

Introduction to the
democratic constitutionalism

in the **Middle East**

the Middle East

Middle East



- Location of the Middle East
- Greater Middle East
- Areas sometimes included

The term "Middle East" **may have originated in the 1850s**

However, it became more widely known when AMERICAN naval strategist Alfred Thayer Mahan **used the term in 1902**¹ to "designate the area between Arabia and India". Mahan realized not only the strategic importance of the region, but also of its center, the PERSIAN GULF.

During this time the BRITISH and RUSSIAN EMPIRES were vying for influence in CENTRAL ASIA a rivalry which would become known as THE GREAT GAMES.

He labeled the area surrounding the Persian Gulf as the Middle East, and said that after Egypt's SUEZ CANAL.

It was the most important passage for Britain to control in order to keep the Russians from advancing towards British India

the Middle East

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In the Islamic countries, the overlap of civil powers with religious ones, and the persistence of religious authority in law and politics, brings on a political culture in which democratic procedures and constitutional structures do not perform the same task as in the western liberal-democratic political environment.

The process of separation between politics and religion which took place in the western scenario in the Modern Age is, indeed, a preliminary condition which made possible the emergence of constitutionalism.

Qatar

got its independence from the U.K. on September 3, 1971.

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- ❖ The government in Qatar is **absolute monarchy**
- ❖ It means each **son** is a successor to his fathers throne.
- ❖ The current Emir is Sheikh Tamim bin Hamad bin Khalifa Al Thani.



Qatar

got its independence from the U.K. on
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- ❑ Qatar's total area is about 11,600 kilometer square.
- ❑ Population of Qatar is around 2.6 million.

❑ The official language in Qatar is the Arabic language. However, **English is a primary language.**

❑ Qatar's religion is **Islam.**

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Qatar

WHY the independence from the U.K. in 1971.

The Al Thani family had lived in Qatar for 200 years. **The 1916 treaty** between the United Kingdom and Sheikh Abdullah was similar to those entered into by the British with other Persian Gulf principalities. Under it, the ruler agreed not to dispose of any of his territory except to the U.K. and not to enter into relationships with any other foreign government without British consent. In return, the British promised to protect Qatar from all aggression by sea and to lend their good offices in case of a land attack. **A 1934 treaty** granted more extensive British protection.

By mid-1971, as the termination date of the British treaty relationship (end of 1971) approached, the nine still had not agreed on terms of union. Accordingly, Qatar declared independence as a separate entity and became the fully independent State of Qatar on September 3, 1971.



- ❑ The official language in Qatar is the Arabic language. However, **English is a primary language.**

Qatar

relationship with the U.K.



ISLAM is the second largest religion in the UK United Kingdom of Great Britain and Northern Ireland, with results from the UK 2011 CENSUS giving the UK MUSLIM population in 2011 as 2,516,000, **4.4% of the total population.**

London has the greatest population of Muslims in the country.

The majority of Muslims in United Kingdom adhere to Sunni Islam, while smaller numbers are associated with Shia Islam.

Qatar

before its independence from the U.K. 1971.

enacted its provisional constitution.

With first provisional basic law of governance.

One year after 1972

Qatar's national independence, the provisional constitution was amended to be compatible with both the requirements and responsibilities of this new era.

Qatar

independence from the U.K. 1971.

It is worth mentioning **that :**

- Qatar's first Municipal Council was formed in the early **1950s**
- **in 1999** Qatar witnessed the first elections for the Central Municipal Council.

That was a historic event as those elections represented the first steps of the country towards democracy in its civil sense, and a pioneering development that encouraged women to run as candidates cast their votes and participate for the first time in public affairs and in the process of decision taking

Qatar

got its MODERN Constitution:



- ❑ It has a Constitution- Under the 2003
CONSTITUTIONAL REFERENDUM
- ❑ it should be a constitutional monarchy

A referendum to approve a new **constitution** was held in **Qatar** on 29 April 2003. The **constitution** was overwhelmingly approved, with almost 98% in favour. The population of the country was estimated to be around 790,000 at the time of the referendum with only 85,000 registered voters.

