

NATIONAL SECURITY AND THE LEGAL STATUS OF MIGRANT WORKERS: DISPATCHES FROM THE ARABIAN GULF

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INTRODUCTION

In many societies, including the United States, non-citizen migrants¹ are increasingly seen as a problem of national security.² This perception is in line with the nature and diversity of migration in an era of globalization, which brings waves of people from one country or area to others. It also comports with the idea that security increasingly encompasses subjective and politically-constructed issues that fit into the category of existential or identity threats. A government's consideration of an issue as a security challenge has implications; the issue receives privileges in terms of national attention and economic resources.³ Thus, securitizing a policy problem is the surest way of prioritizing it.

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1. The issue of non-citizen workers is so charged that the very term for the people in question lacks standardization. Because Arab Gulf governments formally reject the idea that workers from other countries can gain citizenship or other permanent-resident status, the term “migrant” or “*muhajir*” tends not to be used. Rainer Bauböck, *How Immigration Transforms Citizenship: International, Multinational and Transnational Perspectives* 11 (Österreichische Akademie der Wissenschaften Forschungsstelle für institutionellen Wandel und europäische Integration, Working Paper No. 24, 2002) <http://www.eif.oeaw.ac.at/downloads/workingpapers/IWE-Papers/WP24.pdf> (on the Gulf state's strategy of formally rejecting citizenship of migrant workers). I have therefore deployed a mixture of terms, “non-citizen,” “migrant,” “guest worker,” and “non-national,” reflecting the contested nature of the subject.

2. See Myron Weiner, *Security, Stability and International Migration*, 17 INT'L SEC. 91, 91-126 (1992) (providing an early example of some key analytical issues that are affected by this shift to view non-citizen migrants as a security problem).

3. DOUGLAS S. MASSEY & MAGALY SANCHEZ R., BROKERED BOUNDARIES: CREATING IMMIGRANT IDENTITY IN ANTI-IMMIGRANT TIMES 77 (2010) (stating that by 2008 the number of hours that United States enforcement have spent on “line-watch hours stood at nearly eight times the 1986 level, the number of Border Patrol agents

The national securitization of migration policy connects to a core notion of the nature of a national security threat, yet also departs from it.⁴ The previous century of dramatic and destructive wars among nations helped define national security issues as national survival in terms of actual or perceived military threats from other countries and defense systems.⁵ However, in the new millennium, interstate wars have given way to a more diverse array of sources of global instability, which include civil conflict, the use of force by non-state actors, and the increased absolute numbers of migrants and residents of multiple states.⁶

My concern in this Article is with some of the implications of the fact that national security issues are increasingly more likely to be framed in terms of migration and movement of people than in terms of missiles and military capacity. One important general implication is that national security policy is shifting to include a wide range of national and state legislators and law enforcement agents along with military officials.⁷ Thus, national security is defined and regulated in the legal arena. In fact, the popular salience and visibility of migrants and issues surrounding them means that migration is a national security question peculiarly prone to democratic or populist contestation, the very opposite of the arcane, secret image of more traditional interstate military security issues.⁸

Yet, much of the thrust of this legalization and democratization of security policy is the restriction of legal migrants and migrants'

had increased by a factor of 4.7, and the Border Patrol's budget was twenty times its 1986 level").

4. See Stephen M. Walt, *The Renaissance of Security Studies*, 35 INT'L STUD. Q. 211, 212 (1991) (defining the study of security within international relations theory as "the study of the threat, use and control of military force").

5. See, e.g., *id.* at 211-39.

6. See *The US National Intelligence Council on Growing Global Migration*, 27 POPULATION & DEV. REV. 817, 817-19 (report on implications of global migration), available at <http://www.jstor.org/stable/2695203>; see also, ROGER OWEN, STATE, POWER AND POLITICS IN THE MAKING OF THE MODERN MIDDLE EAST 166-92, 200-13 (1992) (discussing non-state actors' roles in the Middle East).

7. See BARRY BUZAN ET AL., SECURITY: A NEW FRAMEWORK FOR ANALYSIS 33-35 (1998) (examining the expansion of actors included in the discussion of securitization); David Cole, *The Missing Patriot Debate*, THE NATION, May 30, 2005, at 18-21 (discussing the 2001 Patriot Act and immigration).

8. Compare Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html> (reporting on Arizona's 2010 immigration law, providing a recent example of migration on the ballot), with DR. STRANGELOVE OR: HOW I LEARNED TO STOP WORRYING AND LOVE THE BOMB (Columbia Pictures 1964) (providing an example, in this classic film directed by Stanley Kubric, of how the image of a secretive American military is well established within pop-culture).

legal rights. Opening up the legal and policy contestation of national security by shifting this rubric into the regulation of non-nationals has therefore meant, at least in part, governmental embrace of laws and law enforcement that are costly, may not correspond to the country's actual labor needs, and may fan the flames of internal national identity conflict.⁹ Of course, securitizing migrant labor policy also harms the rights and livelihood of guest workers.¹⁰

Because of the above, the securitization of migration policy is not regarded favorably by many legal and other commentators.¹¹ Yet, it may be unrealistic to expect a fundamental reframing of national migration policies away from the security sphere, given that who is a stakeholder in a country remains fundamental as an aspect of national identity and integrity. At the same time, it may be possible to imagine a country that securitizes migration policy, but not necessarily or consistently in a way that restricts the inflow of migrants.

In fact, one need not imagine such a country, as this description fits in contemporary nations of the Arabian Gulf—some of the most dynamic and expansive, but also unusual, states in the world today. The governments of nations like Kuwait, Qatar, and the United Arab Emirates are variations on a theme of non-democratic monarchical regimes. And, these regimes are hardly models of human rights observance with respect to migrant workers.¹² Yet they have managed unusual decades of rapid growth and increasing prominence, capped by Qatar's selection as the site of the 2022 World Cup, while avoiding so far the wave of political discontent

9. See Wayne A. Cornelius & Takeyuki Tsuda, *Controlling Immigration: The Limits of Government Intervention*, in *CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE* 3, 9-11 (Wayne A. Cornelius et. al., eds., 2d ed. 2004) (discussing the conflict between countries' labor needs and policy).

10. See *id.*

11. See *id.* (discussing mounting evidence that securitization of migration policy is not an effective or desirable method of limiting illegal immigration).

12. See, e.g., *Maids in the Middle East: Little Better than Slavery*, *THE ECON.*, Sept. 4, 2010, at 51 (providing a specific example of human rights abuses related to migrant workers in the Middle East); *Middle East: End 'Sponsored' Gateway to Human Trafficking*, *HUM. RTS. WATCH* (June 14, 2010), <http://www.hrw.org/en/news/2010/06/14/middle-east-end-sponsored-gateway-human-trafficking> (listing Kuwait, Saudi Arabia, and Qatar in its two lowest possible categories for efforts to combat human trafficking and identifying evidence that migrant workers in the United Arab Emirates, Kuwait, Saudi Arabia, Lebanon, and Jordan withholding passports and wages while enforcing long hours without adequate rest).

that swept the Arab world early in 2011.¹³ Could it be nonetheless that studying particular aspects of the interplay of national security, migrants and national identity in countries like Qatar can shed light on these issues in the more familiar context of the United States?

My analysis below suggests that this is indeed the case. The handling of migrant workers in oil-rich, rapidly globalizing countries like Qatar and its Arab Gulf neighbors is highly problematic, and oftentimes exploitative or xenophobic.¹⁴ At the same time, the problems faced by migrants to the Gulf and the United States are different. Despite Gulf societies' lack of interest in allowing for citizenship for guest workers, the predictability of contract and status issues for these workers, and the overall likelihood of ongoing need for high numbers of them represent important touchstones of certainty for migrants.¹⁵

Predictability is much less prevalent in the American context of fluctuating politics and low legal limits for non-citizen workers. Thus, despite the United States' promise of equal rights and potential citizenship for migrants, which are both noticeably absent from the political landscape of the Gulf, the American reality of unforeseeable spurts of intense enforcement, detention, deportation, and reductions in legal quotas for workers make for a difficult dynamic for contemporary migrants.¹⁶ In both cases, turning migration policy into a highly-charged issue of national security is the cause of widespread difficulties. At the same time, determining which set of difficulties is more problematic is highly subjective.

I proceed with this analysis in three stages. Part I introduces Qatar as an exemplar Gulf Arab state, along with its current pressures around legal reform and non-citizen workers. Part II contex-

13. *FIFA World Cup 2022 and its Impact on the Qatar Economy*, BARRBIZ, Vol. 2 Issue 2, Mar. 2011, available at <http://www.barrconsultancy.com/pdf/barbiz-qatar-expect-amazing-fifa-worldcup-2022-vol-2-issue-2.pdf>.

14. See, e.g., Ray Jureidini, *Migrant Workers and Xenophobia in the Middle East*, UNITED NATIONS RES. INST. FOR SOC. DEV. (Dec. 31, 2003), <http://www.unrisd.org/unrisd/website/document.nsf/0/045B62F1548C9C15C1256E970031D80D?OpenDocument>.

15. Despite the problems related to workers rights, a clearer set of rules does improve the overall reputation of Qatar to migrant workers. According to a Himalayan newspaper, Qatar is the second most desirable country for Nepalese people to work in. Himalayan News Service, *HRW Slams Kuwait for Exploitation of Migrant Workers*, THE HIMALAYAN TIMES, Oct. 8, 2010, <http://www.thehimalayantimes.com/printNepaliNews.php?id=261004>.

16. See Rob Paral, *No Way In: U.S. Immigration Policy Leaves Few Legal Options for Mexican Workers*, IMMIGR. POL'Y IN FOCUS, July 2005, at 5 (discussing the difficulties faced by those wishing to immigrate legally into the U.S.).

tualizes the issue of the rule of law and identity in contemporary Arab politics generally. In Part III, I discuss the law and politics of citizen regulation as a security issue in Qatar and the Gulf. In Part IV, I draw implications from Qatar and the Gulf regarding the securitization of regulating migrants more generally.

I. QATAR, LAW AND SECURITY

Most Americans would be hard-pressed to locate Qatar on a map, despite the fact that it is the only nation to begin with the letter “Q” in the English language, and, more to the point, one of the fastest-growing economies in the world.¹⁷ Until the end of the twentieth century, it was a backwater trading post in the Middle East.¹⁸ Qatar, like the other former Trucial States located on the western shore of the Arabian Gulf, enjoyed limited political autonomy and foreign relations protection by the British until gaining independence comparatively late in 1971.¹⁹ Among many indicators of the country’s small size and recent nationhood, its first and only public university opened in 1973.²⁰

Yet, in May 2009, Qatar played host to perhaps the most illustrious array of global legal luminaries in modern history. Hundreds convened at the first Qatar Law Forum for three days to discuss varied issues underscoring their shared commitment to the rule of law.²¹ Attendees included prestigious judges, including the heads of the International Court of Justice and the European Court of Human Rights, numerous U.S. Federal District and Appeals Court judges, prominent lawyers, and high-powered legal academics from nearly fifty countries and six continents.²²

17. See Gina Coleman, *Qatar: The Fastest Growing Economy in the World*, THE MIDDLE EAST, (Apr. 2001), http://www.findarticles.com/p/articles/mi_m2742/is_2001_April/ai_n25033766/pg_2/?tag=content:col1 (discussing the economic development of Qatar); Moin Siddiqi, *Qatar: A Beacon of Stability in Troubled Times*, THE MIDDLE EAST, (June 1, 2010), <http://www.faqs.org/periodicals/201006/2063748211.html>.

18. See ROSEMARIE SAID ZAHLAN, THE CREATION OF QATAR 11-24 (1979).

19. See *id.* at 106-07 (providing a detailed account of Qatar reaching statehood).

20. In 1973, Qatar founded two teacher colleges that provided the foundation for a university in Qatar, which officially opened in 1977. *Id.* at 130-31; see also Asma al Attiyah & Batoul Khalifa, *Small Steps Lead to Quality Assurance and Enhancement in Qatar University*, 15 QUALITY IN HIGHER EDUC. 29, 29-38 (2009) (providing further information about the development of education at Qatar University).

21. See *Overview*, QATAR LAW FORUM (May 31, 2009), <http://www.qatarlawforum.com/en/qlf-overview> (providing descriptions and links to media coverage of the forum).

22. See *Participants*, QATAR LAW FORUM (May 31, 2009), <http://www.qatarlawforum.com/en/qlf-participants>.

One of the United Kingdom's pre-eminent jurists, former Chief Justice of England and Wales, Lord Woolf, helped run the meeting in his capacity as the President of a new court established by Qatar's government to resolve disputes related to the country's financial and construction projects.²³ Professors and administrators from Harvard Law School and several other important American legal academies were among the Forum's organizers.²⁴ While the Forum was sponsored and hosted by Qatar's government and a private Arab foundation, the proceedings included copious advice by mainly American and British jurists about how Qatar is and others might learn from Anglo-American common law experience.²⁵

Qatar's unusual combination of extensive oil and natural gas revenues and tiny native population enabled the government to host an event like the Qatar Law Forum relatively affordably.²⁶ At the same time, particularly in light of the somewhat Western-centric condescending tone of many of the Anglo-American speakers, the question can certainly be raised of why Qatar did so. Here I suggest that the Forum is part of a broader phenomenon of law's and legal discourse's import as a currency for national security issues around national identity and non-citizen workers.

