had a major public upheaval prior to the 2011 election. Nonetheless, the generally quiet political climate meant that neither country was experiencing acute political polarization or significant human rights violations, as Bahrain ultimately experienced in 2011. Second, the start of each term is signaled by the delegation of new powers to the respective legislature, the 2002 Constitution of Bahrain, and the 2011 Constitutional Amendment in Oman.

In Bahrain, parliamentary life was restored in 2002 after it had been suspended since 1975. The opposition boycotted the first election, which took place in 2002, but major opposition groups agreed to participate in the subsequent election, which took place in 2006. However, by the start of the third term, 2010-2014, the entire process had been disrupted. The country quickly descended into political chaos following the completion of the third term election. In 2011, a significant portion of Bahrainis flocked to the streets to demand political reforms inspired by the Arab world's revolutionary movement. The February 14 Movement is the name given to this movement.

Following the government's execution of several demonstrators in February, 18 members of parliament, all *Wefaq* members, resigned from the House of Deputies. Following the resignation of over half of the Deputies, it was difficult to consider the Legislature to be representative. With

the resignations and the extreme political turbulence and polarization that have plagued Bahrain since 2011, extending the research to a third term is not encouraging. In addition, the chosen eight-year timeframe, from 2002 to 2010, can provide a good picture of the nature of intra-legislature relations in Bahrain's bicameral legislature for this study.

Despite the fact that the Omani government adopted a bicameral legislative form in 1996, studying intra-legislature dynamics prior to 2011 is not prudent. Both houses lacked any legislative or oversight authority. Similar to Bahrain, the Arab revolutions galvanized a considerable portion of the Omanis, who flocked to the streets to demand, among other things, political reforms. The government responded by unilaterally promulgating the first constitutional amendment in 2011, which gave the legislature legislative and oversight powers. As a result, the analysis spans two election cycles, one from 2011 to 2015 and the other from 2015 to 2019.

The analysis does not go beyond 2019 because the country saw dramatic changes soon after the election of 2019, following the death of its long-serving Sultan in 2020. In 2021, the new monarch issued a new constitution, which repealed 95 percent of the legislature's clauses. This renders the study of the legislature following 2020 to be less useful for the purposes of this dissertation. The chosen eight-year timeframe, from 2011 to 2019, is long enough to provide a good picture of the nature of intra-legislature relations in Oman's bicameral legislature for this study.

Understanding the intra-legislature relationship requires looking at the political makeup of each legislature. Given the existence of political associations, Bahrain presents an easier case to study in this regard than Oman. In addition, the study examines the lawmaking process in each country's constitution. These two themes are required in order to study the actual practice of lawmaking during the period in question.



Lawmaking practices mean investigating two main areas, the law proposals and the bills proposed by the Government. Unlike many other legislatures across the world, the Bahraini and Omani legislatures' proposed laws do not become legislation directly. All proposals are forwarded to the government, which is expected to draft a bill and return it to the legislature. Making a legislative proposal in Oman is far more difficult than in Bahrain since, unlike the Bahraini Constitution, the Omani Constitution requires the approval of both houses before the proposal can be sent to the government to produce a bill. The importance of the proposals stems from the fact that they are a significant indicator of each house's preferences and approaches.

Analyzing the bills debated during the research period aims to find any common themes in voting patterns by examining each council's voting behavior. In the instance of Bahrain, the pattern-seeking extends to the behaviors of each house during the shuffle, which is one of the disagreement resolution mechanisms applied in many bicameral legislatures. The Oman Council does not apply shuffles in resolving disagreements between the two houses. The study also investigates the contents of bills that the two chambers were unable to resolve through shuffles and refers to a joint session. It is worth mentioning that the Oman Council only held one joint session from 2011 until 2019. During the study period, the Bahrain National Assembly referred 19 measures to a joint session, but no joint session was held. As a result, the examination of these bills centered on determining the specifics of the disagreement and the respective positions of each chamber.

Accordingly, this Chapter is divided into two sections: 1) the lawmaking process under Bahrain's 2002 Constitution and Oman's 1996 Constitution, and 2) Bahrain's National Assembly 2002-2010 and Oman Council 2011-2019 intra-legislature relations.

## **4.2 The lawmaking process under Bahrain's 2002 Constitution and Oman's 1996 Constitution.**

In both countries, the legislative process is nearly identical. However, Oman's legislature is constrained in its ability to vote on measures due to a time limit. In Bahrain's National Assembly, there is no such time limit. Furthermore, the Bahraini government is constrained by a deadline to convert either house's law proposal into a bill. It is likewise bound by a deadline to ratify a law once it has been passed by the National Assembly. The Omani government is not subject to such a time constraint. Furthermore, unlike the Bahraini legislature, the Omani legislature's legislative proposals must be accepted by the other house before being submitted to the Government.

### **4.2.1 Bahrain.**

As noted above, in Bahrain, all draft bills, including those proposed by the National Assembly, are created by the Government.<sup>467</sup> A bill can be proposed by any member of the National Assembly.<sup>468</sup> The members vote on the proposal after following some procedures outlined in each house's internal regulations.<sup>469</sup> If the proposal passes, the proposal will be referred to the government by the respective house directly.<sup>470</sup> During the same or subsequent convening time of the National Assembly, the Government is required to present a bill reflecting the proposal

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<sup>467</sup> Constitution of Kingdom of Bahrain, 2002, art.81 & art.92.

<sup>468</sup> *Id.*, art.92.

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

to the House of Deputies.<sup>471</sup> After passing the National Assembly and being ratified and issued by the King, a bill became law under the Bahraini Constitution of 2002.<sup>472</sup>

Nonetheless, the government introduces the vast majority of bills. When the government refers a bill to the House of Deputies, the legislative process begins. The National Assembly's meetings require a quorum of more than half of the members in both houses.<sup>473</sup> At each meeting, decisions are made by an absolute majority of the members present.<sup>474</sup>

The measure can be passed, amended, or rejected by each house. In the event that the two houses cannot agree on a bill, the bill can be shuttled back and forth two times.<sup>475</sup> If the two houses are unable to achieve an agreement, a joint session is called.<sup>476</sup> The joint sessions are presided over by the speaker of the Shura Council. The Shura Council refers a law to the Prime Minister for submission to the King once the National Assembly agrees on it. The law will either be ratified and promulgated by the King, or it will be sent back to the National Assembly to be reconsidered.<sup>477</sup> The bill would be considered ratified if the King did not take any action on it for six months.<sup>478</sup>

In the case of reconsideration, the King would be required to ratify and promulgate the bill if the National Assembly voted for it again. The King may unilaterally issue a bill as a decree in one situation. This is when both councils fail to agree in accordance with Article 87 of the Constitution on urgent economic or financial bills.

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<sup>471</sup> *Id.*

<sup>472</sup> *Id.*, art.80-87.

<sup>473</sup> *Id.*, art.80.

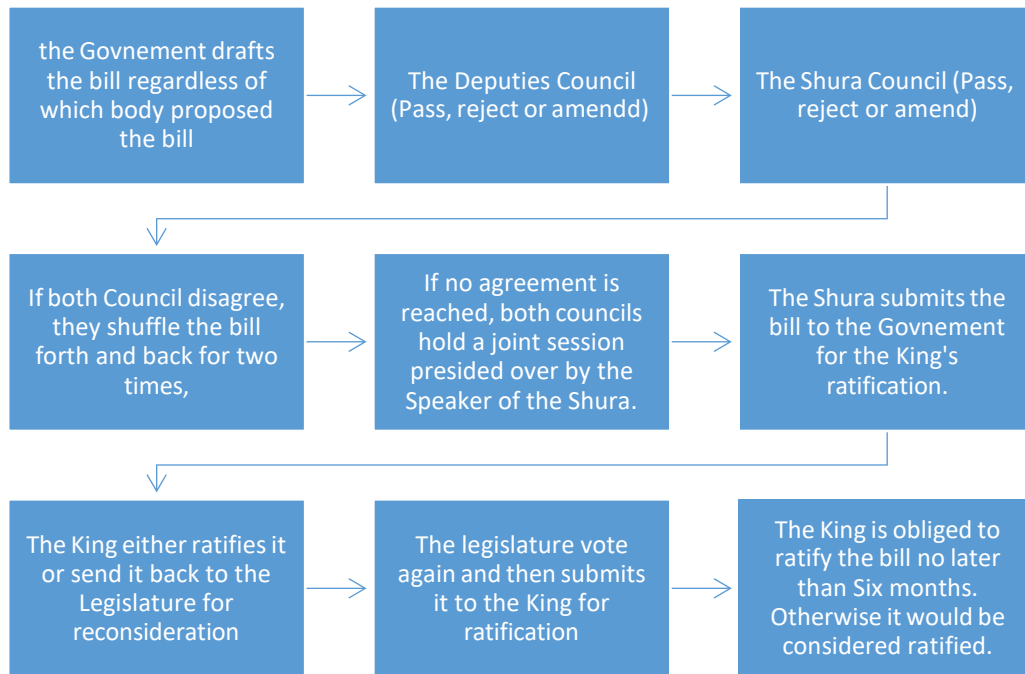
<sup>474</sup> *Id.*

<sup>475</sup> *Id.*, art.85.

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*, art.35.

<sup>478</sup> *Id.*



**Figure 6 The lawmaking process under the 2002 Bahraini Constituion.**

Furthermore, Article 38 of the Constitution grants the King the authority to issue lawful decrees between the sessions of both the Shura Council and the Chamber of Deputies or during the hiatus of the National Assembly. The King can only use this power if an emergency arises that necessitates the approval of actions that cannot be postponed. The decree should follow the Constitution's guidelines.

The Government must present the decree to the National Assembly within one month. If the National Assembly is not in session, the Government must submit the decree within a month of each of the two new chambers' initial meeting. If the Government fails to apply those procedures, the decree becomes null and void retroactively. The same is true if the National Assembly does not confirm the decree.

#### 4.2.2 Oman.

The lawmaking process in Oman under the 1996 Constitution is very similar to that in Bahrain in 2002. Nonetheless, the lawmaking process in Oman is more time-bound, with both houses of the legislature adhering to a set of deadlines. The Oman Council has the authority to propose laws to the government, which the government then submits to the legislature. Unlike the Bahraini legislature, the Omani legislature's legislative proposals must be accepted by the other house before being submitted to the Government. Moreover, unlike Bahrain, the government is not obligated to turn the proposal into a bill within a certain timeline.<sup>479</sup> Furthermore, each chamber is unable to present its proposal to the government directly. Instead, the proposal has to be approved by the other house before it can be presented to the government. To put it differently, proposing legislation by the Oman Council is more difficult than proposing legislation by the Bahraini National Assembly.

As in Bahrain, the majority of the bills are introduced by the government. Before referring a bill to the upper house, the State Council, the Shura Council must deliberate and make a decision on it within three months.<sup>480</sup> Within 45 days of the Shura Council's decision, the State Council must discuss and make a decision on a bill.<sup>481</sup> In the event of a disagreement, both houses convene a joint session, which is presided over by the speaker of the upper house.<sup>482</sup> Decisions are made by an absolute majority of members present in either house or in a joint session, with a quorum of

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<sup>479</sup> The Constitution of Sultanate of Oman, 1996, art.58.36.

<sup>480</sup> *Id.*, art.58.37.

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

more than half of the members in each session.<sup>483</sup> After both houses have reached an agreement, the speaker of the House of Representatives sends the bill to the Sultan.

The law is either ratified and promulgated by the Sultan or it is sent back to the legislature for reconsideration.<sup>484</sup> If the legislature made any changes to the bill's original draft, the Sultan might send it back to the legislature for reconsideration. The bills are expected to be accepted without modification by the Oman Council, according to the text of Art.58.35.

