

Chapter 4

The Rule of Law and Political Liberalization in the Arab Gulf

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For centuries, until the commercial exploitation of its massive oil and natural gas reserves, Doha, Qatar was a backwater trading city. Many people would still be hard-pressed to find it on a map. Yet, in May 2009 Doha played host to perhaps the most illustrious array of global legal luminaries in modern history. Hundreds of high court judges, respected lawyers, and high-powered legal academics from nearly 60 countries and six continents convened at the first Qatar Law Forum for three days to discuss varied issues underscoring their shared commitment to the rule of law.

One of the United Kingdom's preeminent jurists, former Chief Justice of England and Wales Lord Woolf, helped run the meeting in his capacity as the president of a new tribunal established by Qatar's government to resolve disputes related to the country's widespread financial and construction projects. Professors and administrators from Harvard Law School and several other important American legal academies were among the forum's organizers.

The Qatar Law Forum illustrated an important broader trend. In the past few decades, Arab states generally, and Gulf states especially, have made, or felt pressured to make, the rule of law a central piece of their national politics. This connects to internal citizen demands, as has been shown dramatically since 2011, with calls for the rule of law serving as a major frame for the popular uprising against Hosni Mubarak's regime in Egypt.

This focus on the rule of law also links to a Western foreign policy objective, with the United States at the center, which aims to enhance the rule of law in non-Western countries.¹ This recent vintage of legalist wine fits partly in the old bottles of “law and development” practitioners of the 1960s and 1970s.² At the same time, contemporary U.S. rule-of-law reform efforts take place in a setting of globalized inter-connectedness,³ where international law and the legal norms of one society are easily accessible and often salient elsewhere,⁴ and where non-Western domestic and regional legal initiatives are significant, as the Qatar Law Forum exemplified. Thus, multiple and contending discourses and practices around the rule of law suggest a complex political picture.

In fact, such work is complicated further because both internal and external impulses for legalist reform stem from two broad aims. First is an economic stake in facilitating stable market and property transactions for transnational capital. Second is a political concern for improving individual rights and opening up the participatory process.

These two goals may not be mutually reinforcing, and the second can take a back seat to the first. Indeed, efforts to enhance the rule of law to improve

¹The 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. Substantial rule-of-law projects are implemented through the U.S. government’s Department of State and Agency for International Development (USAID), as well as semiautonomous organizations like the U.S. Institute of Peace and private contractors. In the case of Middle East work, much of the funding and recent expansion in programs has taken place through the Middle East Partnership Initiative. In the 2007–2012 strategic plan of USAID, rule-of-law reform aid was the top priority within its second broad policy strategy of “governing justly and democratically.” USAID, *Strategic Plan: Fiscal Years 2007–2012 — Transformational Diplomacy*, 2007, pp. 18–19.

²Thomas Carothers, ed., *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, D.C.: Carnegie Endowment for International Peace, 2006), pp. 15–16.

³See, e.g., David Held, Anthony McGrew, David Goldblatt, and Jonathan Perraton, *Global Transformations: Politics, Economics and Culture* (Stanford, CA: Stanford University Press, 1999).

⁴See generally Paul Schiff Berman, “Global Legal Pluralism,” *Southern California Law Review* 80, 6 (2007): 1155–1238, and Anne-Marie Slaughter, *A New World Order* (Princeton, NJ: Princeton University Press, 2004). On the connection of U.S. judges to foreign legal norms, see Noah Feldman, “When Judges Make Foreign Policy,” *New York Times Magazine*, 25 September 2008, p. 50.

the predictability of market transactions and the reliability of contracts can accompany, and possibly enhance, non-democratic regime stability.

Added to this picture is the complex general relationship of the West to the Arab world. At least until 2011, Arab countries were a particularly potent nexus for Western ambivalence about whether to push greater political accountability or maintain support for repressive regimes that accept U.S. security goals, such as the war on terror or the alliance with Israel.

Given the prevalence of non-democratic governments in the Middle East, alongside the significance of political frames around the rule of law for more recent political mobilization, the political and policy sides of the rule of law are worth study. The broad question motivating this work is how the rule of law and its reform can help make Arab political systems more accountable to their citizens. A secondary question is if foreign efforts to amplify the rule of law can be of any use.⁵ In this paper, the first of these questions will be addressed with specific regard to the Arab Gulf societies of Qatar and the UAE.

Broad questions about the rule of law share intellectual and practical importance. Theoretically, the imprecise and contested nature of legalist ideals and their confusing relationship with religious norms muddy the waters of how to understand the rule of law in the Arab Islamic world. In practice, despite the influence of courts and lawyers in the West, social scientists and policy practitioners have few clear answers about how promotion of the rule of law can help political liberalization in non-democratic settings.