Qatar's legal system



MONARCHICAL CONSTITUTIONALISM

A **constitutional monarchy** is a form of monarchy in which the sovereign exercises authority in accordance with a written or unwritten constitution.

Constitutional monarchies range from countries such as Monaco, Morocco, Jordan, Kuwait and Bahrain, **where the constitution grants substantial discretionary powers to the sovereign**, to countries such as the United Kingdom, Spain, Belgium, Sweden and Japan, where the monarch retains no formal authorities.

Qatar's legal system

MONARCHICAL CONSTITUTIONALISM



Constitutional monarchy differs from absolute monarchy (in which a monarch holds absolute power) in that constitutional monarchs are **bound to exercise** their powers and authorities within the limits prescribed within an established legal framework

Constitutional monarchy may refer to a system in which the monarch acts as a non-party political head of state under the constitution, whether written or unwritten

Qatar's legal system



MONARCHICAL CONSTITUTIONALISM

❖ **Article 60 of the Qatari Constitution**

indicated the separation of authorities in the countries in which the legislative power is vested in the **Shura council**.

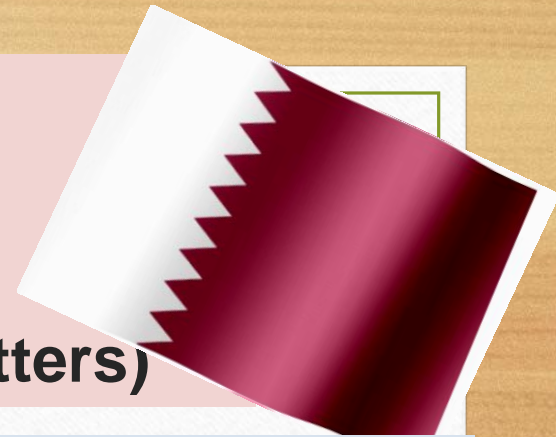
The Executive authority is vested **in the Emir and his cabinet**.

And the Judicial authority is vested **in the courts**.

Qatar

mixed legal system

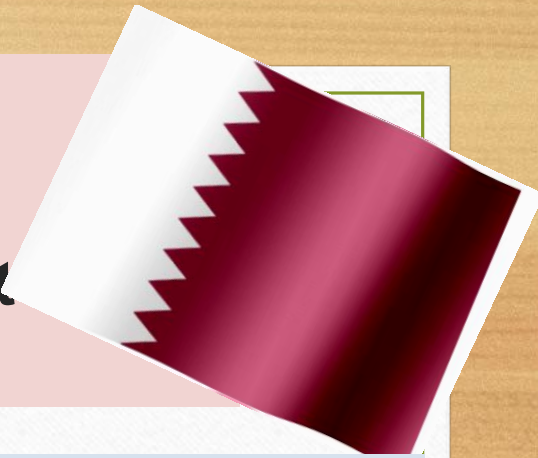
of civil law and Islamic law (in family and personal matters)



- The legal systems is modeled upon elements of **five** main types:
 - ❑ **civil law** (including French law, the Napoleonic Code, Roman law, Roman-Dutch law, and Spanish law);
 - ❑ **common law** (including United State law);
 - ❑ customary law; mixed or pluralistic law;
 - ❑ and **religious law** (including Islamic law).
 - ❑ An additional type of legal system - international law, which governs the conduct of independent nations in their relationships with one another.

Qatar

mixed legal system
of civil law and Islamic law (in family and personal matters)



- **Religious Law** –
- A legal system which stems from the sacred texts of religious traditions and in most cases professes to cover all aspects of life as a seamless part of devotional obligations to a transcendent, imminent, or deep philosophical reality.
- Implied as the basis of religious law is the concept of **unalterability**. **The word of God cannot be amended or legislated against by judges or governments.**
- A detailed legal system generally **requires human elaboration.**

mixed legal system
of civil law and Islamic law (in family and personal matters)

- **Religious Law** – The main types of religious law are :

- sharia in Islam,

- Sharia is the most widespread religious legal system (see Islamic Law) and is the sole system of law for countries including Iran, the Maldives, and Saudi Arabia.