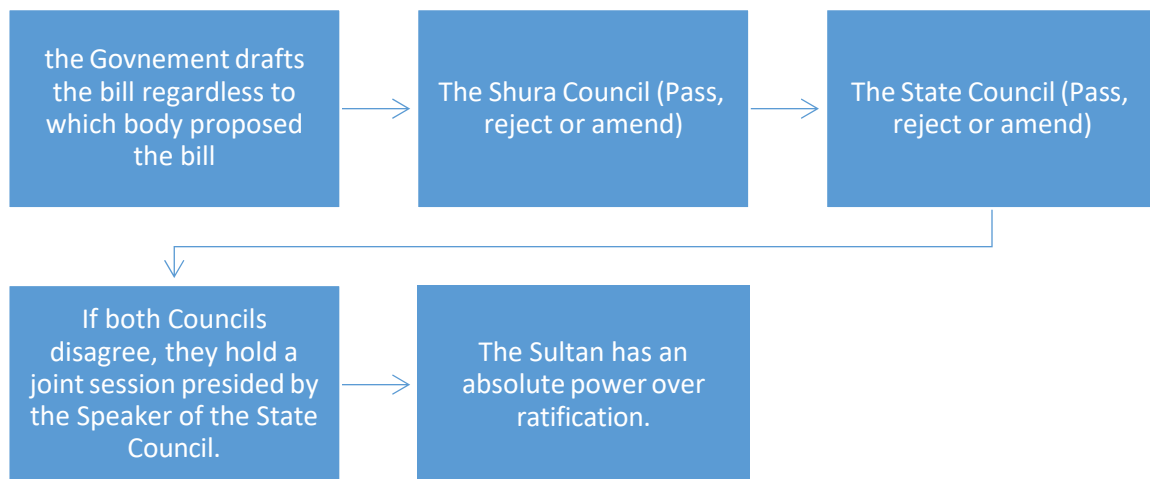
The Constitution is silent on what occurs when the legislature votes on the bill for the second time. In a way, the text grants the Sultan complete control over confirmation. The Sultan, on the other hand, could not pass laws without the consent of the Oman Council unless the legislature was in recess, in which case Sultan's power was quite broad.<sup>485</sup> Unlike the Bahraini Constitution, Sultan's authority to issue law during the parliamentary recess is not conditional on it being urgent, and it is not subject to the approval of the Legislature when it reconvenes.

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<sup>483</sup> *Id*, art. 58.32&33.

<sup>484</sup> *Id*, art.58.35.

<sup>485</sup> *Id*, art.58.39.



**Figure 7 The lawmaking process under the 1996 Omani Constituion.**

#### **4.3 Bahrain's National Assembly 2002-2010 and Oman Council 2011-2019 intra-legislature relations.**

This section looks at the intra-legislature relationships in the Bahrain National Assembly from 2002 to 2010, and the Oman Council from 2011 to 2019. The section examines the bills that the government had submitted to the legislature, as well as the general attitudes of each house regards these bills. It also keeps track of grounds of disagreement between the two chambers regarding laws and the constitutional framework for settling differences. The section discusses the legislative proposals because they are also a key sign of each house's preferences.

#### 4.3.1 Bahrain 2002- 2006.

The National Assembly of Bahrain proposed 90 laws to the government during this legislative term, 58 by the Deputies and 32 by the Shura. More importantly, the National Assembly debated 195 legislations, of which 154 were adopted. The majority of the bills were accepted by both houses with no disagreements. Despite this, the two chambers shuffled 36 bills back and forth until they came to an agreement. In addition, five bills were referred to a joint session, but no joint session was held during the first term, 2002-2006. As a result, the houses voted to postpone those bills until the 2006-2010 legislative term.

In general, the method of composition of each house had no effect on its performance in the legislative process. Nonetheless, the influence of the composition process could explain two things: 1) The lower house, the Deputies, had greater influence over the annual budget bill than the upper house, and 2) the Deputies offered much more law proposals than the Shura.

The Bahraini National Assembly's first term was a time for "creating parliamentary traditions."<sup>486</sup> Both houses aimed to maintain their effectiveness in Bahrain's changing political landscape. This strategy took three forms: 1) amending legislature-related laws, 2) ensuring the legislature's sole control over the lawmaking process, and 3) exaggerating in bill editing, particularly in the first year. Despite the differences in composing methods, both houses chose this strategy.

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<sup>486</sup> The Bahraini Council of Deputies, *The Deputies Annual Report of the Second Year of the Second Legislative Term* (2003), 12.



#### **4.3.1.1 The law proposals 2002-2006.**

Despite the qualitative analysis not distinguishing between the two houses, the quantitative analysis of legislative proposals does. The proposals of the Deputies were far more extensive than those of the Shura. During the first term, the Deputies discussed 250 proposals, but only 58 were adopted by the Deputies. Members of the Shura, on the other hand, made 58 proposals, 32 of which were adopted. As previously said, this is logical given the nature of the council's structure, in which the Deputies are committed to and bound by their people's expectations. The remaining bills were either rejected or under consideration.

The Government, prior to the first election in 2002, enacted the Deputies Internal Law No.54/2002 and the Shura Internal Law No.55/2002, and they covered all aspects of the legislature's activity. Both houses proposed a series of changes to these internal laws. The spirit of both houses' amendments was the same: to ensure the respective House's independence and sole control over lawmaking. Nonetheless, the Deputies' proposal was more comprehensive than the Shura modifications since it proposed amending about half of the Council's internal laws.

As previously stated, many modifications were based on emphasizing independence from the government. Article 19 of the Deputies Internal Law, for example, required the Deputies to invite the Minister of the Shura and Deputies Affairs to meetings of the Deputies Office when preparing the Council's agenda.<sup>487</sup> The Deputies proposed changing this provision to make inviting the

Minister discretionary. Article 85 gave the government the right to delete the minutes of the Deputy's sessions. The Deputies' proposal removed that right and limited it to the house itself.

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<sup>487</sup> The Bahraini Council of Deputies, The Deputies Annual Report of the First Year of the First Legislative Term (2002), 138.

<sup>488</sup> A rejected legislative proposal cannot be submitted again in the same year unless it is approved by the Government, according to Article 95.<sup>489</sup> The Deputies amendment removed the line "unless with the approval of the Government."<sup>490</sup> The Shura Council made similar changes to its internal law, such as changing Article 95 to remove the Government's involvement in the lawmaking process.<sup>491</sup>

Aside from the amendments pertaining to the legislature's independence, another set of amendments centered on the legislature's prestige as a branch of government and its relationship with the executive branch. The amendment, for example, modified Article 36, making it mandatory for a minister to appear before the Council's committees if summoned personally. A similar adjustment was made to Article 138, which requires a minister to attend the Council in person in order to respond to a lawmaker's question. The interpellation processes, Articles 146 to 150, were changed to be conducted before the entire Council rather than the respective committee. The Council changed Article 90 to establish a time limit for the Government to put a law proposal into a bill and submit it to the National Assembly.<sup>492</sup>

Both houses proposed laws that fall into the same categories for the rest of the legislation. In other words, there is nothing that absolutely distinguishes one house's proposition from another. Both chambers presented welfare legislation, as well as professional and technical regulations and civil liberties legislation. The Deputies proposed nine welfare proposals in the first year alone, including pay raises, early retirement, land transfer, and reduced government fees. Given the structure of Bahrain's political and economic system on the one hand, and the nature of the Council

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<sup>488</sup> *Id.*, at.144.

<sup>489</sup> *Id.*, at.145.

<sup>490</sup> *Id.*

<sup>491</sup> The Bahraini Shura Council, *The Shura Annual Report of the First Year of the First Legislative Term (2002)*, 89.

<sup>492</sup> The Deputies, *Supra* note 489, at 144.

on the other, a concentration on welfare bills is understandable. Bahrain is a textbook example of a rentier state, with substantial welfare programs financed by rents collected from the sale of natural resources. Furthermore, constituents frequently expect their candidates and Deputies to get more involved in implementing welfare programs. The Shura also presented welfare-related legislation, such as the marriage fund bill.<sup>493</sup>

Furthermore, both chambers proposed a number of legislation relating to specialized professional and technical fields such as drug usage, maritime borders, and transportation law. They also advocated laws concerning rights and liberties. The Deputies presented labor union legislation, religious freedom legislation, and constitutional court legislation.<sup>494</sup> The State Audit Authority Law<sup>495</sup> and the Press Law<sup>496</sup> were proposed by the Shura. This is not to say that simply proposing legislation promotes liberty and justice; in fact, it could have the opposite effect. Proposing laws, however, in Bahrain meant initiating a conversation to update all of the legislation that followed the restoration of the Legislature. As a result, these proposals were crucial.

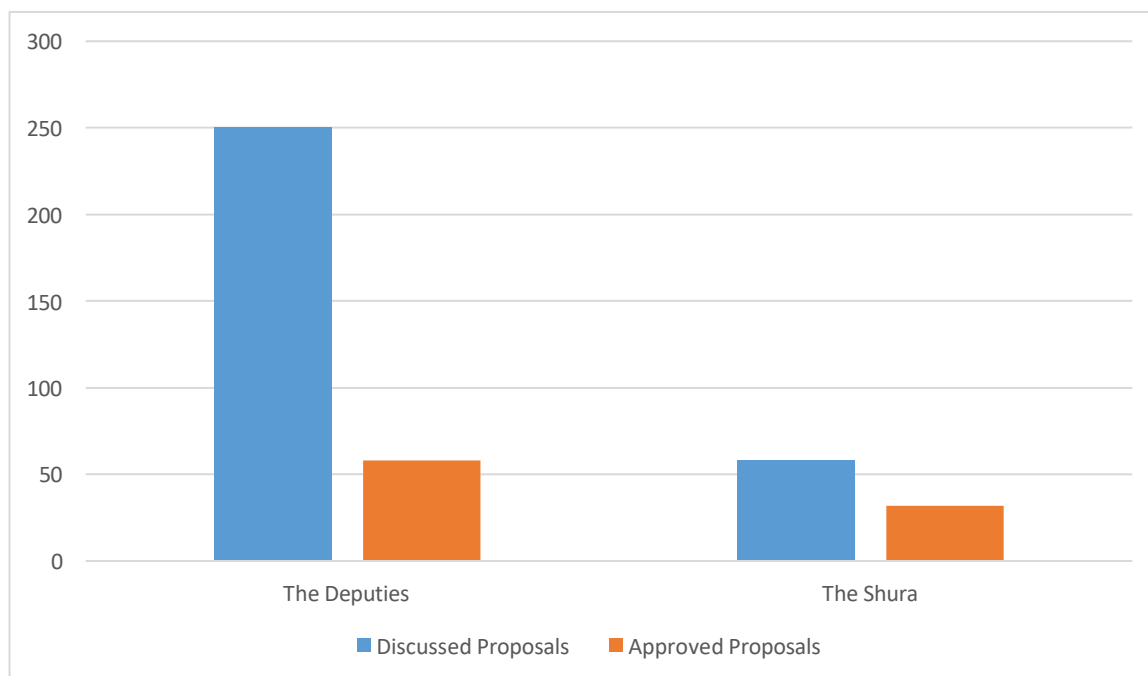
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<sup>493</sup> The Bahraini Shura Council, *The Shura Annual Report of the Second Year of the Second Legislative Term* (2003), 122.

<sup>494</sup> The Deputies, *Supra* note 489, at 53-55.

<sup>495</sup> The Shura, *Supra* note 495, at 123.