Yet the monarchical societies of Qatar and the UAE illustrate one possible pathway through which legal growth may connect to political opening. The rapid hyperglobalization that these countries are experiencing has brought to bear pressures to bolster the rule of law both in terms of economic transactions and political rights. If legal reform geared toward improving transnational economic relations need not also advance political rights, the dual factors of hyperglobalization and little indigenous legal infrastructure to administer this

⁵Given the unclear relationship between the rule of law as a facilitator of economic transactions and democratization, we bracket out for the purposes of this analysis the economic side of the rule of law in order to focus more clearly on political influences and ideas related to the concept.

hyperglobalization have created environments in increasingly prominent Gulf cities that may suggest linkages between the rule of law and political opening.

The remainder of this Chapter fleshes out this argument and reveals some differences as well as broad similarities with respect to the rule of law and political change in Qatar and the UAE. The contention is that the combination of particular developmental choices and federalism in the UAE have made legal growth, marked though it may be, somewhat less conducive to political change than in Qatar. At the same time, in both cases, hyperglobalization has transformed the legal context of both societies so that a connection to global norms around the rule of law and international rights is highly significant.

Before developing the above argument, it is worth exploring some of the general challenges around the rule of law, as well as in the particular context of the contemporary Arab world.

The Rule of Law: Strong Ideals and Unclear Politics, Particularly in the Arab World

It may be that the rule of law “stands in the peculiar state of being *the* preeminent legitimizing ideal in the world today.”⁶ Yet the diverse ways in which the term is deployed also has led theorists to dismiss the significance of this “bit of ruling class chatter.”⁷

The concept generally refers to two broad political categories. On the one hand, it stands for a single norm or cluster of norms that subordinate aspects of personal political authority to legal equality, fair laws, or perhaps the protection of individual rights.⁸ This is at the heart of the pithy if ambiguous formula of a government of laws, not men. On the other hand, the rule of law can describe a particular institution or constellation of functioning legal

⁶Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), p. 4.

⁷Judith Shklar, “Political Theory and the Rule of Law,” in *The Rule of Law: Ideal Or Ideology*, eds. Alan Hutchinson and Patrick Monahan (Toronto: Carswell, 1987), p. 1.

⁸Danilo Zolo, “The Rule of Law: A Critical Reappraisal,” in *The Rule of Law: History, Theory and Criticism*, eds. Pietro Costa and Danilo Zolo (New York: Springer, 2007), p. 55.

institutions, certainly including courts but often embracing legislatures and civil society organizations.

When used in the first sense of an ideal, the term “rule of law” is deployed in diverse and imprecise ways.⁹ Nevertheless, there is typically an assumption of a separation between a society’s politics and law.¹⁰ Specifically, the rule of law is meant to protect people from political anarchy and arbitrariness. It suggests a promise that legal supremacy, stability, and accountability will prevail over the caprice of leaders.¹¹ Possibly, but not necessarily, related is an emphasis on citizen equality before the law.

It is easy to see the rule of law as a set of measures and institutions united in their tendency to guarantee basic fairness to all people, even *vis-à-vis* the politically powerful. Yet nothing guarantees that the normative pieces of this puzzle fit together. Thus, however it is conceived, the ideal of the rule of law is likely to embed broad goals that potentially cut against each other. Rachel Kleinfeld suggests that the importance of specifying the diverse meanings of the rule of law lies precisely in the near certainty that, in this field, not all good things come together.¹²

A particularly obvious and critical tension is that of the law’s importance in providing order and its promise to guarantee the rights of citizens, justice, and equality. Despite the ideal that laws will stand above the self-interested actions of people, the reality is that the drafters, executors, or interpreters of

⁹Frank Upham, “Mythmaking in the Rule-of-Law Orthodoxy,” in *Promoting the Rule of Law Abroad*, ed. Thomas Carothers (Carnegie Endowment for International Peace, 2006), p. 75, and Richard Fallon, “The Rule of Law” as a Concept in Constitutional Discourse,” *Columbia Law Review* 1 (1997): p. 97.

¹⁰Gerhard Robbers, “The Rule of Law and Its Ethical Foundations,” in *The Rule of Law*, ed. Joseph Thesing (Sankt Augustin, Germany: Konrad-Adenauer-Stiftung, 1997).

¹¹For example, “The rule of law ... refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.” United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General*, 2004, p. 4.