- halakha in Judaism,

- No country **is fully** governed by halakha, but Jewish people may decide to settle disputes through Jewish courts and be bound by their rulings.

- canon law in some Christian groups.

- Canon law **is not a divine law** as such because it is not found in revelation.

- It is viewed instead **as human law inspired by the word of God** and applying the demands of that revelation to the actual situation of the church.

- Canon law regulates the internal ordering of the Roman Catholic Church, the Eastern Orthodox Church, and the Anglican Communion.

Qatar

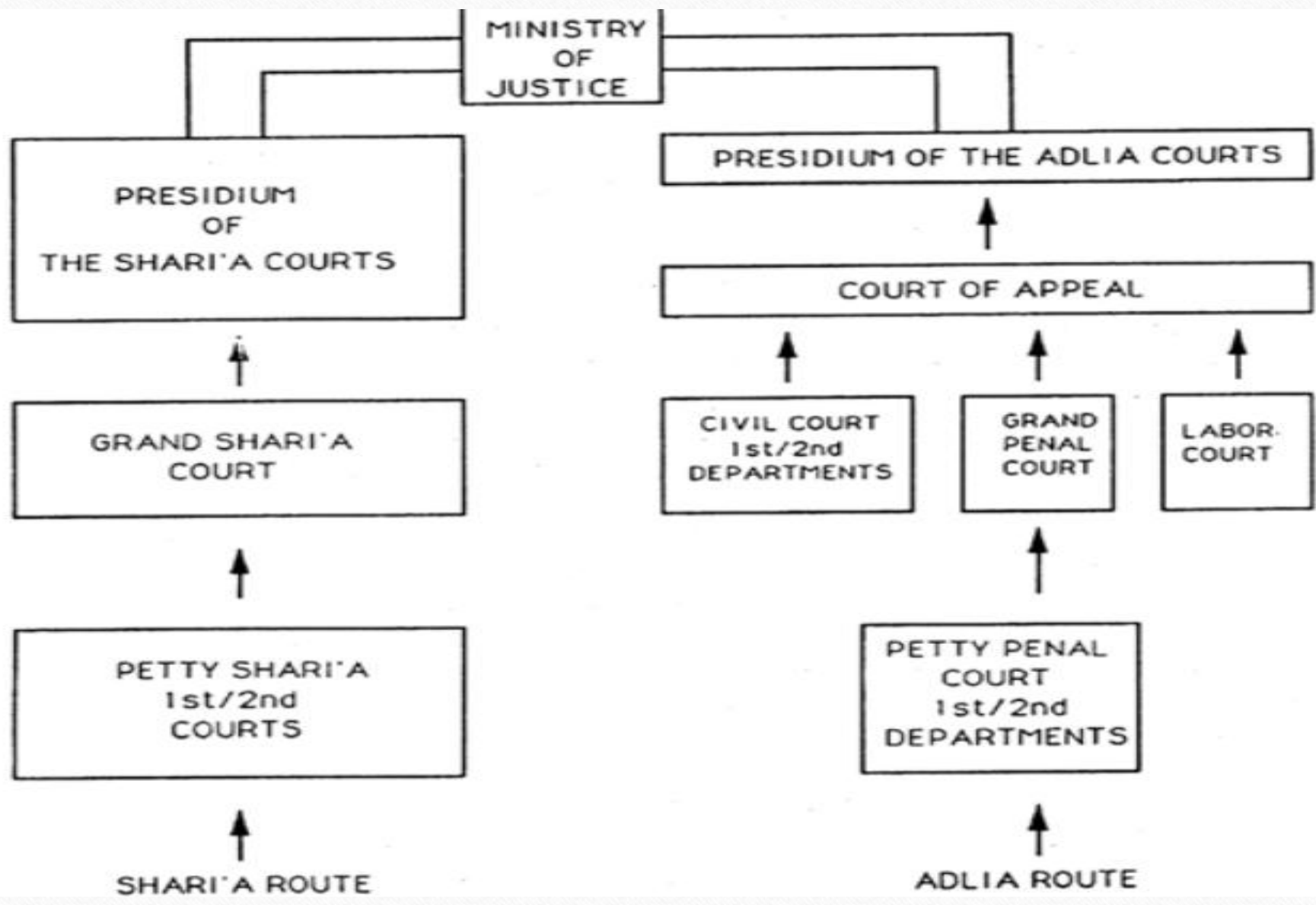
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SYSTEM OF DUALISM –

Two characteristics define Qatar's particularity.