<sup>496</sup> *Id.*, at 120.



**Figure 8 Law Proposals by the Bahraini National Assembly - 2002-2006**

#### **4.3.1.2 The Bills 2002-2006.**

The first term of the Bahraini National Assembly was ordinary, with no major contentious legislation. In terms of lawmaking, both houses embodied the same inclinations and approaches. Both houses tried to guarantee their independence and sole control over lawmaking as part of "building parliamentary traditions."<sup>497</sup> This technique may be seen in the modest but significant modifications to the preambles of numerous bills, as well as the considerable rewriting of the bills' text.

The majority of the early bills submitted by the government to the legislature regulated specialized technical or professional domains, as well as treaties. Bills such as veterinary quarantine, geographical indications, trademarks, trade secrets, patents, and the Gulf Countries

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<sup>497</sup> The Deputies, *Supra* note 489, at 12.

Standardization Treaty fall into this area.<sup>498</sup> These types of bills were not controversial in Bahrain, and there was little likelihood of stakeholder dissent.

Notwithstanding, the National Assembly provided extensive changes to these bills during its first term. The preamble did not refer to the National Assembly as the lawmaking body in many bills. Instead, it referred to the Council of Ministers as the approving body by stating, "after the approval of Council of Ministers."<sup>499</sup> The Shura decided to delete any reference to the Council of Ministers. Instead, it replaced it with the National Assembly as the sole lawmaking body by stating "after the approval of both houses."<sup>500</sup> The Deputies passed several laws, like trademarks and trade secrets laws, without taking out the reference to the Council of Ministers' approval. Only after receiving these bills from the Shura Council did the Deputies begin to apply these suggestions.<sup>501</sup> Given its ties to the government, it could have been unlikely that the appointed Shura would make this modification. The beginnings' impetus might play a role because it was a new era, and everyone wanted it to last and succeeded. Aside from the preamble, both houses made considerable edits to the bills' language and forms but not much to the substance. Despite this, the heavy editing was largely limited to the first year.

Both chambers took the same approach to welfare bills, passing them without amendments or delays. Pay raises, early retirement, land distribution, and decreased government levies are all examples of welfare measures. It also includes projects that directly benefit citizens. For example, the government proposed a measure to borrow money to expand the capacity of a power system in one of Bahrain's cities during the first year.<sup>502</sup> Other examples included authorizing a loan for

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<sup>498</sup> The Deputies, *Supra* note 489, at 344-345.

<sup>499</sup> The Shura, *Supra* note 495, at 72-74 & 67-68.

<sup>500</sup> *Id.*, at 72-74.

<sup>501</sup> The Deputies, *Supra* note 489, at 85 & 96.

<sup>502</sup> The Shura, *Supra* note 495, at 48-49 & 65.

the construction of a hospital and offering free health care.<sup>503</sup> Welfare bills are more likely to be adopted immediately by both houses. Most of the time, introducing a welfare measure to the legislature means the government is prepared to deal with the financial consequences. As a result, there would be no reason to oppose the bill. Furthermore, because welfare bills often attract the interest of the Deputies' constituents, it is difficult to postpone, let alone reject them.

The method taken by the Legislature to financial bills, particularly the annual budget, was seamless and timely. During the first term, the Legislature passed a measure that approved the budget two years ahead of time. The role of the Deputies in the annual budget was greater than that of the Shura. Before the official submission, it appeared that the Government coordinated and reviewed the content of the budget, particularly the expenditures, with the Deputies. The Deputies approve it and refer it to the Shura once the Government has officially submitted it. The Shura approved the budget with no revisions, indicating that it accepted the deal reached between the Government and the Deputies.<sup>504</sup> Nonetheless, such an agreement between the Government and the Deputies was noted for the years 2002, 2003, and 2004, but nothing similar was mentioned for the years 2005 and 2006.<sup>505</sup>

Financial bills tied to a specific project that benefits people had speedy approval, as stated in the welfare bills. On the other side, when the government proposed a bill to borrow \$500 million in bonds, the Deputies overwhelmingly rejected it. The Shura, on the other hand, instantly authorized it.<sup>506</sup> The main point of contention in both chambers was that the government had failed

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<sup>503</sup> The Bahraini Shura Council, The Shura Annual Report of the Third Year of the Second Legislative Term (2004), 71.

<sup>504</sup> The Shura, *Supra* note 505, at 83 - 84.

<sup>505</sup> The Shura, *Supra* note 505, at 72.

<sup>506</sup> The Bahraini Shura Council, Minute of Session No.9 February 17, 2003, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP1/s09/Pages/default.aspx?showsection=minutes>

to provide a thorough explanation of the projects that these bonds would pay. Two things make this bill interesting. It is the only law during the study period that demonstrates the upper house as the government's direct agent. The lower house's rational rejection of the bill was based on the government's failure to explain the bonds' intended use. However, the upper house passed the bill without taking note of the lower house's objection. Second, when the two houses disagree on a measure, the usual course of action is to shuffle the measure or submit it to the joint session to settle the issue. Nevertheless, the Shura documents showed that the Shura had presented the measure to the government. Because the official documents did not indicate whether the bill had been approved by the Legislature or withdrawn by the government, the bill's fate was unknown.<sup>507</sup>

It's worth noting that many financial bills were subjected to urgent processes, which sped up the process. The entire approval process could take only a few days in some cases.<sup>508</sup>

During the first term, the Government submitted a few bills related to freedoms and rights. The records show that the Government introduced two bills to the Deputies, one to amend the Press Law No.47/2003, and the other was new association law. However, those two bills were neither deliberated by the legislature nor withdrawn by the Government.<sup>509</sup> The legislature passed four bills related to freedoms and rights, the political association's law, an amendment to Public Assembly Law No.18/1973, an amendment to Labor Unions Law No.23/2002, and Political Rights Law No.14/2002.

Both houses were crucial in enacting the Political Associations Act.<sup>510</sup> This crucial role resulted in a balance between Bahrain's political reality and its desire to protect and abolish

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<sup>507</sup> The Shura, *Supra* note 505, at 66.

<sup>508</sup> The Shura, *Supra* note 505, at 37.

<sup>509</sup> The Deputies, *Supra* note 489, at 89 & 93.

<sup>510</sup> The Shura, *Supra* note 505, at 72.

restrictions on such rights.<sup>511</sup> For example, both houses agreed to strike Article 27 of the bill, which, among other things, made any non-registered political organization criminally liable. This article, if proven, would have sparked a political crisis because many important political organizations, including the Wefaq, were not registered. As previously stated, several political organizations refused to register in protest of the government's unilateral adoption of the Constitution.<sup>512</sup>

The amendment to Law No.18/1973 on public assembly was done in the same spirit.<sup>513</sup> The right to assemble in public was guaranteed by both chambers. According to Article 2 of the amendment, persons planning to meet in a public assembly must notify, rather than request, the relevant security official for security concerns. The proposal, which originated from the government, provided the security authority broad discretion to postpone public gatherings. Both houses, however, limited this power and made it conditional on having a legitimate reason to postpone a public gathering. In addition, the delay should not be longer than one week.<sup>514</sup>

The amendment to Labor Law No. 23/2002 was significant and had far-reaching implications.<sup>515</sup> The change was political in nature in Bahrain, and it supported the government's objective of reducing civil society's authority. The government aimed to undercut the broad federation of Bahraini unions in particular. Article 8 of the bill provided any two or more unions the power to form their own federation. As a result, it paved the way for a proliferation of smaller

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<sup>511</sup> The Bahraini Shura Council, Minute of Session No.35, July 20, 2005, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP3/s35/Pages/default.aspx?showsection=minutes>

<sup>512</sup> *Id.*

<sup>513</sup> The Bahraini Shura Council, The Shura Annual Report of the Fourth Year of the Second Legislative Term (2005), 64.

<sup>514</sup> The Bahraini Shura Council, Minute of Session No.33, July 10, 2006, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/Pages/default.aspx>

<sup>515</sup> The Shura, *Supra* note 515, at 66.



union federations. The General Federation was aware of the implications of this change and testified against it in front of the legislature. Despite this, both chambers of Parliament approved the measure, notably before the first legislative elections for the Deputies in 2002.<sup>516</sup>

The fourth bill was an amendment to Law No. 14/2002 on Political Rights.<sup>517</sup> The amendment expanded the franchise by lowering the voting age from 21 to 20 years old. Both houses were in agreement.<sup>518</sup> It is worth noting that the government unilaterally passed both the Labor Unions Law No.23/2002 and the Political Rights Law No.14/2002 before the first legislative election in 2002.

#### **4.3.1.3 The reshuffled bills 2002-2006.**

During the first term of the Bahraini bicameral legislature, 2002-2006, the bicameral legislature shuffled 36 bills back and forth. The majority of the amendments were made by the upper house, the Shura. Those changes were in enhancing the procedures, as well as language editing. There was nothing contentious about the measures or the amendments. Therefore, the Deputies accepted and approved the changes made by the Shura in 19 bills. The vast majority of these bills were solely technical, professional, or international in nature. Examples of these bills were United Nations Convention Against Transnational Organized Crime,<sup>519</sup> the Marine Borders Protection bill,<sup>520</sup> Unified industrial regulation for GCC Law,<sup>521</sup> Integrated Circuit Designs Bill,<sup>522</sup>

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<sup>516</sup> The Bahraini Shura Council, Minute of Session No.34, July 17, 2006, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s34/Pages/default.aspx?showsection=minutes>

<sup>517</sup> The Shura, *Supra* note 515, at 69.

<sup>518</sup> The Shura, *Supra* note 88, at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s34/Pages/default.aspx?showsection=minutes>

<sup>519</sup> The Shura, *Supra* note 515, at 32.

<sup>520</sup> The Shura, *Supra* note 505, at 54.

<sup>521</sup> *Id.*, at 59.

<sup>522</sup> *Id.*, at 55.

and Industrial Designs Law.<sup>523</sup> Given the Shura members' competence and extensive years of knowledge in many fields, the manner of composition could have played an impact, albeit a minor one, in these approvals.

In contrast, the Shura shuffled eight bills, but the Deputies insisted on its position, then the Shura accepted and voted for the bills. Examples of those bills were Social Insurance for Bahraini Workers Abroad Bill,<sup>524</sup> Alimony Fund Law,<sup>525</sup> Civil Service Bill,<sup>526</sup> and Labour Fund Bill.<sup>527</sup> Most of those bills directly affected the constituencies, so it somehow could partially explain the Deputies' insistence on their version of the bills as representatives of the people.

The Shura also shuffled four other bills to the Deputies, but the term ended before the Deputies could vote on them. Those bills were Amending Transportation Law No.9/1979,<sup>528</sup> Vocational Training Bill,<sup>529</sup> Consumer Protection Bill,<sup>530</sup> And Amendment to Penal Law No.15/1976.<sup>531</sup>

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<sup>523</sup> *Id.*, at 55.

<sup>524</sup> The Shura, *Supra* note 505, at 62-63.

<sup>525</sup> *Id.*, at 63.

<sup>526</sup> The Shura, *Supra* note 515, at 54.