More basically, the Forum illustrated several important trends about law in non-Western, rapidly-globalizing contexts like the oil-rich states of the Eastern Arab world. Societies like Qatar, though relative backwaters in the history of the Middle East, share with the rest of the region a permeation of diverse, structured legal tradi-

23. See Julia Berris, *Lord Woolf, William Blair QC to Launch Qatar's Commercial Court*, THE LAWYER, (May 14, 2007), <http://www.thelawyer.com/lord-woolf-william-blair-qc-to-launch-qatar-s-commercial-court/125782.article>.

24. See *Program*, QATAR LAW FORUM (May 31, 2009), <http://www.qatarlawforum.com/en/system/files/QLF.pdf> [hereinafter *Program*].

25. *An Introduction to the New Qatar International Judiciary*, QATAR LAW FORUM (May 31, 2009), <http://www.qatarlawforum.com/en/system/files/New+Qatar+International+Judiciary.pdf> [hereinafter *An Introduction*]. For instance, the panel discussion titled "An Introduction to the new Qatar International Judiciary" was described as "an opportunity for the members of the Qatar Financial Centre's . . . new Civil and Commercial Court and Regulatory Tribunal to introduce themselves," but were presided over primarily by Lord Woolf and Sir. William Blair of England, and focused primarily on the ways that the two new entities should model the judiciary entities in London. *Id.*

26. See Moin Siddiqi, *Qatar: A Beacon of Stability in Troubled Times*, THE MIDDLE EAST, June 1, 2010 (describing how Qatar's wealth allowed the Qatar Law Forum to take place); see also Francis Gibb, *Qatar Law Forum: Anyone Who is Anyone Celebrates the Rule of Law*, THE SUNDAY TIMES, June 4, 2009, <http://business.timesonline.co.uk/tol/business/law/article6424382.ece> (discussing the importance of the Qatar Law Forum at a time of financial crisis).

tions, especially that of the *shari'a*, or Islamic law.²⁷ Nonetheless, the dissolution of Islamic imperial control, and any imagined notion of a united Islamic political community, or *umma*, along with the collapse of the Ottomans by the end of World War I meant that *shari'a* became a small part of a more complex mosaic of Western and Middle Eastern legal systems.²⁸

As a practical matter, this broad Middle Eastern phenomenon was less sweeping in small desert trading post societies like Doha, Qatar, and its neighbors than in central Arab population centers like Egypt and Lebanon.²⁹ Yet, the relegation to small spheres of traditional Islamic law throughout the Arab world meant that even in tiny trading posts, *shari'a* began to take on more of a role as a symbolic reference point than a central focal point of governance.³⁰ In short, after nearly a century of Western legal control or influence, Arab states had legal systems that merged many diverse elements in a social context in which one of the least utilized—Islamic law—was both more established and more legitimate historically.³¹

The small Arab trading backwaters grouped together under British external control and protection, as the Trucial States, including contemporary Qatar, were distinct variations of this pattern mostly because their legal systems had not seen the centralization, secularization, and grafting of Western European legal codes that marked the more populous Arab former colonies of France and the UK.³² For a place like Qatar, this simply meant that a legal system was not sufficiently in place to handle the breakneck growth that occurred in recent oil-rich decades, while Islamic sources of law remained popular, if ambiguous.

Amidst this backdrop, Qatar, like other Arab states, has had increasing connections to a Western foreign policy industry, with

27. NATHAN J. BROWN, *THE RULE OF LAW IN THE ARAB WORLD 175-85* (1997) [hereinafter *THE RULE OF LAW*].

28. See NATHAN J. BROWN, *CONSTITUTIONS IN A NONCONSTITUTIONAL WORLD 162-80* (Shahrough Akhavi & Said Amir Arjomand eds., 2002) [hereinafter *NONCONSTITUTIONAL WORLD*].

29. *THE RULE OF LAW*, *supra* note 27, at 185-86.

30. *NONCONSTITUTIONAL WORLD*, *supra* note 28, at 162-80.

31. *Id.*

32. There are several major differences that separate Qatar's contemporary context towards migration from other Arab nations. These include their great relative wealth, their general rejection of the concept of foreigners naturalizing, and that they were "never officially a colony of any European power" (although they were a "protected state" under the British rule). Sharon Nagy, *Making Room for Migrants, Making Sense of Difference: Spatial and Ideological Expressions of Social Diversity in Urban Qatar*, 43 *URB. STUD.* 119, 121 (2006).

the United States at the center; this industry aims to enhance the rule of law in non-Western countries.³³ This recent vintage of legalist wine fits partly in the old bottles of “law and development” practitioners in the 1960s and 1970s.³⁴ At the same time, contemporary U.S. rule-of-law reform efforts take place in a setting of globalized inter-connectedness,³⁵ where international law and the legal norms of one society are easily accessible and often salient elsewhere,³⁶ and where Arab domestic and regional legal initiatives are significant, as the Qatar Law Forum exemplified.³⁷

Multiple and contending discourses and practices around the rule of law suggest a complex picture for the politics of Western rule-of-law aid. Nonetheless, the basic message is non-Western countries intent on hyper-globalized growth should move to conform with Western ideas of the rule of law, both in terms of business law and human rights. This is analogous and connected to the notion that emerged in the 1990s in the economic sphere that non-Western countries should move towards observance of a set of neo-

33. For trends on increasing connections to Western foreign policy, see Rami Khouri, Director, Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut, Lecture at Georgetown University: America, the Middle East, and the Gulf: An Arab View of Challenges Facing the Next U.S. Administration (Aug. 24, 2008), in 1 CIRS BRIEF 1 (2008), available at <http://www12.georgetown.edu/sfs/qatar/cirs/EnglishRamiKhouriBrief.pdf>. The contemporary rule-of-law aid movement generally dates back to the collapse of the former Soviet Union and the rapid political and economic reform needs of Eastern European and Baltic countries. See generally Thomas Carothers, *Rule of Law Revival*, in PROMOTING THE RULE OF LAW ABROAD 3, 8 (Thomas Carothers ed., 2006). Substantial rule-of-law projects are implemented through the U.S. governments' Department of State and Agency for International Development, as well as semi-autonomous organizations like the U.S. Institute for Peace and private contractors. *Id.* at 10. In the case of Middle East work, much of the funding and the recent expansion in programs have taken place through the Middle East Partnership Initiative. See U.S. State Dep't., *About MEPI*, THE MIDDLE E. PARTNERSHIP INITIATIVE, <http://mepi.state.gov/about-us.html> (last visited Nov. 20, 2010). In the current strategic plan of the U.S. Department of State and Agency for International Development, rule-of-law reform aid was the top priority within its second broad policy strategy of “[g]overning [j]ustly and [d]emocratically.” U.S. Department of State and U.S. Agency for International Development, *Strategic Plan: Fiscal Years 2007-2012* 18-19 (2007).

34. Carothers, *supra* note 33, at 15-16.

35. See, e.g., DAVID HELD, ANTHONY MCGREW, DAVID GOLDBLATT & JONATHAN PERRATON, *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* (1999).

36. See Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155, 1155-56 (2007); see also Noah Feldman, *When Judges Make Foreign Policy*, N.Y. TIMES MAG., Sept. 25, 2008, at 50 (discussing the connection of U.S. judges to foreign legal norms).

37. See *Program*, *supra* note 24 (providing a program, including a list of topics).

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liberal economic measures known in the developmental economic policy world as the Washington Consensus.³⁸

As Qatar has transformed rapidly through oil revenues into a dynamic engine of global growth, it has come increasingly under the scrutiny of Western governments, whose corporations have rushed to take advantage of the tiny country's opportunities.³⁹ Thus, the central event of the Qatar Law Forum, the unveiling of the sheikhdom's new tribunal to resolve commercial and other civil disputes arising from construction projects in the small country, was, not surprisingly, a clear symbolic assertion of Qatar's conformity with global legal standards.⁴⁰

Yet, it is far from inevitable that legal standards facilitating Western business involvement and international human rights work together in harmony. This is particularly the case in Gulf countries like Qatar that manifest a second trend that was clear to participants in the Qatar Law Forum. The event, which took place at one of Doha's fanciest hotels, was staffed by hundreds of workers of diverse non-Qatari nationality.⁴¹ Because of the sharp discontinuity of Qatar's small indigenous population and the tremendous growth plans which oil has made possible, the country has brought hundreds and thousands of workers from throughout the world to build, manage, teach, and work in domestic households.⁴² This rapid population influx has left the native population and workforce a tiny minority of less than 10% in their own country.⁴³

38. CLEMENT M. HENRY & ROBERT SPRINGBORG, *GLOBALIZATION AND THE POLITICS OF DEVELOPMENT IN THE MIDDLE EAST 15* (Eugene L. Rogan ed., 2001). For more on the Washington Consensus and its application to Arab states of the Middle East and North Africa, see *id.* at ch. 1-2.

39. See *From Delaware to Doha: the Legal Environment Necessary for Corporate Centres and Thriving Financial Markets*, QATAR LAW FORUM (May 30, 2009), http://www.qatarlawforum.com/en/system/files/From_Delaware_to_Doha.pdf. One of the panels at the Forum, entitled "From Delaware to Doha," explored the legal elements that Qatar would need to adopt to promote it as a global financial center. See *id.*

40. See Gibb, *supra* note 26. Two of the main events of the Forum included: "Qatar's new commercial and civil court, set up by Lord Woolf (its president) and staffed by former UK judges" and "regulatory tribunal under Sir William Blair, the High Court judge." *Id.*

41. I had the privilege of attending and observed this myself.

42. See Claude Berrebi, Francisco Martorell & Jeffery C. Tanner, *Qatar's Labor Markets at a Crucial Crossroad*, 63 MIDDLE EAST J. 421, 430 (2009) (discussing Qatar's population growth due to immigration and its economic dependency upon foreign workers).

43. According to the U.S. State Department, "[f]oreign workers comprise as much as 85% of the total population and make up about 90% of the total labor force." BACKGROUND NOTE: QATAR, U.S. DEP'T OF STATE (Sept. 22, 2010), <http://www.state.gov/r/pa/ei/bgn/5437.htm>.

And therein lies the real story behind the story of the Qatar Law Forum. Qatar, like other Arab societies of the Persian Gulf, depends on massive influxes of migrant workers to carry out its growth.⁴⁴ Yet, the demographic balance this has created, in making natives a small group within their own society, fosters a ready perception of non-citizen residents as a challenge to national security and emergent identity.⁴⁵ As a result, countries like Qatar have generally set up a system of foreign worker sponsorship, known there and elsewhere in Arab Gulf countries as *kefala*, in which workers are tied to their employers and citizenship or even permanent migration is not possible.⁴⁶

This, in turn, has drawn the scrutiny of global rights groups, who insist that the working conditions for many foreign workers in the region violate international law.⁴⁷ And, between the critical role national and transnational levels of law play in making sense of globalization⁴⁸ and the historically salient legitimacy of *shari'a*, the legal sphere is central as a practical and symbolic place where the nature and rules around work, citizenship, and identity are contested.

The interplay between large migrant labor populations and small groups of natives thus produces a push-pull dynamic of significant global pressures on Gulf governments like Qatar to improve their fealty to human rights, along with concerns from local citizens that the identity and social cohesion of their countries might be undermined should migrants be able to stay indefinitely or acquire citizenship.⁴⁹ As a partial result of this dy-

44. Berrebi et al., *supra* note 42, at 430-32.

45. Rainer Bauböck, *How Migration Transforms Citizenship: International, Multinational, and Transnational Perspectives* 11 (IWE, Working Paper Series, Feb. 24, 2002), available at <http://www.eif.oeaw.ac.at/downloads/workingpapers/IWE-Papers/WP24.pdf> (discussing the Gulf state's strategy of formally rejecting citizenship of migrant workers to prevent challenges to the concept of national identity). For example, women in Qatar increasingly feel insecure about walking in their neighborhoods because of the influx of foreign workers. Nagy, *supra* note 32, at 126.

46. ANH NGA LONGVA, WALLS BUILT ON SAND: MIGRATION, EXCLUSION, AND SOCIETY IN KUWAIT 94-97 (1997).

47. See UAE: Meetings Should Address Migrant Workers' Rights, HUM. RTS. WATCH (Jan. 20, 2008), <http://www.hrw.org/en/news/2008/01/17/uae-meetings-should-address-migrant-workers-rights>.

48. See, e.g., SASKIA SASSEN, TERRITORY, AUTHORITY, RIGHTS (2006); Robert Howse, *Book Review—The End of the Globalization Debate: A Review Essay*, 121 HARV. L. REV. 1528, 1529-30 (2008).

49. This push-pull relationship is evident in an interview with Dahi Khalfan Tamin, police chief of the Qatari police force. After stating great concern for the Arab identity in response to the influx of immigrant workers, he laments that Qatar may have

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namic,⁵⁰ Gulf governments expend significant resources to improve their global image with respect to the rule of law, such as the Qatar Law Forum.⁵¹ This is because it is easier for wealthy countries with small populations to spend money to put on a global conference on law than it is to balance the difficult and diverse transnational and national pressures involved in increasing migrant workers' legal rights.