- ❑ First, **as a traditional Muslim society**, people have settled their disputes according to the **Sharia Court (Islamic Court)**, which applies **sharia law** (Muslim law).
- ❑ Second, the independence of Qatar in 1971 marked the termination of British protection and with it British jurisdiction over non- Muslim residents. Consequently, **the Amir established the Adlia court (civil court)** to meet the needs and problems which resulted from **the termination of British jurisdiction**





SHARIA COURTS

Petty Sharia Court

This court consists **of the first and the second court**. Each court has two judges.

- ❑ The first court has jurisdiction over cases that need prompt action, such as felony, assaults and theft.
- ❑ The second court handles cases of personal status, such as divorce, marriage and contracts among people.

Grand Sharia Court

This court is headed by a chief judge who is also the president of the presidium of the sharia courts and religious affairs.

- ❑ The court acts as an appellate court to the Petty Sharia and has jurisdiction over **major criminal cases** such as homicide and serious theft.
- ❑ In cases **of personal status**, it has a wide jurisdiction on matters of inheritance and family disputes, and it also handles land and property disputes among Muslims. The court acts as a trustee for the property of minors and persons of diminished capacity. The court issues Fatwas on various matters.

Its decision is final and cannot be overturned.

Presidium of the Sharia Courts

The presidium **is an administrative body** rather than a court.

- ❑ It is headed by the chief judge of the Grand Sharia court.
- ❑ The presidium supervises the work of the sharia courts
- ❑ The chief judge selects their judges, who are appointed to their posts by royal decree.

Characteristics of Sharia Courts

- ❑ unlike the common law court, the sharia court is not based on case law,
- ❑ the judge does not have to follow precedents and is not bound by the decision of previous cases. The significance of the sharia judge is further highlighted by the **absence of the jury system** which is a dominant feature of the common law court.
- ❑ **The judge applies the verdict of God by virtue of his knowledge of the sharia law.**
- ❑ As for procedures, the sharia courts **require neither the plaintiff nor the defendent to be represented by a lawyer before the court**
- ❑ Muslims represent themselves directly.

ADLIA COURT

The Adlia court was established in 1971 by royal decree No. 13.

The court was supplemented by Qatar criminal laws (decree No. 14), which specified the jurisdictional responsibilities of the Adlia court in criminal cases.

Thus, according to both decrees, the following is an institutional and jurisdictional outline of the Adlia court

ADLIA COURT

Petty Penal Court

This court consists of two departments.

Each one is headed by a chief judge.

The Petty Penal court has jurisdiction over cases such as felony, misdemeanours, traffic accidents, theft and cases that involve violation of the behavioral moral code.

Grand Penal Court

The court is headed by a chief judge called 'the president of the Grand Penal Court'.

It has jurisdiction over major crimes such as homicide and serious offenses such as grand theft.

It also acts as a court of appeal for suits tried by the Petty Penal court.

However, Articles 17, 22, and 23 of the criminal laws specify that in certain crimes, such as intentional or unintentional homicide, and sex crimes such as rape, homosexuality and prostitution, **if the accused is a Muslim, only the sharia court has jurisdiction over such crimes.** However, the Petty and Grand Penal courts have jurisdiction over non-Muslims.

ADLIA COURT

Civil Court

This court consists of three departments.

Each department is headed by a single judge.

One department reviews and rules on cases related to rental and lease properties.

The other two departments rule on civil, commercial and personal status of non-Muslims.