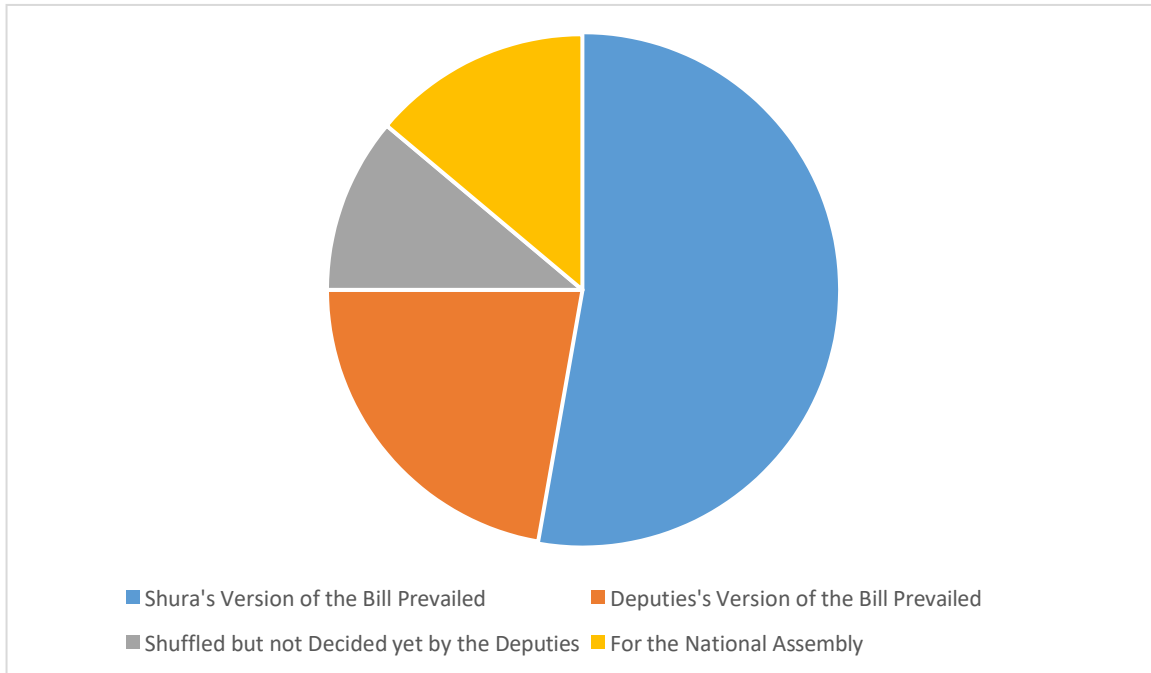
<sup>527</sup> *Id.*, at 59.

<sup>528</sup> The Shura, *Supra* note 515, at 70.

<sup>529</sup> *Id.*

<sup>530</sup> *Id.*

<sup>531</sup> *Id.*



**Figure 9 Shuffled Bills Within Bahrian's Bicameral Legislature 2002-2006.**

#### **4.3.1.4 The joint session 2002-2006.**

Five bills were referred to the joint session during the first term.<sup>532</sup> The first term, however, expired before the two houses were able to convene a joint session. As a result, the houses voted to postpone the bills until the 2006-2010 legislative session. In the context of this study, the nature of the dispute on those bills is significant. The disagreement and reference to the joint session were both part of the so-called established parliamentary traditions.

The Public Health Bill was one of the bills referred to in the joint session.<sup>533</sup> The Shura introduced 12 more chapters to the bill in order for it to be comprehensive and cover a wide range of topics. The Deputies believed the amendments were excessively detailed, so they attempted to eliminate or shorten some of them. However, according to Article 84 of the Constitution, the

<sup>532</sup> *Id.*, at 70-72.

<sup>533</sup> The Shura, *Supra* note 505, at 38.

Deputies' power over the Shura changes was limited to either accepting or rejecting them without making any revisions. As a result, they decided to reject the entire addition.

The bill was returned to the Deputies, who had two options: adopt it or recommend it to the National Assembly, i.e., joint session. However, the Shura's relevant committee recommended that the bill be accepted as written by the Deputies. The extra chapters could then be added to the statute as an amendment later on. The Shura insisted on its version of the bill, claiming that it would be incomplete if those changes were not made. Furthermore, having a bicameral legislature is one of the causes of improved legislative outcomes. The Shura should not adopt the opposite house's stance only to avoid a disagreement that the system had predicted. As a result, if Shura believes the law is better with the changes, it should keep to it and recommend the bill to the joint session.<sup>534</sup>

Another issue of contention was whether one of the chambers had the authority to amend the measures with additional provisions. The Deputies made some additions while reviewing a bill to amend specific articles in Pension law No.13/1975 and Social Insurance Law No. 24/1976. The Shura objected to the Deputies' addition, citing Article 92 of the Constitution, which governs the lawmaking process. The point made by Shura is that the Government is the only one who may create new articles or laws. As a result, it would be unconstitutional for one of the houses to add new articles that were not drafted by the government. If one of the chambers desired to add a new article, it should have submitted it to the government, which would then send the document back to the bicameral legislature. Surprisingly, the Shura itself added new articles to the Public Health Bill discussed earlier. The subtle point of disagreement revolved over what is considered a new

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<sup>534</sup> *Id*, at 101; The Bahraini Shura Council, Minute of Session No.12, December 26, 2005, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s12/Pages/default.aspx?showsection=minutes>.

article. To put it another way, it's not about the structure of the addition but rather about the content of it and whether it's covered by the Government's draft or not.<sup>535</sup>

The aforementioned disagreement between the two houses gives rise to the criticism that the upper house is only the government's agent. It would have been expected from an independent legislative body to adopt an interpretation that increases the legislative authority. Instead, the upper chamber adopted a narrow textual reading of the constitution and gave the impression that it was protecting the authority of the government. It is crucial to stress that there was no proof the government forced the upper house to adopt this position or that the upper house acted unreasonably. After all, the 2002 Constitution's phrasing of Article 00 is rigid to the point where it is challenging to go past it.

A bill to amend Article 35 of Labor Law No. 23/1976 caused a squabble between the two houses. The aforementioned article is about the controversial Kafala system, often known as the sponsorship system. This system is in place in the Gulf Cooperation Council countries, and it is used to monitor migrant workers, particularly those employed in the construction and domestic industries. The bill made it illegal for workers to flee their employers. Shura took a progressive stance and voted against the entire amendment.

Furthermore, Shura stated that a whole new code is currently being reviewed, which governs employer-foreign worker ties. As a result, addressing this relationship in another law may be redundant. The Deputies were adamant about passing this article. As a result, the bill was referred to a joint session by both houses.<sup>536</sup> In a sense, the Deputies were presumably reflecting

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<sup>535</sup> The Bahraini Shura Council, Minute of Session No.20, Mars 27,2006, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s20/Pages/default.aspx?showsection=minutes>

<sup>536</sup> The Bahraini Shura Council, Minute of Session No.26, May 22, 2006, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s26/Pages/default.aspx?showsection=minutes>

the preferences of Bahrainis, which likely worked against the interests of migrant workers. In other words, social justice advancements do not always arise from democratic engagement.

The final point of contention was a change to Auditors Law No. 26/1996. The debate concerned how long a publicly traded business can keep its external auditor and whether the change of auditors should encompass the entire auditing firm or just the individual auditors that audited the company. The Shura chose a shorter term, and the difference was limited to individual auditors rather than the entire firm, whilst the Deputies took the opposite position.<sup>537</sup>

#### **4.3.2 Bahrain 2006- 2010.**

The National Assembly of Bahrain proposed 158 laws to the Government during this legislative term, 133 by the Deputies and 25 by the Shura. In addition, the National Assembly debated 260 pieces of legislation and adopted 137 of them. The majority of the bills were accepted by both houses with no disagreements. Despite this, the two chambers shuffled 15 bills back and forth until they came to an agreement. Furthermore, 14 bills were referred to a joint session, but no joint session was held during the second term from 2006 to 2010. As a result, the houses resolved to postpone the bills until the next session.

##### **4.3.2.1 The law proposals 2006-2010.**

Public expectations increased following the participation of the opposition in the election. The majority of expectations were focused on direct benefits, such as welfare programs. Those

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<sup>537</sup> The Bahraini Shura Council, Minute of Session No.35, July 24, 2006, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT1/CP4/s35/Pages/default.aspx?showsection=minutes>

expectations could explain the influx of welfare law proposals made by the Deputies during this term. The welfare proposals accounted for about half of the Deputies' legislative proposals. Many of these proposals consisted of direct monetary benefits to the constituents. Examples of welfare proposals were general housing allowance,<sup>538</sup> establishing education fund to support self-funded students,<sup>539</sup> 3% annual increase in retirement benefits,<sup>540</sup> pay raises to long-serving government employees,<sup>541</sup> earlier retirement for women,<sup>542</sup> pay increase to all government employees, including the military, and set a minimum salary,<sup>543</sup> low-income support card,<sup>544</sup> lowering gas prices,<sup>545</sup> and loan forgiveness for low-income families.<sup>546</sup>

Despite the fact that some of the legislative proposals were classified differently, they were all welfare law proposals. For example, some Deputies recommended that the government continue paying the deceased's benefit to their heirs as if they were still alive, under the category of religious proposals.<sup>547</sup> It goes without saying that welfare is at the heart of this proposal.

Given their financial ramifications, it suffices to say that not all of the proposals were approved. Some of the proposals were rejected by the Deputies, while others were dropped. It took some of them a long time to prepare for the vote. Nonetheless, in a rentier welfare state like Bahrain, simply offering welfare law recommendations is important since it gives those who made the proposals a positive image among their constituents.

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<sup>538</sup> The Bahraini Council of Deputies, The Deputies Annual Report of the First Year of the Second Legislative Term (2006), 57.

<sup>539</sup> *Id.*, at 74.

<sup>540</sup> *Id.*, at 89.

<sup>541</sup> *Id.*, at 90.

<sup>542</sup> *Id.*

<sup>543</sup> *Id.*, at 91.

<sup>544</sup> *Id.*

<sup>545</sup> *Id.*, at 123.

<sup>546</sup> *Id.*, at 131.

<sup>547</sup> *Id.*, at 116.

The Deputies presented a number of proposals to improve the government's accountability. For example, it passed a bill requiring the government to appoint a minister to oversee all firms of which the government owns 50% or more.<sup>548</sup> It also adopted the open data proposal, which requires the government to publish and make public data in order to promote openness.<sup>549</sup> Proposals relating to the Financial Disclosure Law<sup>550</sup> and Amendment to the Audit Authority Law No.16/2002 was based on a similar logic.<sup>551</sup>

One of the more intriguing proposals was to render escaping foreign workers from their local sponsor's criminals.<sup>552</sup> The Deputies kept taking the same unfair stance toward migrant labor. During the first term, 2002-2006, the Deputies approved this proposal and submitted it to the Government. The document was presented to the Deputies, who approved it, but it was rejected by the Shura. The bill was pushed back and forth between the two chambers before being referred to the joint session. The two houses never had a joint session; therefore, the Deputies reintroduced the same proposal to the Government.

As previously stated, the Shura Council's law proposals were much less than those proposed by the Deputies. In terms of quality, the Shura did not propose any laws with direct welfare benefits, which was understandable given the Shura's composition method. Instead, the Shura proposals were essentially a rewrite and updating of Bahraini legislation. The proposals included various amendments to legislation made before 2002. Those proposals included amendments to Evidence Law No.14/1996, Court of Appeal Law No.8/1989, Civil Procedure Law

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<sup>548</sup> *Id.*, at 54.

<sup>549</sup> *Id.*, at 110.

<sup>550</sup> *Id.*, at 54.