Thus, the rule of law, as it applies to native identity, workers' rights, and international legal actors, is crucial to the politics of the contemporary Persian Gulf, and takes on unique aspects with the rapidity of Gulf societies' oil-driven growth and globalization.⁵² In other words, if the status of migrant workers is central to Arab Gulf concerns about security, then law is the means through which this security issue is regulated. This means that the rule of law is the major arena through which the politics of security are contested symbolically, similar to the way that missiles and deterrence formed the core of symbolic politics around security in the US during the Cold War era. In short, the rule of law in societies like Qatar is a critical currency of national security concerns, and this helps account for the emphasis the small country put on staging the Qatar Law Forum.

The rule of law in Qatar and similar wealthy, rapidly globalizing Arab countries has multiple dimensions. This has to do with the centrality that a relatively conservative version of Islam plays as the social and cultural glue for the small native population of such

to bow to the pressures of foreign human rights organizations. *See Update: Expatriates Are the Future Threat of the Entire Gulf: HE Dahi Khalfan Tamim: Excerpts from the Interview of Dahi Khalfan Tamim in a Qatar Television Show Titled 'Laqum Al Qarar' (The Decision is Yours)*, THE PENINSULA, Dec. 29, 2010, <http://www.thepeninsulaqatar.com/qatar/137276-fupdate-expatriates-are-the-future-threat-of-the-entire-gulf-he-dahi-khalfan-tamim.html>.

50. I do not explore directly in this Article the obvious economic incentives for Gulf governments to put in place legal provisions that attract foreign investment, although this clearly undergirds my broader arguments about national security in the pages that follow.

51. Other examples of Qatar's dedication to improving its global image can be seen in a 2003 *60 Minutes* television interview. *See 60 Minutes: Qatar Embracing Democracy*, (CBS television broadcast Aug. 3, 2003), available at <http://www.cbsnews.com/stories/2003/07/25/60minutes/main565155.shtml?tag=mncol;lst;1> (providing a transcript of the broadcast); see also *Qatar Embracing Democracy*, (CBS television broadcast Aug. 3, 2003), available at <http://www.youtube.com/watch?v=6kU9gkrmrxg&feature=related> (providing actual interview video uploaded to YouTube and available as of last visit on Nov. 20, 2010).

52. See LONGVA, *supra* note 46, at 7 (providing a specific study of how migration has been an integral part of a Persian Gulf State).

countries.⁵³ The issue is not so much one of social conformity or lack of tolerance; rather, it is that places like Qatar have, and are likely to continue to have, codified endorsements of Islam as the established state religion and the official basis of all legislation.⁵⁴ Yet this accompanies a great deal of social change around the broad theme of rapid socioeconomic and cultural growth, with extraordinarily rapid connections to global business and tourism.

The multiplicity of rule-of-law discourse is also due to the embedded conflict in the two broad aims of Western legalist reform. First, there is an economic stake in facilitating stable market and property transactions for transnational capital.⁵⁵ Second, there is a political concern for improving individual rights and opening up the political process in aid-recipient countries.⁵⁶ These two goals may not be mutually reinforcing.⁵⁷ Indeed, efforts to enhance the rule of law to improve the predictability of market transactions and the reliability of contracts can accompany, and possibly enhance, non-democratic regime stability.

Much of the question of how to resolve the possible embedded contradiction between the rule of law as a business-facilitator and a rights-facilitator in countries like Qatar hinges on the relation between internal Arab politics, with its tropes of political legitimation, and external political influences. Although the roles of courts and lawyers in the West suggest associations between legalism and liberties, social scientists, and policy practitioners have few conclusions about what actually works in liberalizing rule-of-law promotion in non-democratic settings.⁵⁸ This problem of knowledge is especially acute in the Arab world. Arab states generally share two features

53. THE RULE OF LAW, *supra* note 27, at 184-86.

54. U.S. DEP'T OF STATE, *supra* note 43 (stating that Qatar's state religion is Islam).

55. Timothy W. Luke, *Dependent Development and the Arab OPEC States*, 45 J. POL. 979, 979-1003 (1983). This dependence is still implied because of Qatar's heavy reliance on oil. According to reporting on a 2003 broadcast of CBS Sunday Morning, "Barely one percent of Qatar's land is arable, but it holds substantial oil, and enough estimated natural gas reserves to supply the U.S. market for the next 200 years." *Sunday Morning: Qatar in Transition*, (CBS television broadcast Mar. 2, 2003), available at <http://www.cbsnews.com/stories/2003/02/27/sunday/main542281.shtml?tag=mncol;lst;2>; see also AAMIR A. REHMAN, DUBAI & CO.: GLOBAL STRATEGIES FOR DOING BUSINESS IN THE GULF STATES 80 (2008).

56. RHONDA L. CALLAWAY & ELIZABETH G. MATTHEWS, STRATEGIC US FOREIGN ASSISTANCE: THE BATTLE BETWEEN HUMAN RIGHTS AND NATIONAL SECURITY 9-12, 28 (2008).

57. *Id.*

58. LAWRENCE C. MAYER ET AL., COMPARITIVE POLITICS 330-33 (2001).

that render external rule-of-law aid particularly difficult—long-standing nondemocratic governments, and legal systems that graft Ottoman, European, and contemporary sources onto residual Islamic norms.⁵⁹

In Arab Gulf societies like Qatar, these challenges go along with the peculiar demographic and political issue that establishing true equality of rights between natives and the large majority non-native citizen workers would endanger both identity and stability of these young, rapidly-growing and non-elected political systems. At the same time, the tension between maximizing open business connections for Western firms and policing international rights violations of workers provides temptations for privileged outsiders to turn something of a blind eye to the rights problems in practice.⁶⁰ All of this was on prominent display at the Qatar Law Forum, where there were some, albeit mostly limited, abstract disagreements or divergent emphases on Western and Arab implementations of the rule of law, while migrant mostly non-Western workers in the area surrounding the conference hotel carried out their long shifts under exploitative conditions in at least some cases.⁶¹

This is not to suggest that either Gulf Arabs or American legal reformers are monolithic in their general attitudes towards the rule of law, democracy, or the treatment of migrant workers. Certainly, many, perhaps most, Arabs desire more predictable, responsive,

59. THE RULE OF LAW, *supra* note 27, at 2-5 (providing information on European and Ottoman influences in drafting the legal systems). Moreover, U.S. rule-of-law advisors face an added daunting impediment: widespread, twofold Arab skepticism about the United States as the messenger for the rule of law in the Middle East. Aziz Al-Azmeh, *Populism Contra Democracy: Recent Democratist Discourse in the Arab World*, in DEMOCRACY WITHOUT DEMOCRATS?: THE RENEWAL OF POLITICS IN THE MUSLIM WORLD 112 (Ghassan Salamé ed., 2001). Many Arabs believe that U.S. policy makers neither know nor care to know basic aspects of law, politics, and society in Arab countries. Jacqueline Shoen, *Practice What you Preach*, MAJALLA, Mar. 4, 2011, <http://www.majalla.com/en/ideas/article300246.ece>. And, there is an even stronger and equally widespread perception that the United States follows in the tradition of earlier Western powers in not always practicing globally what it preaches about the rule of law, particularly in the Middle East. *Id.*

60. See, e.g., Daniel Heradstveit & G. Matthew Bohnam, *The Psychology of Corruption in Azerbaijan and Iran*, in OIL IN THE GULF: OBSTACLES TO DEMOCRACY AND DEVELOPMENT 72, 80 (Daniel Heradstveit & Helg Hveem eds., 2004) (asserting that prominent members of the political opposition in Azerbaijan expressed “disappointment that Western oil companies can make profitable agreements with a dictator who does not hesitate to violate human rights”).

61. See *Asian Migrant Workers Abandoned to Abuse*, HUM. RTS. WATCH (Dec. 17, 2007), <http://www.hrw.org/en/news/2007/12/18/asian-migrant-workers-abandoned-abuse> (providing a general description about the abuses faced by migrant workers in the Middle East).

and fair laws, as attention continues to highlight the problems and prospects for political change in the region.⁶² The 2004 *Arab Human Development Report* is one prominent statement by Arabs of the central importance of the rule of law to social improvement, and the statement was repeated in the more recent 2009 report.⁶³

Indeed, the most transparent purpose of the Qatar Law Forum was to demonstrate and improve global commitment to the rule of law.⁶⁴ At the same time, the small, wealthy Arab state's self-positioning at the center of transnational legalism is also a clear attempt to gloss over the difficult role law must play in the government's difficult task of shoring up citizens' rights and privileges as a tiny minority amidst one of the world's largest and most globally diverse migrant labor markets. The fact that Qatar's demographic composition makes this issue distinctly one of national security, I suggest, creates some of its particular difficulties, as well as highlighting a different approach to non-native rights as a national security problem than that of the United States.

II. ARAB RULES OF LAW UNDER GLOBALIZATION

The analysis so far provides a flavor for how issues of the rule of law, migration, and national identity may be both particularly salient and contested in the contemporary young Arab states bordering the Persian Gulf. This section adds analytical weight to this

62. UNITED NATIONS DEV. PROGRAMME REG'L BUREAU FOR ARAB STATES, ARAB HUMAN DEVELOPMENT REPORT 2004: TOWARD FREEDOM IN THE ARAB WORLD 165 (2004), <http://www.arab-hdr.org/publications/other/ahdr/ahdr2004e.pdf>. Random-sample survey research on political topics is increasingly available for at least some Arab societies. For example, the World Values Survey now includes Algeria, Egypt, Iraq, Jordan, Morocco, and Saudi Arabia. See Mark Tessler, *Do Islamic Orientations Influence Attitudes Toward Democracy in the Arab World? Evidence from the World Values Survey in Egypt, Jordan, Morocco and Algeria*, in VALUES AND PERCEPTIONS OF THE ISLAMIC AND MIDDLE EASTERN PUBLICS 105, 122 (Mansoor Moaddel, ed., 2007); see also JAMES ZOGBY, WHAT ARABS THINK, at iii (2002) (providing a study asking general questions regarding political issues to Arabs from Egypt, Israel, Jordan, Lebanon, Kuwait, Morocco, the United Arab Emirates, and Saudi Arabia); *CDDRL Inaugurates New Program on Political Reform in the Arab World*, FREEMAN SPOGLI INSTIT. FOR INT'L STUDIES AT STANFORD U. (May 10, 2010), http://iis-db.stanford.edu/evnts/6102/Arab_Reform_Conference_Report-37.pdf (providing a succinct summary of the question of political change in Arab countries).

63. See UNITED NATIONS DEV. PROGRAMME, REG'L BUREAU FOR ARAB STATES, ARAB HUMAN DEVELOPMENT REPORT 2009: CHALLENGES TO HUMAN SECURITY IN THE ARAB COUNTRIES 7, 69, 193 (July 21, 2009), <http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>.

64. See *Mission Statement*, QATAR LAW FORUM (May 30, 2009), <http://qatarlawforum.com/en/qatar-law-forum>.

sketch. Because law, migrant workers, and nationhood are so intertwined and fluid in countries like Qatar, the question of migrants' legal status is securitized. That is to say, migrant workers' rights are so caught up in basic issues of legal development and political identity that this topic has an apparently organic connection to national security.

The broad context of legal growth and migrant human rights in Qatar comes from the particular Arab historical juxtaposition of a well-developed legal order, the *shari'a*, and subsequent experience with the imperial implementation of Western legal norms in the Middle East and North Africa.⁶⁵ If countries like Qatar are eager to show fealty to global understandings of the rule of law, this does not necessarily make their citizens readily accepting of the idea that Western lawyers and advisors should tell them how to build or change their legal systems.

In part, this is because of confusion in the multiple ways that the rule of law is conceptualized. If "[t]he rule of law . . . stands in the peculiar state of being *the* preeminent legitimizing ideal in the world today,"⁶⁶ its many possible definitions have led some theorists to dismiss the significance of "this bit of ruling-class chatter."⁶⁷ In particular, the rule of law tends to move between general ideals of equality, fairness, and perhaps the protection of individual rights, on the one hand,⁶⁸ to specific institutional arrangements, on the other. Yet understanding how the rule of law as an ideal can link to specific institutions and reforms is not well-theorized.

There is little empirical research as to how legalist ideals and practices are connected in Arab societies.⁶⁹ Yet, the rule of law has

65. THE RULE OF LAW, *supra* note 27, at 179-85.

66. BRIAN Z. TAMANAHA, ON THE RULE OF LAW: HISTORY, POLITICS, THEORY 4 (2004).

67. Judith Shklar, *Political Theory and the Rule of Law*, in THE RULE OF LAW: IDEAL OR IDEOLOGY 1, 1 (Alan Hutchinson & Patrick Monahan, eds., 1987).

68. Danilo Zolo, *The Rule of Law: A Critical Reappraisal*, in THE RULE OF LAW: HISTORY, THEORY AND CRITICISM 3, 55 (Pietro Costa & Danilo Zolo, eds., 2007).