In this connection, the sharia court retains its jurisdiction over the personal status of Muslims.

ADLIA COURT

Presidium of the Adlia Courts

- is headed by the chief of the Court of Appeal as stated above, is responsible to the minister of justice.
- The president selects justices of the courts and organizes the judicial apparatus of the Adlia court.

Unlike the sharia court, the Adlia court sources of law are based on a modern Western concept of law, where rules have been taken from Romano-Germanic legal systems.

ADLIA COURT

Presidium of the Adlia Courts

The judges of the Adlia court issue their verdict in accordance with the precepts of civil law, in which the rule of law is perceived as a rule of conduct according to the concept of justice.

Thus, contrary to the sharia judges who apply the verdict of God, the judges of the **Adlia court are more concerned with a general rule of conduct for the future.**

Furthermore, decree No. 13 in Article 6 (section b, c) requires judges and lawyers of these courts to have a law degree from a law school of an accredited university. The decree also requires the judges to have practised law for a requisite period of time. Moreover, **the law requires that both the plaintiff and defendant be represented by lawyers in the court**

DUALISM

is visible and significant owing to two distinct types of judicial organization, **the Adlia court and the sharia court.**

- ❑ While the sharia court's sources and procedures are based on Islamic sharia,
- ❑ the court of the Adlia is based on a Western concept of law.

❖ Qatar's legal system **is the civil law system.**

❖ **Sharia law** takes part mostly in family law matters and cases.

- ❑ The fact, however, remains that the Adlia court is neither part of the sharia court, nor supplementary to it.
- ❑ It is entirely independent and belongs to the modern legal system, the civil law.

Thus the belief that Qatar is still governed by the sharia only,

- ❑ and the Adlia court is supplementary and incompatible with the sharia can be disputed

- ❑ While the **sharia court is still a viable source of moral guidance** to many Qataris, there is more than a little evidence to support the fact that the **sharia court's jurisdiction has been limited and even excluded from certain areas, such as labor, trade and business.**

- ❑ **In practice the sharia court entertains issues of Muslim personal status such as marriage, divorce, inheritance and crimes related to the family.**

- ❑ However, its role in influencing individual behavior and state policies has been increasingly limited.

- ❑ Moreover, **the presence of dualism** has led to the rise of legal notables, as opposed to traditional religious ones.
- ❑ Furthermore, the presence of the modern legal system of the Adlia court may also increase the already alienated militant fundamentalist groups, which consider the Adlia court alien to the sharia.
- ❑ Thus the gap between the two laws will continue to increase as neither the sharia nor the civil law is applied on an integral basis.
- ❑ **the civil law needs to be asserted over the sharia law.**

□ *it was essential to have a legal system that is harmonious and embodies practical solutions to legal problems which might not find answers in religious faith only.*



The judicial branch in Qatar:



❖ **The JUDICIARY SUPREME COURT was set up in 1999** to ensure the independence of the judiciary branch in Qatar. It focuses on giving **opinion** on issues related to the judiciary, and studying and proposing the special legislation to develop the judicial system



The judicial branch in Qatar:



The judiciary supreme court: its functions are as follows:

- To give **opinions** on issues related to the judiciary.
- To give **opinions** on the appointment, promotions, transference, secondment and retirement of the judges in accordance to the law.
- To **decide** on the grievances related to judges affairs.



QATAR INTERNATIONAL COURT

The judicial branch in Qatar:



- **The judicial authority law, issued in 2003,** defines the manner in which courts of law shall play their role in society.
- It stipulates **that Judges are independent** and shall not be subject to removal from office except in cases specified by the law; and the independence of the judiciary is inviolable and is protected by law against interference from other authorities.

The judicial branch in Qatar:



- Courts of law are divided into the following categories:
 1. Court of Cassation,
 2. Court of Appeal,
 3. Preliminary Court each court decides on the cases referred to it in accordance with the law.
 4. Other preliminary courts can be formed in other towns as per a decision from the judiciary supreme council.
- ❖ Arabic is the court's official language.