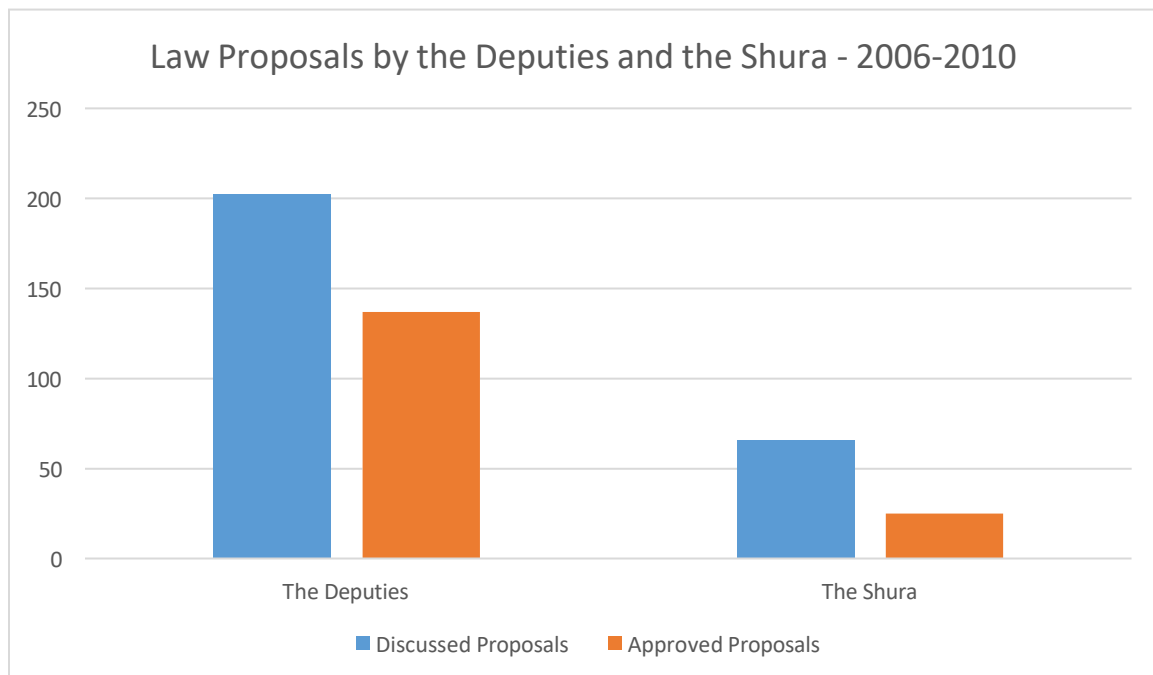
<sup>551</sup> The Bahraini Council of Deputies, The Deputies Annual Report of the Second Year of the Second Legislative Term (2006), 53.

<sup>552</sup> The Deputies, *Supra* note 540, at 135.



No.12/1971, Juvenile Law No.17/1976, and Criminal Law No.15/1967.<sup>553</sup> In addition, the Shura proposed new laws like radiation protection laws,<sup>554</sup> press law,<sup>555</sup> Law of environment,<sup>556</sup> and the law of recycling.<sup>557</sup>

The Shura, as Deputies, reintroduced bills that were scheduled to be voted on in a joint session. The Shura, for example, proposed a public health law to the government.<sup>558</sup>



**Figure 10 Law Proposals by the Bahraini National Assembly ( 2006 – 2010 ).**

<sup>553</sup> The Bahraini Shura Council, The Shura Annual Report of the First Year of the Second Legislative Term (2006), 50-51.

<sup>554</sup> *Id.*, at 50-52.

<sup>555</sup> *Id.*

<sup>556</sup> The Bahraini Shura Council, The Shura Annual Report of the Second Year of the Second Legislative Term (2007), 60-61.

<sup>557</sup> *Id.*

<sup>558</sup> *Id.*, at 50-52.

#### **4.3.2.2 The bills 2006-2010.**

During this legislative term, the King issued six legal decrees in accordance with Article 38 of the Constitution. As previously stated, this article empowers the King to make decrees that have legal force if the National Assembly is not in session. The use of this power is contingent on the fact that the subject of the decree is urgent and immense, requiring immediate action. After then, when the National Assembly is back in session, the Government must present the decree to the National Assembly for confirmation. Nonetheless, under a strong monarchy like Bahrain, the National Assembly is more likely to confirm such decrees. Otherwise, the National Assembly would appear to be antagonistic to the King's person. To put it another way, the legal decrees compel the National Assembly to agree.

The law decrees that the government had submitted to the National Assembly for approval include a wide range of topics.<sup>559</sup> The first was regarding Injury Insurance Law No. 78/2006. The second was about awarding the license to run two major ports in Bahrain on a concession basis. The third was an amendment to the law governing lawyers. The rest was about a planned project between Bahrain and Qatar to create a causeway similar to the King Fahad causeway between Saudi Arabia and Bahrain. The decrees' urgency was not evident, and neither house looked into it, much less disputed any of the decrees.

Stopping or scrutinizing the port concession agreements or the causeway after it was put in place by the King would have been a huge responsibility for any of the houses. The law decrees are an exceptional constitutional tool for extraordinary circumstances. If the Bahraini National Assembly had been in a stronger position, as it is in Kuwait, the story might have been different. In 2008, the Kuwaiti National Assembly rejected a megaproject that the Kuwaiti government had

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<sup>559</sup> The Shura, *Supra* note 558, at 53-54.

agreed to with Dow Chemicals of the United States. During the parliamentary recess, the Kuwaiti government signed the agreement with Dow. The fact that the agreement was signed during the recess was a major element in the Kuwaiti National Assembly's decision to reject the Dow agreement.<sup>560</sup>

Financial bills were frequently approved without modification and in a timely manner. The only exception was the 2009 and 2010 budgets, which were moved to the Deputies by the Shura. Nonetheless, the shuffle was not due to a disagreement; rather, the government increased the budget by 100 million Bahraini dinars while the bill was being debated in the Shura. The budget was passed by the Deputies with no amendments.<sup>561</sup> Financial bills to acquire funding for certain projects were rapidly authorized.<sup>562</sup>

The legislature's attitude on many international treaties remained consistent with that of the first legislative term. The two legislatures swiftly passed treaties without making any amendments. Almost the majority of these treaties were non-controversial and centered on international economic and security cooperation, as well as the promotion of human rights and freedoms.

Due to the obvious financial implications, the majority of welfare laws were subjected to additional scrutiny, as mentioned below. Despite this, both houses agreed to amend the Pension Fund Law No. 13/1975 to add a 3% yearly benefit increase.<sup>563</sup>

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<sup>560</sup> Jane Kinninmont, *Kuwait's Parliament: an Experiment in semi-democracy*, Chatham House (2012), at 10.

<sup>561</sup> The Bahraini Shura Council, *The Shura Annual Report of the Third Year of the Second Legislative Term* (2008), 76; The Bahraini Shura Council, Minute of Session No.18, March 16, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s18/Pages/default.aspx?showsection=minutes>

<sup>562</sup> The Shura, *Supra* note 563, at 76.

<sup>563</sup> *Id.*, at 72.

The two chambers reached an agreement on a bill that would subject the executive branch to additional oversight. The bill was introduced in the House of Deputies. The measure mandated that the executive branch issue regulations for each statute within a particular time.<sup>564</sup>

#### **4.3.2.3 The reshuffled bills 2006-2010.**

The two chambers shuffled 26 bills back and forth until they came to an agreement. The number of laws that were reshuffled was lower than in the first legislative term. Surprisingly, 23 of the 26 shuffled bills were adopted by the Deputies in Shura's version. There could be two reasons for this. To begin with, the majority of those laws were proposed to the Government by the Deputies. Second, it wasn't necessarily about bill disagreements; rather, it was about additions or non-fundamental alterations. Even Shura's amendments to Deputies Internal Law No.54/2002 were accepted by the Deputies.<sup>565</sup> This was unlike any other amendment to the internal laws before this. Previously, the relevant house would introduce internal legislation amendments, which the other house would accept. The Shura, on the other hand, amended the internal legislation of the Deputies, shuffled the measure to the Deputies, and the latter accepted it. The disagreement stemmed from the Deputies' addition of new articles. According to the Shura, the Deputies should have proposed those articles to the Government first. It cannot just add them on its own, especially if they are not covered by the government's amendment.<sup>566</sup> The Shura continued, as it had in the

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<sup>564</sup> The Bahraini Shura Council, Minute of Session No.14, January 18, 2010, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s14/Pages/default.aspx?showsection=minutes>

<sup>565</sup> The Bahraini Shura Council, The Shura Annual Report of the Forth Year of the Second Legislative Term (2010), 69.

<sup>566</sup> The Bahraini Shura Council, Minute of Session No.26, April 12, 2010, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s26/Pages/default.aspx?showsection=minutes>

previous term, to interpret the Constitution textually and zealously defended the powers of the executive and legislative branches.

The Deputies had also agreed on the Shura's version of four other bills: the disclosure law,<sup>567</sup> Senior citizens law,<sup>568</sup> Amendment of Article 393 of criminal law No.15/1976,<sup>569</sup> and an amendment to disability law No.74/2006.<sup>570</sup>

The Deputies proposed the disclosure law. Although the Shura agreed with the concept of the law, it found the law in conflict with the law related to the State Audit Authority. The Shura emphasized this point and shuffled the bill to the Deputies, and the Deputies agreed with the Shura's decision.<sup>571</sup>

In senior citizens' law,<sup>572</sup> which was proposed by the Deputies; the Shura changed the age of who would be considered a senior under the law from 65 to 60 years.<sup>573</sup>

The Deputies proposed amending Article 393 of Criminal Law No.15/1976.<sup>574</sup> The article is about the crime of bouncing checks. The amendment suggested that the charges could be dropped if the convict paid the amount of the check and the victim agreed to drop the charges. The Shura said this is against the public interest because this crime can jeopardize the whole economy.

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<sup>567</sup> The Shura, *Supra* note 567, at 66.

<sup>568</sup> *Id.*

<sup>569</sup> *Id.*, at 67.

<sup>570</sup> *Id.*, at 74.

<sup>571</sup> The Bahraini Shura Council, Minute of Session No.23, March 22, 2010, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s23/Pages/default.aspx?showsection=minutes>

<sup>572</sup> The Shura, *Supra* note 567, at 66.

<sup>573</sup> The Bahraini Shura Council, Minute of Session No.22, May 4, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s20/Pages/default.aspx?showsection=minutes>

<sup>574</sup> The Shura, *Supra* note 567, at 67.

The Deputies agreed.<sup>575</sup> The expertise of the upper houses' members played a role in steering the vote on some bills.