69. Existing work tends to focus on judicial opinions and the function of courts, rather than on whether or how popular understanding of or respect for law may matter to legal and political systems more generally. *See generally* THE RULE OF LAW IN THE MIDDLE EAST AND THE ISLAMIC WORLD: HUMAN RIGHTS AND THE JUDICIAL PROCESS (Eugene Cotran & Mai Yamani eds., 2000) (exploring whether and to what extent the international standards of human rights should be observed in Middle Eastern and Islamic countries). As insightful and important as this research is, both its sparseness and lack of specific argument as to how legal functionaries contribute to broader rule-of-law ideals or liberalizing political outcomes serve to underscore the problem of knowledge for rule-of-law programs in places like the Middle East. *But see generally* THE RULE OF

long been critical as doctrine in the Arab world. The Middle Eastern origin of two of the most renowned, ancient legal codes—the Code of Hammurabi and the Judeo-Christian Bible—should not be forgotten. More to the point, Islamic and Ottoman socio-legal traditions that contribute to contemporary Arab law predate the Anglo-American common law by centuries.⁷⁰ Thus, discussion about the reformist pressures on the rule of law in Arab states cannot proceed without recognition that the general concept has deep Middle Eastern roots. Indeed, Islam's long history of prioritizing law and mechanisms for its evolution mean that one indigenous Arab version of rule-of-law ideals remains very popular today.⁷¹

More specifically, Islam originated as a social system that combined “*din wadawla*,” religion, and polity.⁷² Naturally, law emerged as the central glue to guide the growth and administration of the millions of people throughout the Middle East, North Africa, and Southern Europe who comprised the early Islamic empire from the seventh through the thirteenth centuries.⁷³ While facets of contemporary Western and global articulation of the rule of law cannot simply be retro-fitted or read into Islamic political history, the core term for Islamic law, *shari'a*, prioritizes legal order and brings together legal doctrine and judicial decisions.⁷⁴ In other words, this traditional Arab Islamic term itself is one way of translating, if not necessarily transplanting, some of what is understood as the rule of law; it is likely to be viewed by many Muslim Arabs as the correct Arabic term for the concept. In general, then, the idea of the rule of law was central and well-developed within Islam; political institutional practice was the problem.⁷⁵

The complex political and doctrinal history of *shari'a* merits far more detailed treatment than can be undertaken here. Yet, several

Law, *supra* note 27, at 187-220 (providing information on courts in Arab countries that provides insights regarding embedded Arab authoritarian politics).

70. Compare ANTHONY BLACK, THE HISTORY OF ISLAMIC POLITICAL THOUGHT 9-13 (2001) (discussing the foundations of Islam in the seventh century), with KEVIN M. TEEVEN, THE ANGLO-AMERICAN COMMON LAW OF CONTRACT 1-5 (1990) (discussing the foundation of Anglo-American common law during the thirteenth century).

71. NOAH FELDMAN, THE FALL AND RISE OF THE ISLAMIC STATE 20-21 (2008).

72. ERWIN ISAK JAKOB ROSENTHAL, POLITICAL THOUGHT IN MEDIEVAL ISLAM 8-9 (1968).

73. See W.M. BALLANTYNE, ESSAYS AND ADDRESSES ON ARAB LAWS 34-35 (2000).

74. FELDMAN, *supra* note 71, at 117-21.

75. See KHALED ABOU EL FADL, ISLAM AND THE CHALLENGE OF DEMOCRACY 12-16 (2004) (providing a general account of the tension between the ideal and practice of the rule of law in Islam).

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significant points, though they might be partial over-simplifications, facilitate an appreciation of the ongoing influence of Islamic ideals in the contemporary Arab politics of the rule of law. First, Islamic law evolved and grew mainly through the role and efforts of scholars and judges, but without an ironclad institutional check on the power of rulers. This led the conflict between the empowering and power-enabling tendencies of law to resolve ultimately towards the latter.⁷⁶ Second, the ideals of Islamic politics and the rule of law remained a useful political language after the end of Islamic government in much of the Middle East and North Africa.⁷⁷ Moreover, the scholarly, non-codified history of Islamic law is closer to the Anglo-American common law tradition than subsequent major legal influences in many Middle Eastern countries.⁷⁸ This Article explains each of these points in turn.

First, because Islam emerged rapidly as a system of social governance, as well as a creed, it is hardly surprising that a law-forming class of Muslims also developed quickly.⁷⁹ Religious scholars were the natural source for legal interpretation, because Muhammad's Islamic status as God's final Prophet meant that either his recorded prophecies in the Qur'an or the sayings (*hadith*) quotes attributed to him otherwise, collectively known as the *sunna*, formed the basis of the most reliable dicta for ordering society.⁸⁰

Moreover, the relatively small number of explicitly legal passages in the Qur'an and the governing challenges that grew with the spectacular expansion of Islam in the several centuries after Muhammad's death meant that legal needs and sources were too diverse to allow for simple derivation from the founding documents of the religion.⁸¹ Over time, scholars built an elaborate intellectual interpretative edifice to find ways to codify and extend through rea-

76. ALEXANDER D. KNYSH, *IBN 'ARABI IN THE LATER ISLAMIC TRADITION* 56-57 (1999).

77. See FELDMAN, *supra* note 71, at 4-7.

78. See RAFAEL DOMINGO, *THE NEW GLOBAL LAW* 19-21 (2010) (providing a general comparison of common law and *shari'a*).

79. BLACK, *supra* note 70, at 32-37 (providing a general history of the rise of a law-forming class).

80. See *id.* at 10-11 (providing a discussion of Muhammad's prophecies in the Qur'an and his sayings as a basis for societal order).

81. After Muhammad's death, scholars took on the role of interpreting the Qur'an and *shari'a*. FELDMAN, *supra* note 71, at 23-25. Twentieth century experiments in Iran, in which the government was run almost entirely under scholarly rule, have not increased basic political rights associated with the rule of law, transparency, or due process, thus showing the importance of balance and checks of power between the scholar and the governing powers. *Id.* at 134-37.

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son and analogy (*qiyas*), consensus (*ijma'*) and interpretation (*ijtihad*) these original authoritative sources of Islam.⁸² The result was a diverse, non-monolithic, and long-lasting system of jurisprudence and social growth with built-in emphases on expert knowledge and consensus, not unlike the development of contemporary international law.⁸³

One of the central, enduring doctrines of Islamic jurisprudence was the leader's status as custodian or servant of communal law, rather than its progenitor.⁸⁴ Rulers were to be judged by qualified Islamic scholars and Muslims generally on their record of executing and enforcing Islamic law.⁸⁵ This clear theoretical limit to the leader's legislative powers and discretion was subject to the realities of a depoliticized, diffuse, pre-modern imperial citizenry, which could both allow centralized political excess or heighten the importance of the scholars' work.⁸⁶ Yet Islamic law's dependency on scholars meant that the ruling political elite "was largely, if not totally, absent from the legal scene."⁸⁷ Thus, Islamic scholars exercised a major, often practical, role in granting or withholding legitimacy to the leader.

The range and power of the Arab Islamic and subsequent Ottoman Islamic empires decreased over time, while Western economic and military power posed a doctrinal and practical challenge to Muslim political order in the Middle East and North Africa. In the broad context of Western imperial expansion, Islamic political order began to take a back seat to the beginnings of local nationalism and efforts at centralization. Whatever the particular cause,⁸⁸ the ideal and reality of Islamic government, including the central place of the rule of law as a check on arbitrary authority, diminished until its death blow after World War I.⁸⁹ At that point, the Islamic Ottoman Empire disappeared and the Arab regions were

82. E.g., Chibli Mallat, *From Islamic to Middle Eastern Law: A Restatement of the Field (Part II)*, 52 AM. J. COMP. L. 209, 285 (2004).

83. FELDMAN, *supra* note 71, at 4-7.

84. BLACK, *supra* note 70, at 109-11.

85. *Id.*

86. *Id.*

87. WAEL HALLAQ, *THE ORIGINS AND EVOLUTION OF ISLAMIC LAW* 204 (2005).

88. There are divergent accounts that nonetheless concur on the importance of legal scholars in developing *shari'a* and the roots of the collapse of Islamic legal institutions in modern political developments. FELDMAN, *supra* note 71, at 59-75; HALLAQ, *supra* note 87, at 205.

89. Youssef M. Choueiri, *Review Article: The Middle East: Colonialism, Islam and the Nation State*, 37 J. OF CONTEMP. HIST. 649, 651 (2002).

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divided up into mostly colonial enclaves.⁹⁰ More to the point, the system of scholars that upheld the rule of law disappeared, and, with it, the rule of law itself other than a term for colonial government enforcement and bureaucratic centralization.⁹¹

The failure of Muslim Arab states to resist modern Western domination doomed Islam as the ideological basis for organizing government in most of the Middle East for the colonial and early post-colonial periods.⁹² Yet, a second important point here is that Islamic political theory remained a significant source of basic ideals, particularly with respect to the rule of law.⁹³ One relevant normative influence is justice as a value that is centrally and popularly embedded in Islam.⁹⁴ Justice as a concept and a discourse is ubiquitous in the Qur'an.⁹⁵ Moreover, as is true with American legal ideals, Islam's emphasis on justice in the *sunna* includes significant attention to social equity and individual rights.⁹⁶ Thus, discussions of many of the issues that frame legal discourse are engrained in the religious identity of a large majority of the people in Arab societies. The importance of justice within Islam also contributed to the fact that Islamic jurisprudence never fully developed a concept of natural law. This has led some to argue that there is no clear theory to ground a completely secular legal order, as natural law helped to do over time in the West.⁹⁷

Islamic political theory can be read as presupposing two more specific tenets that have clear relevance to contemporary Western ideas about the rule of law: (a) that despite the ideal that political authority exists for the benefit of Islam, authority in practice will tend toward absolutism, rather than subordinating itself to communal legitimacy or justice; and (b) that resources autonomous from the state are needed to check leaders' actions.⁹⁸ This classical Islamic distrust of government and an emphasis on law as a constraint

90. *Id.*

91. FELDMAN, *supra* note 71, at 81-82.

92. *Id.* at 105-46.

93. *Id.* at 4-7.

94. For general discussion of justice and the Quran, see ABOU EL FADL, *supra* note 75, at 18-23.

95. *Id.*

96. *Id.* at 23-30.

97. GEORGE N. SFEIR, MODERNIZATION OF THE LAW IN ARAB STATES 11-12 (1998).

98. For a discussion of this fragmented "problem of power," see MAYER ET AL., *supra* note 58, at 45.

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on authority helped ground the influence of Islamic scholars and would sound quite familiar to many Americans.⁹⁹

Such familiarity is not coincidental. As legal anthropologist Lawrence Rosen and others have noted, Islamic law is essentially a common law system, especially in its reliance on local courts and local cultural information as characteristics that distinguish both from the legal centralization of a civil law system.¹⁰⁰ Thus, American and Arab lawyers may share a similar understanding of the importance of locally based legal processes, among other concepts. Islamic legal development, unlike Anglo-American common law, derived doctrine more from scholarly opinion and consensus, which tended to be brief and not necessarily prone to creating binding precedent, than through judicial opinions.¹⁰¹

By the twentieth century, Islamic legal rule had been largely banished and tarnished in Arab countries, reduced to the sphere of family law by Western colonial rulers and rejected by many natives who saw Islamic government as outmoded or ineffective in the face of European power.¹⁰² At the same time, late-Ottoman centralization and subsequent foreign great power control of law in the Middle East and North Africa fostered three major consequences. First, this produced a patchwork of legal orders in a given society, rather than the relatively long-standing growth of a unitary national legal system such as that which occurred in the United States.¹⁰³ Second, it set up an authoritarian norm that law would in fact be subordinated to imperial political power.¹⁰⁴ And, third, it spurred on a tendency for constitutions to exist without a significant history of judicial interpretation.¹⁰⁵ In some states, such as Morocco, this led to frequent postcolonial redrafts of the constitution to reflect changes in the power or preoccupations of political authority, in

99. Ellis Goldberg, *Private Goods, Public Wrongs and Civil Society in Some Medieval Arab Theory and Practice*, in *RULES AND RIGHTS IN THE MIDDLE EAST: DEMOCRACY, LAW, AND SOCIETY* 251, 255-63 (Ellis Goldberg, Resat Kasaba, and Joel S. Migdal eds., 1993).

100. LAWRENCE ROSEN, *THE JUSTICE OF ISLAM* 48-49 (2000).

101. CHIBLI MALLAT, *INTRODUCTION TO MIDDLE EASTERN LAW* 61 (2007).

102. *Id.* at 132-33. Feldman also discusses the inner decay of the end of the scholars' role within the ruling class at the end of the Ottoman Empire. FELDMAN, *supra* note 71, at 88-91.

103. For a comparison of constitutions in the West, including the United States, and the Middle East see *NONCONSTITUTIONAL WORLD*, *supra* note 28, at 105-10.

104. *THE RULE OF LAW*, *supra* note 27, at 12.

105. *NONCONSTITUTIONAL WORLD*, *supra* note 28, at 106.