QATAR INTERNATIONAL COURT



The judicial branch in Qatar:

❖ **Article 39 of the Qatari Constitution** presumes innocents until proven guilty.

The public prosecution

- ❖ conducts public actions in the name of the people
- ❖ has the sole competence to initiate and proceed with the criminal action.
- ❖ supervises the law enforcement and ensures the enforcement of criminal laws.
- ❖ The law specifies the conditions and guarantees pertaining to the staff discharging the functions of the same and clarifies conditions and guarantees pertaining to those empowered to carry out its functions.

- ❖ On the **international level**, Qatar has the vision to establish an **integrated justice system** that serves global justice and international peace and security.
- ❖ Qatar has pledged to fund the Global Integrity Network for up to \$50 million to promote global justice efforts.
- ❖ Qatar is a part of the **1958 New York Convention on the Recognition and Enforcement of the Foreign Arbitral Awards**.
- ❖ The main law portal in Qatar is Almeezan.

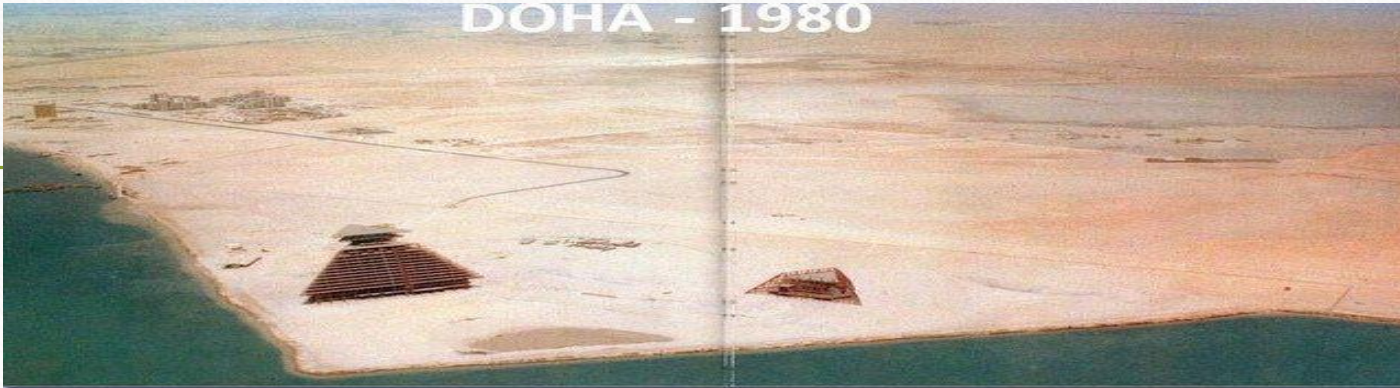


Qatar's economy 101:



- ❖ In the early 1900 the economy was dependent mostly on fishing and pearl hunting. However, during 1920-1930 the **Japanese** discovered cultured pearls which made Qatar's economy go downwards.
- ❖ **People suffered until the 1940s when oil was discovered, natural gas was not discovered till the 1960s.**
- ❖ Qatar has the **3rd largest natural gas** reserve (following **Iran** and **Russia**). However, it is the worlds largest natural gas exporter.

DOHA - 1980



DOHA - 2014



Qatar's economy 101:



- ❖ Qatar has developed a plan to **diversify its economy** manifested in the **Qatar National Vision 2030**.
- ❖ The goal of the National Vision is to transform Qatar into a pioneer state with a knowledge based and extremely competitive economy while maintaining its strong cultural and tradition values.

❖ Qatar's economy can be categorized **as state capitalism** because **all important oil and gas producing companies** such as Qatar Petroleum, Qatar Gas, as well as non oil/gas firms such as Qatar Airways, Qatari Diar, Ooredoo **are entirely owned to the state of Qatar.**



- ❖ Because Qatar will be hosting the 2022 world cup, it has invested efforts in infrastructure and the improvement of education and health care.
- ❖ Qatar has established the Qatar Science and Technology Park (QSTP) to attract companies and institutions from around the world to develop their technologies in Qatar.