The amendment to disability law No.74/2006 increased the disability allowance.<sup>576</sup> The Shura made a few edits and shuffled the bill back to the Deputies, which agreed on the Shura version. The Shura deliberation over this law and the discussion it had with the Minister of Social Development reveals the similarities between the two houses in approaching the welfare bills.<sup>577</sup>

The Deputies, on the other hand, insisted on its version of three bills: the appropriation law,<sup>578</sup> an amendment to Article 51 on maternity leave of civil service law No. 35/2006,<sup>579</sup> and an amendment to Government Tenders and Procurement Law No.36/2002.<sup>580</sup>

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<sup>575</sup> The Bahraini Shura Council, Minute of Session No.5, November 2, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s05/Pages/default.aspx?showsection=minutes>

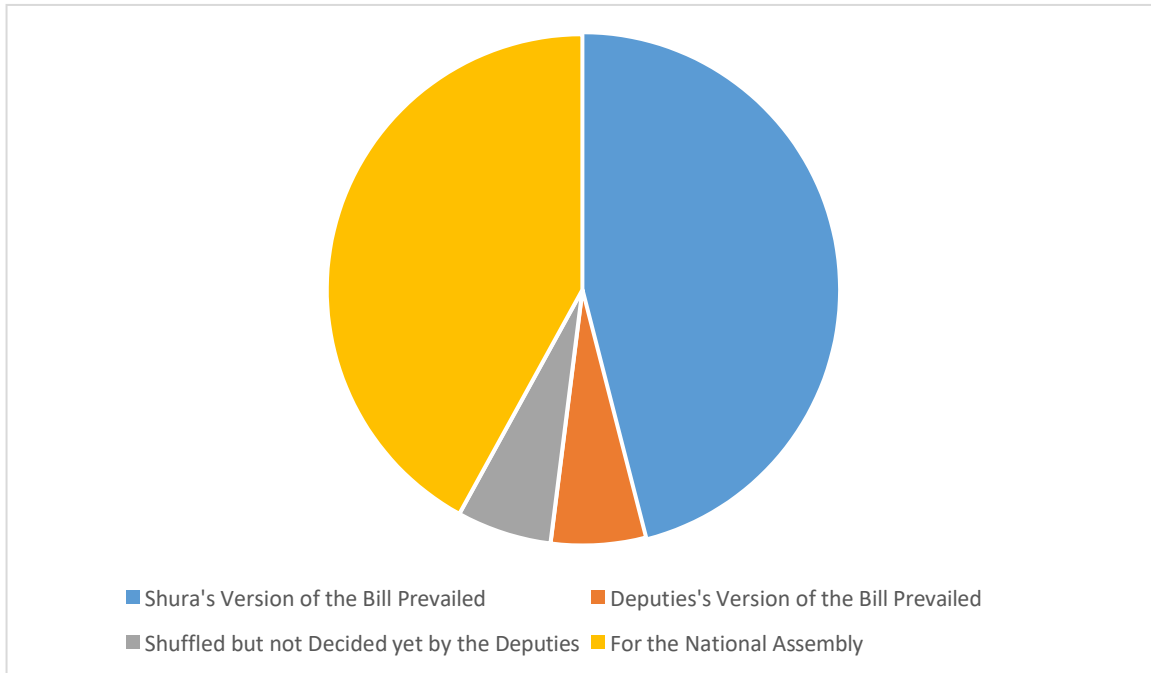
<sup>576</sup> The Shura, *Supra* note 567, at 74.

<sup>577</sup> The Bahraini Shura Council, Minute of Session No.21, March 8, 2010, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s21/Pages/default.aspx?showsection=minutes>

<sup>578</sup> The Shura, *Supra* note 563, at 72.

<sup>579</sup> *Id.*, at 76.

<sup>580</sup> The Shura, *Supra* note 567, at 68.



**Figure 11 Shuffled Bills Within Bahrian's Bicameral Legislature 2006-2010.**

#### **4.3.2.4 National Assembly 2006-2010.**

The Bahraini National Assembly's houses shuffled 21 pieces of legislation but were unable to reach an agreement. The number of measures referred to joint session thus more than quadrupled from the previous legislative term. Neither the first nor second legislative terms saw a joint session. The cause behind this is unknown. There is no time limit for convening the joint session in Bahrain's constitution. Both houses reintroduced several of the legislation that was meant to go to a joint session, as discussed above. The Shura proposed a public health law to the government, while the Deputies proposed a bill to incriminate the fleeing worker.<sup>581</sup> The government did not reintroduce the public health law, but it did so with the bill relating to the indictment of the fleeing

<sup>581</sup> The Bahraini Shura Council, Minute of Session No.23, April 20, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s23/Pages/default.aspx?showsection=minutes>

worker.<sup>582</sup> Surprisingly, Shura's discussion did not address why this issue was not resolved in a joint session, as it was meant to be.

Seven of the laws proposed to the National Assembly dealt with providing direct monetary incentives to certain constituencies. That legislation was submitted to the government by the Deputies. The Shura voted no on such bills for a variety of reasons. Housing loans were the subject of two measures. The first was interest-free housing loans for low-income families.<sup>583</sup> The bill was rejected by the Shura since the existing interest rate, which is only 3%, is already low. Because most loans go to low-income people, removing this interest would result in a large loss for the Housing Bank.<sup>584</sup> Given that interest-free loans are forbidden in Islam and that the majority of the Deputies are Islamists, it would not be incorrect to infer that the concept behind them had an Islamic foundation. In nearly all of the Gulf States, it is also common to request free benefits or services.

The second bill was an amendment to Housing Law No. 10/1976, Article 5.<sup>585</sup> This bill was proposed by the Deputies as well. The legislation aimed to offer low-income households government financing to help them build dwellings. The Shura agreed with the Government in rejecting the bill, claiming that the government's low-income housing policy already handled the situation where an applicant lacks the financial resources to build a home. There were three possibilities under the existing policy. First, if the applicant has the financial means to build on the site within a year, the applicant receives free land; otherwise, the land is returned to the government. Second, if the applicant owns the land but lacks the financial means to construct a

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<sup>582</sup> *Id.*

<sup>583</sup> The Shura, *Supra* note 567, at 80.

<sup>584</sup> The Bahraini Shura Council, Minute of Session No.23, March 31, 2008, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP2/s23/Pages/default.aspx?showsection=minutes>

<sup>585</sup> The Shura, *Supra* note 563, at 84.



home, he or she may be qualified for a government loan. Third, if the applicant lacks both land and money, he or she may be eligible to apply for a government-subsidized housing unit. As a result, passing this bill is unjust to individuals who choose their option because everyone would have chosen the first option if they realized the free land would be coupled with a soft government loan. Furthermore, passing the law would have added to the government's financial burden. The Deputies underlined that there are people who have received lands from the government but are unable to build on them and are in danger of losing their land. As a result, the Deputies demanded that the bill be debated in a joint session.<sup>586</sup>

Another bill proposed that retirees who borrow money from the pension fund be given interest-free loans.<sup>587</sup> The legislation was proposed by the Deputies. The Shura rejected the entire plan, claiming that such a program would encourage the majority of people to request loans, jeopardizing the fund's financial stability.<sup>588</sup>

Bills to establish additional funds were also rejected by the Shura since a similar scheme was already in place. This is the case with the plan to establish national health.<sup>589</sup> and education fund<sup>590</sup> To assist students who are self-funded. The Shura discovered two problems with the education fund. To begin with, it would impose an unneeded financial load on the state's budget. The Shura noted that there were a variety of official running programs in which applicants could compete for funding based on their merits. Furthermore, Shura ruled that the bill was illegal

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<sup>586</sup> The Bahraini Shura Council, Minute of Session No.10, January 12, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s10/Pages/default.aspx?showsection=minutes>

<sup>587</sup> The Shura, *Supra* note 567, at 84.

<sup>588</sup> The Bahraini Shura Council, Minute of Session No.21, April 6, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s21/Pages/default.aspx?showsection=minutes>

<sup>589</sup> The Shura, *Supra* note 558, at 56.

<sup>590</sup> The Shura, *Supra* note 567, at 83.

because it violated the equality principle. The plan would help people who can afford to pay their own tuition, regardless of whether they were previously eligible for government scholarships. As a result, a loophole would open up, allowing people to self-enroll and participate in this scheme rather than competing for scholarships with others. The Deputies disagreed with the Shura, claiming that many citizens began their studies but struggled to finish them. As a result, this program would be a good motivator for this segment of society.<sup>591</sup>

The Deputies had also proposed providing direct compensation to security workers who work in law enforcement and customs administration.<sup>592</sup> The Government drafted bills based on those proposals and presented them to the Deputies, who approved them. Both bills were rejected by the Shura. The Shura contended that the allowances connected to the nature of the activity were governed by the Public Security Forces Law No.3/1982. Furthermore, it is unequal to give additional allowances to only a subset of the security troops. All of the other groups face considerable risk as well, and offering money equal to 20% of the value of the seized drugs is relatively arbitrary. It would put the state in a financial bind.<sup>593</sup> On the same basis, the Shura rejected the bill concerning customs administration.<sup>594</sup>

Two amendments to pension laws, Article 87 of pension law No.13/1975 and military pension law No.11/1976, were a source of contention between the two houses.<sup>595</sup> The Deputies

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<sup>591</sup> The Bahraini Shura Council, Minute of Session No.8, December 15, 2008, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s08/Pages/default.aspx?showsection=minutes>

<sup>592</sup> The Shura, *Supra* note 567, at 84.

<sup>593</sup> The Bahraini Shura Council, Minute of Session No.25, May 4, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s25/Pages/default.aspx?showsection=minutes>

<sup>594</sup> The Bahraini Shura Council, Minute of Session No.24, April 27, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s24/Pages/default.aspx?showsection=minutes>

<sup>595</sup> The Shura, *Supra* note 563, at 85.

proposed both amendments, which the Shura rejected. The law proposed adding years to the retirees' pensions beyond their actual working years. The bills were aimed at individuals who worked in high-risk jobs. The Shura argued that the bill would put an additional burden on the employers since all high-risk occupations include special allowances.<sup>596</sup>

Similarly, the two houses could not agree on two laws that would amend the Social Insurance Law of No. 24/1976.<sup>597</sup> A new article, No.34.1, was added as a result of one of the amendments (1). The amendment was proposed by the Deputies, and the entire bill was rejected by the Shura. The bill proposed a similar approach to the amendment of the Pension Law, which added extra years to some employees' real working years. This change was aimed at the same group of people, namely those in high-risk occupations. On similar grounds, the Shura voted down the bill. Furthermore, they believed the measure distorted the principle of social insurance, which required participation from both employers and employees.<sup>598</sup>

The two houses disagreed on a number of social welfare bills. The upper house, which is more connected to the government, is concerned about the state budget, while the lower house, which is closer to the people, continues to call for increased social welfare. It is fair to state that, considering the increasing number of welfare bills, the Shura's concerns were not wholly unjustified.

Finally, the Deputies proposed an amendment to Article 6 of Law No. 74/2006 on Disabilities.<sup>599</sup> The law was proposed by the Deputies, and it limited the retirement eligibility time

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<sup>596</sup> The Bahraini Shura Council, Minute of Session No.8, November 28, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s08/Pages/default.aspx?showsection=minutes>

<sup>597</sup> The Shura, *Supra* note 563, at 85.

<sup>598</sup> The Bahraini Shura Council, Minute of Session No.19, March 23, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s19/Pages/default.aspx?showsection=minutes>

<sup>599</sup> The Shura, *Supra* note 563, at 84.

for disabled people to half that of non-disabled people. The entire bill was rejected by the Shura for two reasons. The amendment, for starters, involves gender discrimination, which is illegal under Article 18 of the Constitution. Without providing any reason, the bill proposed various retirement ages based on gender. Second, the bill did not specify who would be responsible for the costs. The Shura noted that this is a common problem with bills approved by the Deputies that do not specify who will bear the bill's financial burden. The Shura went on to say that even if the law put a burden on the Ministry of Social Development, it would be rejected by the Shura because the Ministry was in the midst of a massive deficit.<sup>600</sup> As previously noted, the Shura's worries about the financial implications were fair, as was their suggestion that the legislature takes into account how the requested welfare bills will be covered.

The two houses had also disagreed on six bills that related to public policies. The first was a bill proposed by the Deputies that obliged all communications related to any entities belonging to the Government to be in Arabic. Also, it requires all public signs to be in Arabic.<sup>601</sup> The Shura voted against the bill, arguing that it was excessively regulating. Shura's view was that all communication is natural in Arabic when they involve Arabic-speaking parties. Nevertheless, there were a huge number of communications that involved non-Arabic speakers. Thus the communications were in English. With this bill, the Government would be obliged to translate all those communications, which is unnecessarily expensive.<sup>602</sup>

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<sup>600</sup> The Bahraini Shura Council, Minute of Session No.10, January 12, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s10/Pages/default.aspx?showsection=minutes>

<sup>601</sup> The Shura, *Supra* note 567, at 85.