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contrast with the United States norm of a single, basic constitutional document that can only be modified with difficulty.¹⁰⁶

The legal system of every contemporary Arab nation is a unique mixture of Islamic, Ottoman, European, and post-independence laws.¹⁰⁷ This *mélange* of legal sources in most Arab societies did not in itself preclude legal clarity or checks on authority. However, along with the lapses in territorial and ethnic logic that European colonial powers frequently employed in setting borders for many of the contemporary nations of the Middle East, the lack of legal systemic unity in Arab states has two consequences for recent United States-fostered efforts to enhance the rule of law.¹⁰⁸ It means that the jurisprudential reference points of lawyers in the United States are not likely to be of direct use to Arab societies. More importantly, the patchwork of legal systems in Arab societies has contributed to political situations in which postcolonial Arab leaders have had many incentives to centralize their authority and no real legal impediments to doing so.¹⁰⁹

This latter point is even more obviously related to the primary legacy of colonialism in the Middle East—an emphasis on control backed by force that was meant to serve the best interests of the colonizer, rather than of indigenous citizens. The political example that socialized Arab nationalist elites was colonial regimes' resort to invented political forms like mandates and protectorates to occlude their exercise of raw power.¹¹⁰ Legal norms and institutions under colonialism made readily apparent the contradictions between stated and true purposes.¹¹¹

At the same time, these norms and institutions were somewhat successful at centralizing political and economic administration. However much Arab nationalists rebelled against colonial rule, they also learned that the lofty promises of colonial political ideas were generally subservient, or even in direct contrast, to the reality

106. PHILLIP C. NAYLOR, *NORTH AFRICA: A HISTORY FROM ANTIQUITY TO THE PRESENT* 228-29 (2009).

107. For a succinct summary of the combination of sources of law in each Arab area, see *THE RULE OF LAW*, *supra* note 27, at 3-5. To be sure, a number of territories escaped direct foreign domination, most notably in the Persian Gulf. See MALLAT, *supra* note 101, at 243. Yet, even in these places, Western legal ideas and practices have supplemented indigenous combinations of Islamic and customary law. *THE RULE OF LAW*, *supra* note 27, at 518.

108. OWEN, *supra* note 6, at 11.

109. *THE RULE OF LAW*, *supra* note 27, at 11-18.

110. *E.g.*, EUGENE ROGAN, *THE ARABS* 219 (2009).

111. OWEN, *supra* note 6, at 14.

of police control.¹¹² It is small wonder, facing severe economic and other challenges, that these nationalists built on, instead of dismantled, the legacies of authoritarian rule that they inherited.

To be sure, the ideal of the rule of law will often be at odds with the centralizing tendency of governments. I argue that Arab states in the Middle East in general had an especially wide gap between the ideal and the reality because of the combination of the relative lack of autonomous, pre-colonial, unified legal order in these states and the particular repressive nature of colonial governments. More subtly, I am suggesting that the level of discontinuity between the rational, legalistic values preached by European administrators and their practice of resource extraction and police rule tainted the global, secular ideal of the rule of law in a way that is unlikely to resonate with the socialization of many American lawyers and that can complicate many Arabs' credence of the sincerity of international legal actors and doctrines.

Thus, it is easy for Arabs to view Western lawyers and international legal ideas in the West as primarily an ideology of political control, and not as a possible check on political abuse or guarantee of individual rights. This is important because it implies that efforts by reformers to strengthen the rule of law, and particularly central legal institutions, need not be associated with political opening within Arab societies.¹¹³

Despite their general legacy of political authoritarianism, Arab regimes have not lacked at least partially clear legal structures. For example, most Arab states have basic laws or constitutions but little recent history of independent judicial review.¹¹⁴ The evidence is that Arab leaders take their constitutions seriously, but mostly as

112. *Eg.*, ROGAN, *supra* note 110, at 206.

113. A striking example of how well-formulated ideas of the rule of law can exist alongside repressive political tendencies was the publication by an Iraqi law professor of a thoughtful tract on the rule of law as an ideal in Iraq at the very same time that Saddam Hussein was beginning to consolidate his particular style of brutal (and often legally arbitrary) authoritarian rule. SAMIR KHAIRI TAWFIQ, MABDA SIYADAT AL-QA'NUN [THE PRINCIPLE OF THE RULE OF LAW] (1978). "Considering that it was published a year before Saddam Hussein moved from partial to undisputed political control of Iraq, this thoughtful, philosophical discussion of the rule of law in terms that would sound familiar to Western legal scholars is a particularly interesting treatise on the subject in the Arabic language." David M. Mednicoff, *Legalism Sans Frontieres? U.S. Rule-of-Law Aid in the Arab World* 17 n.17 (Carnegie Endowment for Int'l Peace, Paper No. 61, 2005), available at <http://www.carnegieendowment.org/files/cp61.mednicoff.final.pdf>.

114. *See* NONCONSTITUTIONAL WORLD, *supra* note 28, at 35-94, 143-60.

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legitimizing documents, rather than sets of provisions enforceable by independent reviewers.¹¹⁵

In short, Arab citizens have two broad historical touchstones with respect to the rule of law. One is the twentieth century experience of codified law from many, including Western sources, most often being used to support centralized, non-democratic rule.¹¹⁶ A second is the vague collective knowledge and memory of an earlier era, when jurists and judges managed to develop law that could check and delegitimize authority, but within the clear norms and bounds of Islamic faith.¹¹⁷

The above means that the theory and practice of legalism in contemporary Arab politics has a fragmented quality. On the one hand, Islamist political ideology grew throughout the Middle East in the 1980s and 1990s to become the dominant current trope of political discourse and opposition.¹¹⁸ As a result, Islam and *shari'a* remain at the rhetorical and actual center of discussions of law in contemporary Arab states. In particular, many Arab constitutions clearly endorse Islamic law as the primary source for legislation.¹¹⁹ The most frequent rallying cry or demand of opponents to current Arab governments is the amplification or restoration of *shari'a* law.¹²⁰

The extent to which Islam and *shari'a* should inform the rule of law, and what forms this should take, is currently an area of great debate and discussion among Arab and non-Arab Muslim scholars.¹²¹ Adding to the complexity of this issue is the theoretical contradiction between the Islamic ideal of *siyasa al-shari'a* (the government of God's law) and *dawlat* or *siyadat al-qanun* (the sovereignty of man-made law).¹²² The latter term, rather than a native Arab Islamic concept, is a direct Arabic translation of the Western

115. See *id.* at 143-94 (discussing the political roles for Arab constitutions).

116. MALLAT, *supra* note 101, at 167-71, 410-16.

117. See, e.g., HALLAQ, *supra* note 87, at 543-50.

118. M.A. Mohamed Salih & Abdullahi Osman El-Tom, *Introduction*, in INTERPRETING ISLAMIC POLITICAL PARTIES 1, 8-12 (M.A. Mohamed Salih ed., 2009).

119. Even a country with as developed secular legal and social traditions as Egypt makes Islam its basic source for legislation in article 2 of its constitution. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971 (amended 2007).

120. E.g., FELDMAN, *supra* note 71, at 105.

121. ABDULLAHI AHMED AN-NA'IM, ISLAM AND THE SECULAR STATE: NEGOTIATING THE FUTURE OF SHARI'A 267-89 (2008).

122. 2 F. ROSENTHAL, THE ENCYCLOPAEDIA OF ISLAM 177-78 (E. J. Brill, 2006).

idea of the rule of law, which may therefore convey a patina of inauthenticity to at least some Arab Muslims.¹²³

Like other broad ideological frames, Islam allows for diverse interpretation about law and politics, and is compatible with the actual contemporary Arab practice of mixed legal norms and institutions. For this reason, a broad majority of government and opposition fealty to *shari'a* exists alongside more secular courts, bureaucrats and lawyers' associations in many countries, with the forces combined for analytical purposes as the "the legal complex" in a recent study of law and democratization.¹²⁴

Yet the standing of members of the Arab legal complex is the second side of the contemporary rule of law's fragmented nature. Lawyers are sometimes part of an active and growing transnational movement of Arabs, linked to global rights Non-Governmental Organizations (NGO's) and rule-of-law advocates, and are open to more direct import of Western ideas or experiences with legalist reform.¹²⁵ Reflected in international fora and documents such the *Arab Human Development Reports*, this posture does not reject the importance of Islamic identity or law *per se*.¹²⁶ Rather, it is a preference, or at least a willingness, to articulate theories of legal and political reform in terms translated directly from global usage such as *dimaqatriyya* (democracy), *huquq-el-insan* (human rights), and *siyadat al-qanun* (rule of law).¹²⁷ This tendency can be grounded in skepticism about the possibility of traditional Islamic terms to adapt to modern political debates, a desire to avoid overburdening religious concepts with excess contemporary meaning, or both.¹²⁸

123. Mednicoff, *supra* note 113, at 17 & n.20 ("One of the signs of both legal pluralism and the relative novelty of the Western notion of the rule of law in Arab countries is that there is no single phrase that is used in every country to translate the term. For example, in Morocco, the concept is often referred to as *dawla el-haq w'al-qa'nun* (the rule of right and law), instead of *siyadat al-qa'nun*. This term gained currency through the Moroccan monarchy's efforts to employ it as a slogan for its own purported fealty to the ideal of the rule of law.")

124. See MALCOLM FEELEY, *FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM* 198-200, 481-84 (Terence C. Halliday et al. eds., 2007).

125. See KEVIN DWYER, *ARAB VOICES: THE HUMAN RIGHTS DEBATE IN THE MIDDLE EAST* 7-14 (1991).

126. See UNITED NATIONS DEV. PROGRAMME, *supra* note 63.

127. Fuad S. Naem. *A Traditional Islamic Response to the Rise of Modernity, in ISLAM, FUNDAMENTALISM, AND THE BETRAYAL OF TRADITION* 89 (Joseph E.B. Lumbard ed., 2009).

128. *Id.*

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However, this indigenous Arab reformist tendency within portions of the legal complex is less likely to find broad sociopolitical support, unlike Islamist political expression. In diverse Arab countries such as Egypt, Morocco, Qatar, and Tunisia, lawyers, law students, and lay citizens speak articulately about the rule of law and respect its limited success and broader promise to improve rights, fairness and political transparency.¹²⁹ At the same time, there is tremendous cynicism about American foreign politics and aid generally, and lack of confidence in domestic legal and political institutions.¹³⁰ A century of popular historical associations of Western legal and political ideals with colonial and post-colonial highly centralized governments suggest a broad sense of mistrust with respect to the concrete prospects of rule-of-law reform.

This matters for the regulation and securitization of migrant workers in the particular Arab contexts of the oil-rich Gulf states because it complicates and sometimes polemicizes the interplay of local reform prospects and international human rights pressures. First, and most obviously, the ease in which campaigns by Western human rights and legal reform advocates can be portrayed as Trojan horses for neo-imperialism reduces their influence, while increasing at the same time the difficulties Gulf governments might face in terms of nationalist legitimacy if they appear to bow to external pressures.¹³¹

Second, and more subtly, the possible local perceptions of Western rights advocates as inauthentic, hypocritical, or something worse means that the politics around legal reform for guest workers can often have an unvoiced subtext of sensitivity to Western power influence.¹³² This is not easy for outside lawyers to appreciate fully, but it makes international dialogue around rights and law often

129. This is on the basis of preliminary qualitative surveys that I have administered to lawyers and law students in Morocco and Qatar, as well as several longer interviews. However, I am still collecting this data and am careful at this stage to limit general and specific conclusions until data collection is further along.

130. See, e.g., *Reports: Arabs Open to Democratic Reforms Despite Setbacks*, INT'L FOUND. FOR ELECTORAL SYS. (May 15, 2007), <http://www.ifes.org/Content/Publications/Feature-Stories/2007/May/Reports-Arabs-Open-to-Democratic-Reforms-despite-setbacks.aspx> (providing summary information and data files available at the International Foundation for Electoral Systems' project on the rule of law in Arab countries).

131. See Farid Esack, *The Contemporary Democracy and the Human Rights Project for Muslim Societies*, in CONTEMPORARY ISLAM: DYNAMIC, NOT STATIC 117, 117-27 (Abdul Aziz Said et al. eds., 2006).

132. For a relatively public example of this in the press of Dubai, see Rashid Saleh Al Oraimy, *There's Something Fishy about the Labour Protests*, GULF NEWS

about different things for Western and Gulf actors. Moreover, it adds a strong additional impetus for workers' status to be seen as a security issue. If questions regarding law generally in Arab societies are steeped in rhetoric around fears of Western control and aspirations around *shari'a*'s relevance, this is even more salient when the issue to which law is applied is the nature of non-citizen rights in relatively young, dynamic states with overwhelming migrant demographic majorities.

All of the above was in evidence at the Qatar Law Forum. Local Gulf legal scholars and officials dominated several sessions focused on the relevance of Islam and Islamic law, along with its ability to encompass and embrace local needs and international rights.¹³³ Westerners at other sessions spoke of overcoming deficits in Arab law, especially in matters such as women's rights and political freedoms. This may have left a whiff of neo-imerialism with some Arab attendees, based on comments in Arabic which I overheard after these sessions.

Disagreements about the appropriate role of religion in law and the status and rights of migrants, remained mostly unvoiced and generally unacknowledged. Yet these disagreements turn on important embedded philosophical predispositions in Islamic and Western individualist thought in terms of the nature of equality that can suggest distinct postures on national identity and security. This embedded tension around equality helps inform differing outcomes with the regulation of migrant workers in cases like Qatar and the United States.