<sup>602</sup> The Bahraini Shura Council, Minute of Session No.14, January 18, 2010, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s14/Pages/default.aspx?showsection=minutes>

In another bill, the Deputies proposed amending Article 4 of Urban Planning Law No. 2/1994.<sup>603</sup> The bill required municipal councils to approve all urban planning projects. The Deputies' position was based on the fact that the municipal councils are the most locally engaged. Hence they ought to approve the urban planning in their particular jurisdictions. This bill was deemed by the Shura to be a complication in an already convoluted procedure. The Shura's rejection was not because the municipal councils were involved but because the entire procedure was subject to their approval.<sup>604</sup> The Shura's voting leaned toward the Government's perspective on centralizing the decision-making.

The amendment of the Maritime Boundaries Law No.20/2006 was a more complicated bill.<sup>605</sup> This law was proposed by the Deputies, but it was rejected by the Shura. There were three points on which both houses disagreed. The first point was the measurement of the seaports. Because measures fluctuate from place to place, the Shura argued against establishing a single general measurement for all marine ports. Second, the Deputies requested a blanket prohibition on issuing permits to any enterprise that is located right on the beach. The Shura argued against the generalization because it would miss out on attractive commercial prospects that would benefit those who live near ports. The third is the time limit for enforcing the law's requirements. The Deputies demanded a shorter time frame, but the Shura countered that the time frame was insufficient because the process was intricate.<sup>606</sup>

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<sup>603</sup> The Shura, *Supra* note 567, at 85.

<sup>604</sup> The Bahraini Shura Council, Minute of Session No.7, November 16, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s07/Pages/default.aspx?showsection=minutes>

<sup>605</sup> The Shura, *Supra* note 567, at 80.

<sup>606</sup> The Bahraini Shura Council, Minute of Session No.21, April 6, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s21/Pages/default.aspx?showsection=minutes>

Another Deputy's bill to amend the Civil Procedures Law No.12/1971 was rejected by the Shura.<sup>607</sup> The main reason for the bill's rejection was that the amended clause could not be amended on its own since it would affect several other parts of the same law. As a result, the change should take into account all of the other clauses.<sup>608</sup>

To strengthen its oversight authority, the Deputies proposed a bill requiring the government to appoint a minister to oversee governmental companies.<sup>609</sup> The entire bill was rejected by the Shura, citing its impracticality. The government owns stock in a number of enterprises that operate in various industries. Each enterprise was examined by the Minister in charge of the sector. As a result, the legislature has control over those ministries. Furthermore, those corporations are independent, and the government's liability is limited to its percentage of ownership; therefore, designating one Minister would be of little benefit.<sup>610</sup>

Finally, the Future Fund Law No.28/2006 was the subject of one bill.<sup>611</sup> The future fund is a sovereign fund that invests a portion of the rent for future generations' benefit. Kuwait, which established the Future Generation Fund in 1953, was the first to come up with the concept of such a fund. The Bahraini Deputies proposed a similar fund, which the Shura rejected. The bill outlined a series of programs aimed at preserving oil wealth for future generations. Part of the wealth would be cut and invested in new national funds, according to the legislation. The basic argument of the Shura was that Bahrain had limited oil resources, to begin with and was running a big deficit; thus,

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<sup>607</sup> The Shura, *Supra* note 567, at 81.

<sup>608</sup> The Bahraini Shura Council, Minute of Special Session No.1, December 31, 2008, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/ss01/Pages/default.aspx?showsection=minutes>

<sup>609</sup> The Shura, *Supra* note 567, at 81.

<sup>610</sup> The Bahraini Shura Council, Minute of Session No.3, October 19, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP4/s03/Pages/default.aspx?showsection=minutes>

<sup>611</sup> The Shura, *Supra* note 567, at 81.

closing the debt should be the first priority. Another priority was investing money in health and education. Furthermore, Bahrain's experience with sovereign funds is not particularly positive. The Shura mentioned the insolvency of some pension funds. The Deputies stood firm in their position, claiming that allocating this sum does not undermine all of the Shura's concerns.<sup>612</sup>

#### **4.3.3 Oman 2011-2015.**

Unlike Bahrain's bicameral legislature, Oman's bicameral legislature has extremely limited public data. Furthermore, the government and legislature regarded the 2011 legislative term as though it was a continuation of previous terms. There was thus no obvious sense of a new beginning, even though the legislature had seized power for the first time. The 2011 legislature was the seventh legislative term, according to all official documents. The Government and the Legislature, of course, were aware of the new power provided by the 2011 Amendment that gave it power. Analyzing the legislature's activities, however, reveals that it functioned more as a liaison between the government and the people than as a true legislative branch. The result is that neither house is particularly close to the people, so the differences between them are not as easy to discern as they might be in Bahrain.

The formation of internal regulations was the first item on the legislative agenda of the Shura and State Councils. Under Article 58.25 of the 1996 Constitution, each council has the authority to create its own internal rule that stipulates, among other things, deliberation and voting procedures, as well as interpellation by the Shura Council. Internal laws were created and passed

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<sup>612</sup> The Bahraini Shura Council, Minute of Session No.15, February 16, 2009, available at <https://www.shura.bh/ar/Council/Sessions/PreviousLT/LT2/CP3/s15/Pages/default.aspx?showsection=minutes>

by both chambers. In other words, it did not follow the Constitution's Article 58.35 method for making laws. However, during the next legislative term, 2015-2019, this issue sparked a debate between the Shura and the Council of Ministers, which will be covered later.

The legislature approved 25 bills during the seventh legislative term (2011-2015), with only one bill requiring a joint session. The legislature also discussed 16 treaties and four annual state budgets. It is worth noting that treaties and yearly budgets are exempt from legislative approval under Article 58.40,41 of the Constitution. In terms of law proposals, the Shura, the lower house, made only four, while the State Council, the upper house, made none.

The Legislature approved all of the bills as written by the government. Except for the consumer protection bill, none of the bills were contentious. The majority of the laws dealt with technical and professional issues such as measurement and standardization, banking law amendments, antitrust law, antidumping and countervailing duty legislation, medical law, and pharmaceutical law. The Shura proposed legislation to help small and medium-sized businesses, federal procurements, open data, and a modification to Social Insurance Law No.91/1972. The first three law proposals intended to strengthen government performance control. Despite this, the tiny quantity of recommendations makes it impossible to discern the council's basic trends.

A bill on consumer protection that was considered in a joint session was the only point of conflict between the two chambers.<sup>613</sup> The argument focused on four articles. Consumer protection garnered a lot of attention because it was one of the key demands during the 2011 uprising. The government established the Public Authority for Consumer Protection by Royal Decree No.26/2011.<sup>614</sup> In its first year, the Consumer Protection Authority issued Decision No.12/2011,

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<sup>613</sup> Oman Shura Council, Shura Statistic Book of the Seventh Legislative Term 2011-2015 (2016), 61.

<sup>614</sup> The official website of the Public Authority of Consumer Protection is available at <https://pacp.gov.om/ar/pages/about.aspx>.



forbidding any increase in the price of any product or service without first getting approval from the authority. This decision infuriated the business sector, which fought it fiercely. The Council of Ministers sided with the business sector and approved Decision No.7/2014, which curtailed the scope of Decision No.12/2011. The Council of Ministers' decision prompted a popular outcry. Many Shura members regarded this as an opportunity to show their support for the people, particularly since the decision was made so close to the election.<sup>615</sup> The Shura released an urgent statement condemning the decision of the Council of Ministers.<sup>616</sup>

Despite having little input into bills and only a few legislative proposals, the legislature was still involved in a variety of public issues. However, the involvement came in the form of recommendations based on Shura Council research. The Council, for example, made a suggestion to reduce the maximum interest rate on personal loans from 7% to 5%. It was also suggested that the percentage of low-income people's monthly deductions be lowered.<sup>617</sup> The Omani Shura Council leans heavily toward social welfare programs, much like Bahrain's lower house does, albeit not as heavily.

The Shura also made recommendations for a school bus and bus driver safety requirements. This was a critical problem, especially in light of the serious lack of safety practices in school transportation.<sup>618</sup> It also provided recommendations on disability laws,<sup>619</sup> marriage funds,<sup>620</sup> housing policies,<sup>621</sup> quarries and crushers,<sup>622</sup> food and water security.<sup>623</sup>

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<sup>615</sup> <https://alwatan.com/details/20827/print/>

<sup>616</sup> The Omani Shura, *Supra* note 516, at 69.

<sup>617</sup> *Id.*, at 93-95.

<sup>618</sup> *Id.*, at 98-99.

<sup>619</sup> *Id.*, at 100-103

<sup>620</sup> *Id.*, at 104.

<sup>621</sup> *Id.*, at 105-106.

<sup>622</sup> *Id.*, at 96.

<sup>623</sup> *Id.*, at 110-113.

It is unclear why the Shura Council did not propose the recommendations as law proposals. It is possible that the necessity that the law proposal is passed by both chambers played a factor. The recommendations, unlike the law proposals, can be submitted directly to the government. In comparison to the Bahraini Legislature, many of the concerns addressed by the Omani Shura as recommendations were presented as law proposals in the Bahraini legislature. This is not to say that those recommendations were bad or good. They would, however, have improved parliamentary work and boosted the Legislature's political relevance. The problem with the recommendation is that it is of limited utility and is not recognized as a legislative tool because the Government is always free to ignore it.

Due to the lack of active civil society organizations in Oman, the 2011 uprising had little impact on the legislature's activities. Despite its legislative authority, the Council remained largely focused on its consultative role and was unable to personify the legislative body's mission. Despite the lower house's attempts to position itself as a new power in the state, the consultative nature of the lower house remained. For example, Article 58.43 of the Constitution began with two attempts to conduct interpellation proceedings. The first was addressed by the oil minister in response to repeated strikes by oil companies. It was rejected by the Council of Ministers, who claimed that the Shura had no power over the Ministry of Oil. Only service ministers were covered by Article 58.43. The second question was directed at the Minister of Education. The Council of Ministers denied that the education minister had broken any laws. The dispute was not escalated by the Shura, and that was the end of it.

#### 4.3.4 Oman 2015-2019.

The Legislature's attitude toward the legislative process did not alter significantly from the previous term. The Legislature's strategy is based on three themes: accepting bills as they are, introducing a few laws, and making numerous recommendations. The entire Legislature kept a low profile, and the approaches to legislation in both houses were essentially identical. There were no joint sessions during this term because both houses agreed on every bill. Four bills were sent back to the Legislature for reconsideration by the Sultan.<sup>624</sup>

In addition, the Legislature debated 45 treaties and four annual state budgets.<sup>625</sup> Although the number of law proposals submitted by the Oman Council increased from the previous term to 21, only seven were accepted.<sup>626</sup> The State Council, the upper house, made only one of the 21 law proposals. The Shura issued numerous recommendations in various areas of legislation, as it did in the previous term.

There were no controversial laws passed by the Legislature during the ninth legislative term, and none of them gained public attention. The majority of the bills dealt with specialist technical or professional sectors and had no direct impact on people. Those who would be directly affected by the law were more likely to engage before it was submitted to the Legislature. Amendments to the income tax, for example, were one of the bills passed this term.<sup>627</sup> Despite the fact that tax law is critical in many countries, Oman did not impose income tax on individuals. Direct income tax law affects corporations only. Because the tax is small and limited, and many businesses benefit from tax exemption programs, the impact on corporations is low. The same is

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<sup>624</sup> Oman Shura Council, *Shura Statistic Book of the Seventh Legislative Term 2015-2010* (2010), 12.