III. EQUALITY, NATIONALISM, AND SECURITY IN AN EXEMPLAR ARAB GULF SOCIETY

In comparative terms, Islam as world religion is often characterized by its broad concern for equality and social justice more generally. One obvious piece of evidence for this concern is the requirement of institutionalized charity, *zakat*, as one of the basic

(Apr. 26, 2006), <http://gulfnnews.com/opinions/columnists/there-s-something-fishy-about-the-labour-protests-1.234295>.

133. For instance, an entire session at the Qatar Law Forum was dedicated to "Shari'ah and Legal Reform in the Arab World." It was chaired by the Attorney-General of Qatar HE Dr. Al bin Fetais Al-Marri and included an international panel of Islamic scholars. *See Program, supra* note 24.

five elements of faith known as the five pillars of Islam.¹³⁴ Islam's historic aversion to interest-accruing banking is one of varied other ways in which a concern for economic equity is perhaps more firmly enconced in traditional ideology than is true for core Western ideological articulations of equality.¹³⁵

At the same time, as a faith-based community that arose in a seventh century Arabian environment of existing multiple established religions, Islam had to find methods to coexist with other creeds while maintaining its internal identity and dynamism.¹³⁶ There could be no doctrine in the emerging religion that all people were equal regardless of religion, and such a doctrine was out of place in the seventh century in any case.¹³⁷ Yet, Islam had two important institutional innovations for regulating the status of non-Muslims that helped explain the social system's success in sustaining an array of civilizational and creative diversity in the Mediterranean region during Europe's Dark Ages.¹³⁸ First is the idea of the *dhimmi*, or permanent guest, a category initially, but not exclusively found in later Islamic history, applied to Christians and Jews because of the importance each of their religions held as a predecessor religion to Islam.¹³⁹ In exchange for payment of a tax, members of *dhimmi* religious groups lived indefinitely under Muslim rule, and enjoyed autonomy of worship and a wide array of rights.¹⁴⁰ At the same time, it was clear that the *dhimmi* was a member of a minority group with explicitly less connection to the majority society for not being Muslim.¹⁴¹

134. See, e.g., 11 A. ZYSOW, *ZAKAT*, The Encyclopaedia of Islam 406-22 (E. J. Brill ed., 2006); KHALED ABOU FADL, *THE GREAT THEFT: WRESTLING ISLAM FROM THE EXTREMISTS* 120 (2005).

135. ABDULLAH SAEED, *ISLAMIC BANKING AND INTEREST* 1 (2d ed. 1999).

136. See BLACK, *supra* note 70, at 10-11 (providing a description of the early days of Islam and the demographic landscape, especially in relation to non-Muslims and tribalism within the region). R

137. BAT YE'OR, *THE DECLINE OF EASTERN CHRISTIANITY UNDER ISLAM: FROM JIHAD TO DHIMMITUDE* 144-47 (Miriam Kochan & David Littman trans., Fairleigh Dickinson Univ. Press 1996).

138. Patrice C. Brodeur, *Christianity and Islam*, in *ENCYCLOPEDIA OF ISLAM AND THE MUSLIM WORLD* 142, 142-48 (Richard C. Martin ed., 2003).

139. See BLACK, *supra* note 70, at 208-09 (discussing the usefulness of the *dhimmi* rules in the Ottoman empire). R

140. For a brief discussion of this principle that tries to frame issues of Islamic communal history in language more familiar to a contemporary legal audience, see ABDULLAHI AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION* 88-89 (1990).

141. Cl. Cahen, *Dhimma*, in *2 THE ENCYCLOPEDIA OF ISLAM* 227, 227-31 (B. Lewis, Ch. Pellat, & J. Schacht eds., 1991).

A second more limited mechanism for allowing official status to non-Muslims within explicitly Islamic societies was that of the *aman*. This term refers to a contract under which any non-Muslim, even one not respected for his religious roots with Islam like Christians and Jews as *ahl el-kitab*, can have security in his person and goods within an Islamic society for a limited period, often less than a year.¹⁴² If the *aman* mechanism could apply to anyone outside of the community of believers, it did not encompass the general rights, acceptance or protection of *dhimmi* status, nor any likelihood of more permanent residence. However, individual Muslims, as well as leaders, had the capacity to grant *aman*.¹⁴³

These two historic Islamic institutions are relevant for two related reasons. First, they generally responded to a perceived need, and set a precedent, for regulating communal rights in a way that explicitly privileged Muslims while allowing for offsetting benefits for non-Muslims. In short, *dhimmi* status in particular, by eschewing the idea that subcommunities necessarily had to find most of their identity in the general society, could take some of the sting out of a clear mandate of non-Muslims as separate and unequal.¹⁴⁴ Second, the two traditional forms of status provided traditional templates that held more than a little relevance for transposition to the regulation of migrant workers in the contemporary era. Indeed, there is a rough analogy that could be made between *dhimmi*s and skilled, Westernized professional workers, on the one hand, and *aman* and non-skilled workers from less-developed societies, on the other hand, in contemporary oil-rich Arab states like Qatar.

A clarification is in order here. This Article is not suggesting that contemporary Gulf governments make direct use of classical Islamic categories for thinking about non-native rights in general or worker regulation in particular. Nor is it my argument that Islamic political history and terminology permeate in a deterministic or monolithic manner the thought process or legal climate of contemporary Arab officials. Rather, the traditional Islamic acceptance of categories of community residence that are less than full communal membership is a rough model and touchstone of legitimacy for a modern society in which distinct treatments for different classes of

142. J. Schacht, *Amān*, in 1 THE ENCYCLOPAEDIA OF ISLAM NEW EDITION 429, 429-30 (H.A.R. Gibb, et al. eds., 1986). *Ahl el-kitab* translates to "people of the book." G. Vajda, *Ahl el-kitab*, in 1 THE ENCYCLOPAEDIA OF ISLAM NEW EDITION 264, 264 (H.A.R. Gibb, et al. eds., 1986).

143. AN-NA'IM, *supra* note 140, at 88; HALLAQ, *supra* note 117, at 332-33.

144. Schacht, *supra* note 142, at 429-30.

residents can be accepted, albeit mitigated with broader norms requiring equity, justice, and mercy.

Moreover, the contemporary context for regulating citizens and non-citizens in Qatar is different in many ways from classical Islamic history.¹⁴⁵ Islam is a more contested, less realized basis for social order after its marginalization as the sole actual basis for law and politics in post-Ottoman, post-imperial independent Qatari nationhood.¹⁴⁶ In addition, the diverse globalized influences from Asia, Europe, and North America that permeate the small Arab nation as a result of its extraordinary wealth and rapid pattern of growth dismiss the idea that any particular model will have exclusive influence on the country's pattern of regulation, or even unimpeded autonomy to regulate non-natives.

Nonetheless, the point here is that historical Islamic norms around equality, which do not conform to Western standards of simple legislated civil and political rights for all residents, happen to resemble the basic norms by which contemporary wealthy, expansive Arab societies like Qatar distinguish between nationals and non-nationals. This is part of a broader pattern of congruence with Islamic historical norms of governance that have tended towards dynastic family systems, which are ratified and maintained through mechanisms of consensus and consultation of leading elite stakeholders.¹⁴⁷ These mechanisms, with titles like *shura* (consultation) and ritualized meeting points (*majlis*), do not correspond to formal procedures for electoral democracy, but they share with the latter an emphasis on political representation.¹⁴⁸

Thus, Qatar makes use of political and regulatory reference points loosely derived from Islamic models that are more communitarian and egalitarian, but less pluralist and rights-oriented, than Anglo-American foundational political norms. While I do not wish to essentialize or over-characterize such a contrast, I do suggest distinct points of departure for the United States and Qatar with re-

145. There are several major differences that separate Qatar's contemporary context towards migration from other Arab nations, including their great relative wealth, general rejection of the concept of foreigners naturalizing, and that they were "never officially a colony of any European power" (although they were a "protected state" under the British rule). Nagy, *supra* note 32, at 121.

146. For a description of the legal system in Qatar see THE RULE OF LAW, *supra* note 27, at 179-85.

147. For a more recent historical example of the prevalence of dynastic rule in the Middle East, see ROGAN, *supra* note 110, at 479-81.

148. A. Ayalon, *Shura*, in 9 THE ENCYCLOPAEDIA OF ISLAM NEW EDITION 504, 504-06 (C.E. Bosworth, et al. eds., 1997).

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spect to how to deal with non-citizen residents. Within an American political framework, expectations of formal equivalence of rights and a national identity founded in historical ideological affiliation mean that full citizenship privileges are assumed to be a possibility and an end goal for residents.¹⁴⁹ This assumption colors both immigration policy debates and the imagination of migrants themselves.

By contrast, in Qatar, there is no long-standing political tradition to presuppose that undifferentiated legislated citizenship for all is the likely or assumed outcome for those outside of the dominant, national community. If norms around social and economic fairness exist, then distinct sub-communal arrangements—recalling *dhimmi* status, or even more limited and temporary accommodations, recalling *aman*—are reasonable ways to bring non-nationals into the society, without the possibility of full membership or integration.

With this in mind, there is a logic to the function of the Qatari expatriate labor market, where employment offers tend to outbid the going rate for a worker based on the wages for similar positions in her own native country.¹⁵⁰ Thus, engineers engaged in similar work in Doha who come from India and the United States make vastly different salaries, because of an assumption that differentiation by communal norms is appropriate, so long as that differentiation is accepted generally by the parties themselves.¹⁵¹ Clear inequality across diverse populations residing within the same country is acceptable where there is no expectation that those populations should integrate or achieve uniform standards of national membership.

Of course, the realities of contemporary Qatar make this lack of a historical predisposition towards pluralist integration through citizenship more compelling and conscious. Qatar's combined small native population and tremendous wealth have made breakneck expansion through relatively well-paid global labor quite likely. At the same time, the social welfare benefits that this wealth allows the Qatari government to provide its citizens would make full citizenship economically quite desirable for migrants, which

149. This is evident in the U.S. Council on Foreign Affairs' emphasis on the importance of immigration to American history and of upholding American values of fairness under the law. COUNCIL ON FOREIGN RELATIONS, U.S. IMMIGRATION POLICY: INDEPENDENT TASK FORCE REPORT NO. 63 106-08 (2009), available at http://www.cfr.org/publication/20030/us_immigration_policy.html.

150. Nagy, *supra* note 32, at 123.

151. *Id.*

certainly helps explain why the government, like its peers in the Gulf region, allows for no such citizenship prospects for expatriate workers.¹⁵² Because of this, an additional resonance from Islamic theory that might seem logical is also not applied, namely, the possibility that all Muslims would be fully-integrated members of the Qatari nation, irrespective of their geographical origins. While non-Qatari Muslims worship alongside Qataris in mosques and find dominant social practices largely consonant with their own religious backgrounds, they are still generally unable to attain full membership in the country in which they live.¹⁵³

Along with the importance of Islamic legal traditions and the legitimacy of a notion of inter-communal equity that does not assume equal civil rights and the possibility of citizenship for all, Qatari legal policy towards migrants is shaped by the politics of national identity and security. These latter points are inter-linked in Qatar in several ways. First, the relative youth of the Qatari nation, with formal independence dating only to 1971, means that national identity is rather loose and undergoing formation.¹⁵⁴ With no real long-standing historical registers of nationhood, Qatar resorts to genealogy and traditional dress as markers of shared identity.¹⁵⁵ Second, a traditional distinction that allows for securitization of migrants is Islam's broad divide between societies of Muslims and of non-believers, with the latter at times referred to *dar-al harb* ("the

152. COUNTRY REPORT: QATAR, FREEDOM HOUSE (2010), <http://www.freedomhouse.org/template.cfm?page=363&year=2010&country=7902>.

153. This lack of full communal equality for non-Qatari Muslims is an embedded tension within the society. Qataris often will complain about whether many of the non-Qatari Muslims of Southeast Asian and other origins are true Muslims, an occurrence that suggests an understanding that true Muslims should experience broad social equality. Qatari men are allowed to marry non-Qatari Muslim women, although the reverse is generally not true. *Need to Ensure Equal Citizenship Rights to Women*, THE PENINSULA (May 5, 2010), <http://www.thepeninsulaqatar.com/q/56-tofol-jassim-al-nasr/2049-need-to-ensure-equal-citizenship-rights-to-women.html>. The official rules regarding citizenship specify continued residence for twenty-five years as a necessary, but not sufficient, precondition. Barbara Bibbo, *Expats Can Apply for Qatari Citizenship*, GULF NEWS (June 6, 2006), <http://gulfnews.com/news/gulf/qatar/expats-can-apply-for-qatari-citizenship-1.239793>. Despite all of this, Qatar's ruler can and does grant citizenship, most often to prominent Muslims, again reflecting the historical norm towards conceiving of community based on religious affiliation. An example of this was the grant of Qatari citizenship to a wealthy Muslim Indian painter. *See, e.g., India's Exiled 'Picasso' Takes Qatari Citizenship*, FRANCE 24 (Feb. 27, 2010), <http://www.france24.com/en/20100227-indias-exiled-picasso-takes-qatari-citizenship>.

154. ROSEMARIE SAID ZAHLAN, *THE CREATION OF QATAR* 112 (1979).

155. *See* Nagy, *supra* note 32, at 127-31. In fact, within the Qatari people, there are many variations of identity reflected by variations of dress, family names, and other cues outsiders would view as subtle. *See id.*

house of war”).¹⁵⁶ Again, I want to be clear that I am not suggesting a tendency for Qatari Muslims, who are extremely globalized in their influences and lifestyles, to think of outsiders as enemies; this is categorically not the case. Rather, the existence of one particular distinction within Islamic history can act as a very minor push to help people already inclined to do so in some situations to consider the issue of regulating non-natives in security terms.

A more material reason that Qatari policies towards non-nationals are readily securitized is the general geographical and demographic context of the small country. Qatar is located between two regional powers, Iran and Saudi Arabia, and close to states with recent histories of internal violence, Iraq and Yemen.¹⁵⁷ The combination of the very real concern posed by Qatar’s neighborhood and its history of being under the protection of a great power for the past century has meant that the country is nearly entirely dependent militarily on the United States.¹⁵⁸ In other words, in Qatar, the traditional core concern of national security policy, territorial integrity and protection, is essentially contracted out to another country, which pushes other issues like non-national residents into the forefront of security considerations.

This is especially the case given the country’s small native population and swelling ranks of non-national residents. Because of their society’s immense recent wealth, and the ambitions for preeminence in culture, media, and sports that this has fed, Qataris are a minority of around 10% within their own country.¹⁵⁹ The diverse multinational consumer culture that has emerged in Qatar, and elsewhere in small Arab oil states, has turned the world’s closest current *lingua franca*, English, into the dominant influence in a highly Arabized land.¹⁶⁰ Thus, despite their wealth and privilege, it

156. A. Abel, *Dar al-harb*, in 2 THE ENCYCLOPAEDIA OF ISLAM NEW EDITION 126, 126 (B. Lewis, Ch. Pellat & J. Schacht eds., 1991).

157. An article in the Qatari newspaper *The Peninsula* indicates that Qatari people recognize their location in the world as an opportunity to be a moderator between the West and their less peaceful neighbors. See *Qatar Can Serve as a Bridge Between East and West*, THE PENINSULA (Apr. 27, 2010), <http://www.thepeninsulaqatar.com/qatar-perspective/1072-qatar-can-serve-as-a-bridge-between-east-and-west.html>.

158. *Sunday Morning: Qatar in Transition*, *supra* note 55.

159. U.S. DEP’T OF STATE, *supra* note 43 (“Foreign workers comprise as much as 85% of the total population and make up about 90% of the total labor force.”).

160. See CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK: FIELD LISTING—LANGUAGES, http://www.cia.gov/library/publications/the-world-factbook/fields/print_2098.html (last visited Jan. 29, 2011) (listing, for example, Qatar as having English as a common second language and Kuwait as having English widely spoken).

is easy for Qataris to feel ethnically, linguistically, and especially, culturally overwhelmed in their own society. This, in turn, makes it natural for policy towards migrants to become securitized. Indeed, the status of migrants easily becomes the top local issue of national security when military and territorial integrity are largely outside of the realm of government action.

The two main migrant populations present different possible visions of insecurity to the small native population, reinforcing a possible perceived native need to securitize their status.¹⁶¹ The comparatively small Western mainly professional group is most likely to challenge usually indirectly, established local social practices, whether this is around questions of language, dress, romance, or religious pluralistic equality.¹⁶² On the other hand, the large populations of often exploited less-skilled construction and domestic workers from South and Southeast Asia raise concerns for natives about strikes, criminal activity, and other issues that could disrupt the normal flow of Qatari society.¹⁶³ Taken together, reasonable or not, fears of Western workers' pressure on traditional social practices and Eastern workers' shut-down of daily life combine to buttress the likelihood that regulating the large non-national majority is viewed as a core question of national security.

If the non-national vast majority of residents in small Arab oil-rich countries like Qatar are easily seen as a potential security threat, they are also indispensable. Policies aimed at nativizing significant segments of the workforce have run afoul of a combination of lack of incentives or adequate training for some natives and the sheer pace and ambition of social and economic growth.¹⁶⁴ Contemporary wealthy Gulf city-states like Abu Dhabi, Doha, and Dubai compete informally for tangible accomplishments on the global stage, such as Abu Dhabi's world-class museums, Doha's media and university cities and Dubai's extravagant building

161. Efforts to break perceived security threats from migration into discrete categories go back to Myron Weiner's edited volume, see *INTERNATIONAL MIGRATION AND SECURITY* 10-18 (Myron Weiner ed., 1993).

162. For an example, see the blog posts of a British national blogging under the pseudonym, Jane01, on the Qatar Living online website. See, e.g., *Jane01*, *QATAR LIVING* (Mar. 31, 2008 6:31 AM), <http://www.qatarliving.com/blog/jane01>.

163. Andrew Gardner, *Labor Camps in the Gulf States, Viewpoints: Migration and the Gulf*, *THE MIDDLE EAST INSTIT.* 57, http://ups.academia.edu/AndrewGardner/Papers/328943/Labor_Camps_in_the_Gulf_States. For general Middle Eastern history of labor strikes by migrant workers, see OWEN, *supra* note 6, at 204-07.

164. See, e.g., Tofol Jassim Al-Nasr, *Patriotism vs Privilege*, *THE PENINSULA* (May 2, 2010 8:52 PM), <http://www.thepeninsulaqatar.com/q/56-tofol-jassim-al-nasr/1693-tofol-jassim-al-nasr.html>; see also, Berrebi et al., *supra* note 42, at 432.

projects. However, it is hard to imagine this extraordinarily rapid growth continuing other than on a foundation of copious workers that the native population cannot possibly supply.

Thus, a government like Qatar's cannot restrict the influx of migrants without choking its grand ambitions for rapid development. Securitizing the inflow of migrants then becomes a question of information and internal management, rather than of reducing overall numbers. In short, in its lack of interest or ability to think of restricting legal migrants as the primary component of immigration policy and in its lack of predisposition to assume that migrants are likely to be able to integrate into national society in the long-run, Qatar's government is quite different from its analogues in the United States and West more generally, despite at least as much overall tendency to securitize the issue area.

Thus, from the perspective of migrants, the dark side of securitizing immigration policy diverges a great deal in Qatar and the United States. In Qatar, there is little illegal immigration, facilitated both by the country's desert and ocean land borders, and by its large numbers of legal migrant workers. Thus, the major challenges for officials in Doha would seem to be keeping close tabs on, and discouraging the potential for social destabilization of, the legions of non-citizens in the country. The process for regularizing non-nationals' residence documents is rather elaborate, and includes health scans and biometrics.¹⁶⁵ New migrant workers clearly pick up the message that they are not only the intense subjects of a national security apparatus, but they are also, in addition, dependent on the help and agency of their employers, who actually recommend and maintain their resident visas.¹⁶⁶

165. *Official Allays Fear of Mandatory Health Tests*, THE PENINSULA, July 4, 2010, <http://www.thepeninsulaqatar.com/qatar/55804-official-allays-fears-of-mandatory-health-tests.html>.

166. Qatar's recent 2009 reform of its labor law prohibits employers from holding the passports of their employees. *Labour Law and Changes in Sponsorship Rules*, THE PENINSULA, Feb. 24, 2011, <http://www.thepeninsulaqatar.com/law/143688-labour-law-and-changes-in-sponsorship-rules.html>. However, as is true in many Gulf Arab societies, this practice continues, and employers handle the official status of their non-native employees in any case, because of the nature of the *kefala*, sponsorship system, under which all foreigners remain in the country based on their contracts with their employers, rather than the leave of the state itself. Nagy, *supra* note 32, at 122. A recent investigative report from Verité shows that the problems related to the sponsorship system are still very real, despite recent reforms. *Help Wanted: Hiring, Human Trafficking and Modern-Day Slavery in the Global Economy*, VERITÉ RES. AND ADVOC. INITIATIVE 58, June 2010, <http://www.verite.org/helpwanted/>.

In addition, the acceptance of inequality across national and racial grounds means that lower-status migrant workers suffer longer lines, and possibly more degrading treatment, at the hands of the Qatari state than do higher-status Westerners, often in the same facility.¹⁶⁷ In a context of great wealth and pressures to regulate the myriads of foreign residents of diverse backgrounds and often low status, individual workers' concerns for privacy and other civil rights take a back seat to the potential security threat that they are presumed to represent. If Qatari state surveillance is not nearly so extensive than that in many non-elected political systems, there is nonetheless a sufficiently copious amount of biometric and other private data on millions of foreigners to arouse concern.¹⁶⁸ Indeed, in other wealthy Arab contexts, officials have voiced pride in their ability to gather, and if necessary, to deploy a tremendous amount of personal data on foreign workers resident in their territory.¹⁶⁹

It is increasingly the case that the United States, and other countries, are following the practice of small states like Qatar in gathering growing amounts of biometric and other sensitive data on non-citizen legal residents.¹⁷⁰ Nonetheless, the major focus of U.S. immigration policy, in national security terms, is in limiting legal immigration and attempting, however unsuccessfully, to halt illegal non-citizen entry into the country.¹⁷¹ In other words, the major thrust of American policy to control non-citizens is that of barring entry by law and by force, and imprisoning and expelling aliens

167. A personal example of this was the comparative treatment of me and my wife during the biometric procedures to obtain our residence permits in 2006. In part due to the relatively conservative social norms of the country, women and men are separated during these procedures. My wife, who is half-Indian, was assumed to be a worker from India, and was made to wait in a much longer line for fingerprinting, while I was ushered into an air-conditioned VIP room because of my presumed Western origin.

168. Chris V. Panganiban, *Filipinos in Qatar Join Saudi Protest Against E-Passports*, THE PENINSULA, July 10, 2010, <http://www.thepeninsulaqatar.com/qatar/119741-filipinos-in-qatar-join-saudi-protest-against-e-passports.html>.

169. See, e.g., Marten Youssef & Kareem Shaheen, *UAE is Urged to Find a Balance*, THE NAT'L (Oct. 7, 2009), <http://www.thenational.ae/news/uae-news/health/uae-is-urged-to-find-a-balance> (quoting Dr. Ahmed al Marzooqi, United Arab Emirates' Director of the DNA Database Department, regarding plans to implement UAE's national DNA database).

170. See U.S. DEP'T OF STATE, SAFETY & SECURITY OF U.S. BORDERS: BIOMETRICS, http://travel.state.gov/visa/immigrants/info/info_1336.html (last visited Jan. 23, 2011) (providing an official government statement on what is collected and why).

171. See COUNCIL ON FOREIGN RELATIONS, *supra* note 149, at 6-7; see also *Developing a Strong Border and Immigration Policy*, HERITAGE FOUND. (Aug. 17, 2010), <http://www.heritage.org/Research/Reports/2010/08/Developing-a-Strong-Border-and-Immigration-Policy>.

when this fails. In Qatar and similar societies, by contrast, the policy is somewhat less coercive and restrictive, in that it is geared towards controlling, and providing a base level of socioeconomic benefits for, legal aliens who enter in much higher proportions vis-à-vis the citizen population.¹⁷²

For non-citizen residents of Qatar, this difference in the nature of state policy leads to distinct expectations. They know from the beginning of their time in the tiny country that their value is time-bound, and dependent on work, and their stake in the society is correspondingly limited. At the same time, since there is no expectation of citizenship, and this is true across the board for migrants, legal status and national identity, for better or worse, are transparent.

This contrasts with the shifts in possible national status and identity, and the burdensome calculations they foster, for many non-citizens in the United States. What Saskia Sassen depicts as the diffuse categories of nationality and legality that are illuminated by contemporary immigration¹⁷³ is a phenomenon in countries like the United States. Here, for example, the diverse, unpredictable determinants of immigration policy and the real possibility of full citizenship can make entering and remaining in the country illegally, under some circumstances, a more likely route to eventual citizenship than working within the legal visa system.¹⁷⁴ On the other hand, the growing securitization of immigration policy has increased the risks for, and backlash against, illegal non-citizen residents, so that the chance of incarceration and deportation is great.¹⁷⁵ Thus, the promise, with frequently shifting ground, of equal citizenship can encourage migrants to undertake a pattern of calculated unregulated work, other routine legal transgression, concealment, and risk that are, at best, disruptive, and, at worst, unpredictably uprooting and coercive.

172. Nagy, *supra* note 32, at 122.

173. See, e.g., SASKIA SASSEN, TERRITORY, AUTHORITY, RIGHTS 261-63 (2006).

174. Paral, *supra* note 16, at 6.

175. See MASSEY & SANCHEZ, *supra* note 3, at 77-78. The following illustrates the increase in immigration enforcement in the United States after the terrorist attacks of September 11, 2001:

Whereas in 1986 only 25,000 immigrants were arrested and deported from the United States, by 1996 the figure had climbed to 160,000 . . . deportations surged to reach a record 359,000 in 2008; this level has never been seen before in U.S. history and outdoes the mass deportation campaigns of the 1930s by a factor of three.

Id. at 77-78.