<sup>625</sup> *Id.*, at 14, 228, 164 & 87.

<sup>626</sup> *Id.*, at 13, 227, 163 & 88.

<sup>627</sup> *Id.*, at. 11.

applicable to other bills, such as amendments to foreign investment law, money laundering law, veterinary law, cultural law, trademarks law, and business law.<sup>628</sup>

As a result, the Legislature's overall visibility was limited, as neither the general public nor specific interest groups in the society were interested in its work. Moreover, as discussed, civil society is not as strong in Oman as in Bahrain, limiting public involvement in the Legislature's activities. The Legislature only played a limited role in practice. It was more likely to accept any bill as long as it did not outrage society, which was the case with the consumer protection law.

The Sultan, on the other hand, returned four laws back to the assembly for reconsideration during this legislative session. as he had the right to do under Article 58.35 of the Constitution if the bill's draft was changed.<sup>629</sup> These bills were the land transportation law, an insurance law, an automobile insurance amendment, and a transportation law amendment. Oman Council agreed to all the comments provided by the Sultan.

Internal laws of the Shura Council resulted in a clash between the Shura and the Council of Ministers. On March 14, 2017, the Minister of Municipalities was subjected to an interpellation, which sparked a confrontation. The Shura Council said that the Ministers had overstepped his authority, citing Article 58.43 of the Constitution.<sup>630</sup> The Council of Ministers, on the other hand, did not adhere to the Shura's interpellation procedures or schedules. The Shura's internal regulation is not a law, according to the Council of Ministers. As a result, the Shura is unable to bind the Council of Ministers to its internal rules. The Shura dismissed the Ministers' argument, citing Article 58.25 of the 1996 Constitution, which states that the Shura has exclusive authority to stipulate the interpellation proceedings in its internal regulation. The Shura issued an urgent

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<sup>628</sup> *Id.*

<sup>629</sup> *Id.*, at 12

<sup>630</sup> *Id.*, at 111.

statement to the Sultan regarding the situation.<sup>631</sup> The Sultan took no public action on the matter, the situation did not escalate, and the interpellation did not occur. The Shura's attempt to interpellate is a sign that they wanted to do something to be accountable and responsive to popular demands. Undoubtedly less than the Bahraini deputies, but nonetheless significant.

The Shura proposed a total of 21 laws.<sup>632</sup> Unsurprisingly, the proposed legislation was all focused on broad public policies. The focus on general policies is mainly attributed to the fact that the Government controls the budget, not the legislature. Therefore, their ability to propose bills that have a financial impact almost does not exist. Amendments to tender legislation, audit law, marine fishing law No.53/1981, environmental protection law, sewage law, patients' rights law, and development planning law were proposed by the State Council. Law proposals that were not adopted were either not voted on or were still being debated, such as an amendment to the Shura Election Law.

Aside from the proposed legislation, the Shura offered 23 recommendations to the Government. These suggestions range from the broadest to the most particular. Among these are proposals to the Government to enact legislation in specific sectors.<sup>633</sup> Some of the recommendations were related to matters that the Government has sole authority over. Because the Legislature has consultative power over the annual state budget, the proposals that had a direct financial influence were a notable example of this category of recommendations. Only a few recommendations fell into this category, such as recommending that specific products be

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<sup>631</sup> *Id.*, at 91.

<sup>632</sup> *Id.*, at 13, 227, 163 & P.88.

<sup>633</sup> *Id.*, at 293.

subsidized,<sup>634</sup> funding research programs,<sup>635</sup> and developing motivational systems for corporate social responsibility programs.<sup>636</sup>

The majority of the recommendations fell under the jurisdiction of the Legislature; nevertheless, the Legislature chose to introduce them as recommendations rather than law proposals. Among those recommendations were amendments to the financial and administrative audit law No.111/2011,<sup>637</sup> issuing the Constitutional court law and the Oman Council law,<sup>638</sup> amendments to communication law,<sup>639</sup> amendments to civil society institutions law,<sup>640</sup> amendments to disability law,<sup>641</sup> issuing higher education law,<sup>642</sup> amendments to labor law, agency law, and commercial registration law.<sup>643</sup> As stated earlier, the Omani Legislature could not quite see itself as a legislature despite its new power. It had some institutional inertia in that it had been consultative for so long that it continued to occupy that role even where formally it was no longer required to.

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<sup>634</sup> *Id.*, at 47.

<sup>635</sup> *Id.*, at 190.

<sup>636</sup> *Id.*, at 251.

<sup>637</sup> *Id.*, at P.122.

<sup>638</sup> *Id.*

<sup>639</sup> *Id.*, at 123.

<sup>640</sup> *Id.*

<sup>641</sup> *Id.*, at 124.

<sup>642</sup> *Id.*, at 123.

<sup>643</sup> *Id.*, at 189.

#### **4.4 Conclusion.**

This Chapter discussed the intra-legislature relations between Bahrain National Assembly and Oman Council during the period 2002-2010 and 2011-2019, respectively. The purpose of the Chapter was to find out how the composition method affected the legislative process.

Both legislatures' legislative outcomes show that the composition method employed in each chamber had no substantial impact on the legislative process. Both chambers had largely similar general inclinations and worked in roughly comparable ways. Despite the similarities between each legislature's upper and lower houses, the method of composition played only a minor effect. The lower chamber of both legislatures always presented more laws than the upper house. Furthermore, for a few years, the lower chamber of Bahrain's National Assembly had a greater effect on the annual budget bill. The method of house composition can sometimes explain how specific bills were voted on in the Bahraini Legislature. The bicameral structure must be distinguished from the method of composing each house in the bicameral legislature. The reason for this is that Bahrain's upper chamber, for example, provided a good double-check for a better legislative outcome. In other words, it demonstrated the benefits of having a bicameral legislature, which has been echoed throughout the literature.

Despite this, the findings of this study are constrained by the study's period and circumstances. The study found that the time period under research was one of relative political calm and the beginning of a new legislative area. In other words, the study does not apply to other time periods or conditions, including the era after 2011 in Bahrain and 2019 in Oman. According to the Bassiouni Commission, following February 2011, Bahrain slid into a toxic political polarization, and the government's human rights breaches soared. As a result, major questions concerning the role of an appointed upper house in such a situation have been raised.

Oman is in the same boat but differently. Following the ascension of the new monarch and the adoption of the 2021 Constitution, the Oman Council's relatively restricted power became much more limited. This study revealed the largely passive role of both houses of the Omani Legislature. Thus, tough questions arose concerning the function of the Legislature and its appointed upper chamber under the new Constitution.

To summarize, the purpose of this study is not to argue for or against the bicameral legislature form used in Bahrain and Oman. Particularly given Bahrain's upper house's capacity to maintain its independence from the government and produce better legislative outcomes. After all, the bicameral form of Bahrain and Oman was imposed by the government rather than elected by the people.



## **5.0 Conclusion of the Dissertation**

This research thoroughly studied two bicameral legislatures of two modern Gulf States, Bahrain and Oman. Both countries adopted a similar model of a bicameral legislature, a bicameral legislature with an appointed upper house that has equal power as the popularly elected lower house. Bahrain and Oman's bicameral model allows the government, through the upper house, to limit the possibilities of popular rule and entrench greater authoritarianism.

The research took off from a simple yet significant fact that bicameral legislatures are not all made equal. This fact is especially important in Bahrain and Oman because the bicameral model's introduction was oversimplified by implying that it existed in many established democracies; therefore, it seems appropriate to embrace it. The bicameral legislative structure is more complicated because it is culturally specific. The choice of the bicameral system of the legislature and the characteristics of that bicameral model are often tight to each country's history, political, and cultural reality. Thus, bicameral legislatures differ in three essential components, i.e., the purpose and representation, the composition process, and democratic legitimacy and power. The research found that contrary to many other legislatures, the Bahraini and Omani model of bicameral legislature lacks harmony between the three components that distinguish bicameral legislature.

The research then explored more deeply the political history of Bahrain and Oman to find out why this particular bicameral legislature was adopted. The analyses concluded that this particular bicameral legislature in both countries is a buffer. It is understood that the governments of Bahrain and Oman introduced the bicameral model unilaterally without following a recognized democratic process. The monarchy of both countries had to introduce constitutions for different

reasons. Nonetheless, they were powerful enough to dictate the characteristics of the legislature. Thus, they created the upper chamber to serve as a safeguard for the government, ensuring that it could restrain and control the legislature.

To see how Bahrain and Oman's bicameral model worked in practice, the research first looked into the makeup of the legislature of both countries. Examining the makeup of the legislature took two approaches, general and narrow. The general approach looked into the status of civil society, and the narrow one looked into the political composition of Bahrain's National Assembly (2002-2010) and the Oman Council (2011-2019). The governments' meddling, restrictions, and control hamper both countries' political groups and civil society. The findings of the final chapter about intra-legislative relations were explained in part by the state of civil society and political associations.

The final chapter examined the intra-legislature relations pertinent to the legislative processes in Bahrain's National Assembly (2002-2010) and the Oman Council (2011-2019). The research concluded that both houses have primarily acted similarly, where the majority of bills submitted by the government passed as is. In other words, the composition method employed in each house had a limited influence on the legislative process. Nevertheless, one can find the typical differences in a bicameral legislature between the two houses. In Bahrain and Oman, the expertise of the upper house members played a role, albeit limited. In addition, some differences appeared over social welfare bills. The lower house supported all welfare bills enthusiastically, although the upper house was more cautious. The upper house, which is closer to the government, was concerned about the state budget, while the lower house, which is closer to the people, continued to call for increased social welfare.

Although the bicameral model in both countries allows the government to interfere directly in the legislature through the upper house, there was no evidence that the government did so during the research period. The lower house did not present a serious challenge during the study period; thus, even if it were arguable that the government intended to employ the upper house, there was no reason to do so.

Some aspects of bicameralism and democratization are revealed by examining the bicameral legislatures in Bahrain and Oman. Some bicameralism models, such as those in Bahrain and Oman, can be utilized to solidify authoritarianism as an additional safety net the monarchy exploits to bolster its authority. Whether or not the monarchy deliberately employed the upper chamber to meddle in the legislative process, this conclusion can still be valid. After all, the upper chamber would still serve as a passive conduit for the views of the government. In general, the desire to advance democracy in some form should be the driving force behind the adoption of a bicameral legislature or any other structure for that matter. Therefore, determining how much that particular system advances democracy would be a key component of any evaluation. Because democracy was not the underlying principle of the design, it is challenging to apply the same judgment to the situations in Oman and Bahrain.

It is difficult to take the government's rhetoric about public participation seriously because it contradicts the essence of politics and power. Without being coerced in some way, it is practically impossible for an absolute authority to surrender power to another party. Without the rebellion of the 1990s, Bahrain's 2002 Constitution would not have been adopted. The 2011 Constitutional Amendment in Oman, which was a direct result of the 2011 upheaval, is comparable. This reasoning also holds true for other provisions of the constitution, like the legislature's structure and power distribution.

The government rhetoric regarding public participation is hard to be taken seriously because it goes against the nature of power and politics. It is almost impossible for an absolute power to concede power to another party unless it is pressured to do so in one way or another. The introduction of the 2002 Constitution of Bahrain would not have happened if not for the 90s uprising. The same applies to the 2011 Constitutional Amendment in Oman, a direct result of the 2011 uprising. This logic applies to other aspects of the constitution, such as the legislature's structure and power distribution. In other words, the content of a nation's constitution frequently reflects its political environment. The constitution's provisions would just serve as a reflection of the dominance of one major player in the political sphere, like the monarchy of Bahrain and Oman.

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