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From the regulating state's perspective, implementing the securitization of migrant workers by limiting inflows rather than maximizing legal contractors is both expensive and imperfect. Despite the millions of dollars that U.S. Homeland Security and other law enforcement agencies spend yearly on border control, it is widely acknowledged that trying to make American borders entirely closed to illegal aliens is impossible.¹⁷⁶ The costs of imprisoning and deporting illegal migrants are an additional severe burden, and one that might be avoidable if more modest spending was directed instead to subsidizing or regularizing migrant jobs to eliminate some of the incentives for employers to hire illegally off of the books.¹⁷⁷

Of course, many conditions differ between countries like Qatar and the United States that could preclude shifting U.S. practices to reflect the basic thrust of Qatari problems. Unemployment, rather than a surplus of possible jobs, is of much greater concern in the United States, and may help account for the strong popular anti-immigrant pressures that have contributed to the general upswing in the securitization of migration policy. In Qatar, the combination of less populist democratic practices of the political system and a continuing rapidly expanding economy, that leaves little real alternative to massive numbers of foreign workers, means that cutting back on legal contract workers is unlikely.¹⁷⁸

Nonetheless, part of the implication of this argument is that securitizing migration policy itself is in part the cause of anti-immigrant sentiment. For one thing, decades of United States restrictions on legal foreign workers have helped establish the high levels of illegal immigration.¹⁷⁹ This, over time, helped sustain the underground low-wage illegal alien employment market, encouraged negative popular American images of migrants as law-breakers or

176. See, e.g., C. STEWART VERDERY, JR., *BRICK BY BRICK: A HALF-DECADE OF IMMIGRATION ENFORCEMENT AND THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM* 10, 12-14 (2010), available at http://www.tucson sentinel.com/documents/doc/062810_cap_dhs_enforcement.

177. See, e.g., Jack Martin & Eric A. Ruark, *The Fiscal Burden of Illegal Immigration on United States Taxpayers* 21-22 (2010), available at http://www.fairus.org/site/DocServer/USCostStudy_2010.pdf?docID=4921. For more general discussion of the severe problems that illegal aliens face if captured, see generally Karen Tumlin et al., *A Broken System*, NAT'L IMMIGR. LAW CENTER (July 28, 2009), <http://www.nilc.org/imm-lawpolicy/arrestdet/A-Broken-System-2009-07.pdf>.

178. Berrebi et al., *supra* note 42, at 430-42.

179. See, e.g., Douglas S. Massey, *Borderline Madness: America's Counterproductive Immigration Policy*, in *DEBATING IMMIGRATION* 129, 129-38 (Carol M. Swain, ed., 2007).

threats to national culture,¹⁸⁰ and fostered an impulse towards more coercive and incarceratory policies. The promise of citizenship and sociopolitical rights that this entails, along with the reality of an increasingly closed and punitive set of national policies and a labor market nonetheless dependent on low-wage, low-status labor, makes for a destructive quality of life for alien workers in the United States that is, in practice, not easy to see as superior to the clearly more overtly discriminatory practices of states like Qatar.

IV. COMPARING SECURITIZED MIGRATION POLICY IN QATAR AND THE UNITED STATES

I am not arguing that eliminating the possibility of citizenship for non-national workers in the United States is just or desirable. The theory behind the United States as an open society for people of diverse origins remains in itself a major magnet for migrants, and it is one that should enhance the lives of both natives and the small group of migrants who see the theory's realization. In Qatar, the lack of full equality norms along national and ethnic grounds is hardly a global model, and leads to many instances of pernicious worker mistreatment which deserve to receive the level of human rights focus that is increasingly a focus of Western NGO's and governments.¹⁸¹ Moreover, countries like Qatar are no less prone to securitize migrant worker policy, and this securitization has encouraged a level of biometric and other incursions into personal privacy that are being implemented throughout the world and raise frightening prospects for heightened surveillance and incarceration.¹⁸²

Rather, this Article has two major points. The first, broader one is that the securitization of migration policy encourages a range of coercive practices that have the dual effects of increasing state coercive budgets and capacity, and of exacerbating tensions between citizens and non-nationals in societies as diverse as Qatar and the United States. It is not mere coincidence, but a partial function

180. See, e.g., Samuel Huntington, *The Hispanic Challenge*, FOREIGN POL'Y, MAR./APR. 2004 30, available at http://www.foreignpolicy.com/articles/2004/03/01/the_hispanic_challenge.

181. See *The Island of Happiness: Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi*, HUM. RTS. WATCH (May 19, 2009), <http://www.hrw.org/en/reports/2009/05/18/island-happiness-0>.

182. For a discussion of the implementation international biometric identification, see David Lyon, *National IDs in a Global World: Surveillance, Security, and Citizenship*, 42 CASE W. RES. J. INT'L L. 607, 607-08 (2010).

of the facts and rhetoric of non-national securitization, that popular native suspicion around foreigners takes the same forms of fear of criminal activity and concern for national culture in Doha that it does in Detroit. If non-nationals are, in practice, unlikely to become full members of society, it is natural for nationals to react to this with a mix of distrustful attitudes.

This relative similarity in the effects of securitizing migrant workers where legal and political norms diverge as much as they do in the United States and Qatar suggests the second more subtle major point of the Article. That is, if actual results of securitizing migration are comparable across countries with quite different ideals around citizenship and equality, the usefulness of the norms themselves requires a bit of unpacking. This is especially the case in the context of the United States and Arab Gulf societies, where the tendency of the former is to assume the legal backwardness and to problematize the sociopolitical practices of the latter, as noted in the discussion above of the Qatar Law Forum.¹⁸³ Migrant workers' rights problems are undoubtedly severe in Arab oil-rich societies, and deserve the intense human rights scrutiny that they receive. Despite this, some of the flow of rhetoric around rights issues from the West may be suspect if the reality of foreign workers' experiences in the West is comparably problematic in practice to what happens in the Gulf.

The reality of migration in the United States is that the level of securitization may have led to reductions in recent years in illegal foreign workers, but that millions remain either incarcerated, in the process of being deported, or living a clandestine existence with little current hope of regularization.¹⁸⁴ The illusory promise of full citizenship and the fears of national identity or economic competition that feed into, and are replicated by, securitization, help frame this severe problem. Yet many migrants may well view the prospect of stable employment in the United States without attaining native rights as acceptable, while the labor market still seems to include positions that native Americans cannot or will not fill.¹⁸⁵ This is, of course, the situation in Qatar.

183. An *Introduction*, *supra* note 25.

184. See, e.g., William Finnegan, *Borderlines*, *NEW YORKER*, July 26, 2010, at 19, 19-20; Douglas Massey, *Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration*, *CATO INST. TRADE POL'Y ANALYSIS*, June 13, 2005, at 1.

185. For a discussion of conflict between countries' labor needs and policy see Cornelius & Tsuda, *supra* note 10, at 9-11.

Thus, the high level of fixed-term contract legal workers in Qatar suggests several possible lessons for countries like the United States. First, an emphasis on a wider range of legal migrant categories, or a large expansion of the numbers of legal, fixed-term migrant workers, might be a less expensive and more enforceable general shift in migration policy worth considering in the United States. The lack of assumed interconnection between work contracts and possible citizenship in places like Qatar, though unfair in some ways, allows for a level of clarity for natives and non-natives alike around the issue that at least permits a very large number of worker visas relative to the population. Raising the number of fixed-term legal workers as one strand of a disentangled immigration policy is, in fact, a part of United States discussions of immigration reform.¹⁸⁶

A second possible lesson of the divergence in legal policy amid heavy securitization of the issue of foreign workers in the United States and the Arab Gulf is the tendency for securitization to complicate flexible management of the issue generally. In Arab contexts, this can take several forms. Generally, securitizing the question of migrant workers' regulation fosters additional elements of mistrust among natives and the diverse migrant subpopulation groups, thereby likely producing, or facilitating, stepped-up intergroup conflict and state intrusion.¹⁸⁷ The above is less a problem in contemporary Qatar than in comparable city-states, such as Dubai in the United Arab Emirates. There, the sheer extent and speed of growth have been accompanied by heightened securitization, spinning into strategies of central control that retard the very open business environment that helps fuel the growth, such as the recent decision to ban Blackberry smart phone data plans because their autonomy from local state control allowed them to be termed a se-

186. See COUNCIL ON FOREIGN RELATIONS, *supra* note 149, at 6-7, 84-88; see also Angela Maria Kelley et al., *Principles for Immigration Reform*, CENTER AM. PROGRESS (June 24, 2009), http://www.americanprogress.org/issues/2009/06/immigration_principles.html; Demetrios G. Papademetriou et al., *Aligning Temporary Immigration Visas with US Labor Market Needs: The Case for a New System of Provisional Visas*, MIGRATION POL'Y INST. (July 2009), http://www.migrationpolicy.org/pubs/Provisional_visas.pdf.

187. One clear statement of Qatari's mistrust of non-native workers is in the implementation of "Family Day" at the shopping centers in Doha. See *Out of Bounds*, THE PENINSULA (Oct. 1, 2008, 1:48 AM), <http://archive.thepeninsulaqatar.com/component/content/article/349-qatar-newsarchive/75420.html>.

curity threat.¹⁸⁸ In Qatar, by contrast, over a decade of managed central growth of relatively open media, like the regional cable stations of Al-Jazira, and higher educational institutions, has created a counter-weight of relative press and intellectual opacity to the Orwellian and communal divisive tendencies of the securitized state.¹⁸⁹

In fact, the pathologies of securitizing legal migration policies in the United States may be even more severe than in Qatar. Even accounting for the understandable ongoing effects on American culture and politics of the attacks by non-U.S. citizens of September 11, 2001, recent trends in securitizing migrants have included remarkable amplification, even duplication, of surveillance organizations¹⁹⁰ and anti-immigrant border amplification. The securitization of the national debate around residents without legal status has turned ugly, and possibly unconstitutional, in recent months, with Arizona's 2010 law that authorizes security workers to stop and arrest suspected illegal immigrants.¹⁹¹

Different norms around citizenship and equality in the United States, despite seeming fairer than the over-segmentation by national origin of countries like Qatar, do not necessarily lead to kinder outcomes for non-national workers. Indeed, the inability, or security-driven populist democratic disinclination, for the U.S. government to live up to its own official promises around citizenship may feed into the broad problems of national migration policy, by giving illegal migrants false hope for regularized status or unwitting incentives to conceal their presence for fear of coercion by increasingly securitized federal and state governments.

188. See, e.g., *Blackberry Ban in the Middle East* (ABC television broadcast Aug. 2, 2010), available at <http://abcnews.go.com/International/video/uae-bans-blackberrys-blackberry-messenger-hard-track-11308307>.

189. See Delinda C. Hanley, *Qatar's Education City is Building Bridges to a Better Future*, 26 WASH. REP. ON MIDDLE E. AFF., Aug. 2007, at 30, 30-32; see also Wendy Wallace, *Qatar Invests in a Vision*, THE MIDDLE EAST, July 2005, at 57, 57-59 (discussing commitment to education in general).

190. See, e.g., Dana Priest & William M. Arkin, *Top Secret America: A Washington Post Investigation*, WASH. POST., July 19, 2010 - Dec. 20, 2010, <http://projects.washingtonpost.com/top-secret-america/> (providing a series of reports on U.S. intelligence organizations and their relative secrecy and lack of political accountability).

191. See, e.g., Archibold, *supra* note 8, at A1; see also, James Doty, *Arizona's New Immigration Law I Unconstitutional*, SALON.COM (Apr. 26, 2010), http://www.salon.com/news/feature/2010/04/26/is_arizona_immigration_law_constitutional (discussing the law's likely constitutional problems); Ruthann Robson, *Arizona Immigration Law SB 1070*, CONST. LAW PROF BLOG (Apr. 24, 2010), <http://lawprofessors.typepad.com/conlaw/2010/04/arizona-immigration-law.html>.

This suggests a third and final lesson from the diverse forms of securitized legal regulation of migrant workers in Qatar and the United States. In an era of legal globalization, it is understandable that lawyers and policymakers would assume that similar standards and practices around migrants are sensible. To a large extent, global equity and universalistic fairness dictate this outcome. Nonetheless, if underlying social understandings of law and of equality differ significantly, as I have argued is true with respect to the secularization and security usage of law in the United States and Qatar, then these deeper distinctions need to be at least taken into account in fashioning legal outcomes.¹⁹²

More specifically, reasonable predispositions, such as those in the official rhetoric at the Qatar Law Forum, towards the view that legal rights must take similar shape and reflect universal norms, have to consider the countervailing social undercurrents, including religious establishment and anti-immigration populism. I have argued that some aspects of Islamic history and decoupling from central Arab state control can facilitate an understanding of non-nationals as separate in their rights from citizens in some ways. However, this separation at least allows for large numbers of contractually-limited, fixed-term non-native workers in societies like Doha, whereas broad popular pressures against non-citizen workers in the United States have led to a very different set of problems for these workers. In short, especially because of the securitization of migration issues, the contemporary situation for guest workers can be summed up as a pointed paraphrase of Tolstoy's famous book-opening phrase. Namely, each state that securitizes the legal status of non-national workers tends to make those workers unhappy in their own way.¹⁹³

192. See *supra* Part I.

193. LEO TOLSTOY, ANNA KARENINA 1 (Richard Pevear & Larissa Volokhonsky trans., Penguin Classics 2003) (1878).