¹²Rachel Kleinfeld, “Competing Definitions of the Rule of Law,” in *Promoting the Rule of Law Abroad*, ed. Thomas Carothers (Carnegie Endowment for International Peace, 2006), pp. 34–36.

law can flout this ideal unless meaningful accountability, popular awareness, and transparency exist. In other words, the rule of law can bolster democracy or it can slide into rule *by* law and reinforce political repression.¹³

Perhaps because of the tensions among rule-of-law ideals, ideas about implementing the rule of law in non-Western countries often focus on the dimension of institutional reform, especially of courts, with little overt rationalization as to how such reform connects to the ideal. Given the apparent importance of rule of law to democracy in the West, trying to adapt the structures and functions of Western legal institutions to non-Western contexts seems quite reasonable.¹⁴ Indeed, U.S. rule-of-law aid in Arab countries has primarily sought to promote court modernization and judicial training.

The nature of the reform can be highly technical. In Morocco, for example, major U.S.-funded and U.S.-staffed programs have included training judges in alternative dispute resolution, teaching evidence and judicial ethics, and adapting case management computer programs to make it easier for case backlogs to be reduced and for some holdings to be posted on the Internet.

Clearing judicial logjams and increasing the possible transparency of case rulings are clearly reasonable goals, and some of these aid programs are successes in terms of technical judicial efficiency. Nonetheless, it is unclear whether bringing good case management software to an Arab court system helps instill a broader sense of justice, individual rights, or liberalization, since judicial autonomy, the content of the laws, and the laws' sociopolitical context remain analytically underdeveloped.

Understanding how practices of legal institutions link to the ideals of the rule of law is important for appreciating the context and consequences of institutional reform. When reform efforts are confined to legal institutional performance with little reference to the issues of broader justice, a society may be ruled by law without relating to the democratizing goals of the rule of law.¹⁵

¹³Indeed, one vein of scholarship in political science on the rule of law insists that the ideal is unrealizable and that the concept is inseparable from particular political practices. See, e.g., Jose Maria Maravall and Adam Przeworski, eds., *Democracy and the Rule of Law* (Cambridge: Cambridge University Press, 2003), p. 15.

¹⁴Carothers, ed., *Promoting the Rule of Law Abroad*, p. 21.

¹⁵Guillermo O'Donnell, "Why the Rule of Law Matters," *Journal of Democracy* 15, 4 (2004): 33–34.

For this reason, promising approaches to conceptualizing the rule of law tie ideals to practices by developing criteria for how political and legal systems approximate rule-of-law values in areas such as legal restraints on government, neutrality, popular respect for law, and observance of human rights.¹⁶ Such criteria can certainly be applied and evaluated in contemporary Arab contexts. There is little empirical research as to how legalist ideals and practices are connected in Arab societies. Existing work tends to focus on judicial opinions and the function of courts, rather than whether or how popular understanding of or respect for law may matter to legal and political systems more generally.¹⁷

Both the sparseness of this research and the lack of specific arguments 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.¹⁸ Given that Egypt, now in the process of a revolution, stands as the sole Arab case with a court that has engaged in judicial review for the past several decades, a focus on law beyond a national supreme court would appear to be necessary as a practical matter.

Work relating the rule of law in Arab contexts to the dominant scholarly and policy work coming out of the West, and particularly the United States, faces an added daunting impediment i.e., widespread, Arab skepticism about the United States as the messenger for the rule of law in the Middle East.

Many Arabs believe that American policy makers neither know nor care to know basic aspects of law, politics, and society in Arab countries. And there is an even stronger and equally widespread perception that the United States has not always practiced what it preaches about the rule of law, particularly in the Middle East.

¹⁶See, e.g., Kleinfeld, "Competing Definitions of the Rule of Law."

¹⁷Erik G. Jensen and Thomas C. Heller, eds., *Beyond Common Knowledge: Empirical Approaches to the Rule of Law* (Stanford, CA: Stanford University Press, 2003), and Eugene Cotran and Mai Yamani, eds., *The Rule of Law in the Middle East and the Islamic World: Human Rights and the Judicial Process* (London: I.B. Taurus, 2000). The former study notes the conflation of the rule of law with institutional programs by reform specialists, as well as the limited impact of such reform programs, pp. 1–3.

¹⁸See Nathan Brown, *The Rule of Law in the Arab World* (Cambridge: Cambridge University Press, 1997), for work on courts in Arab countries that provides insights regarding embedded Arab authoritarian politics.

Thus, it is not surprising that the rule of law in the Arab world is easily seen as weak, politically unimportant, and perhaps at odds with Western norms and reform efforts. At the same time, many Arab citizens desire more predictable, responsive, and fair laws, particularly as pressure mounts for political change in the region.¹⁹

The 2004 *Arab Human Development Report* is one prominent statement by a group of Arabs of the central importance of the rule of law to social improvement, as was the Qatar Law Forum itself. Moreover, legalist reform became a subject of much greater attention and funding as a legacy of the George W. Bush administration's broader push for democratic change in the region post-11 September 2001²⁰ and is likely to be more prominent in the wake of the 2011 popular Arab political movements. If neither the need for legal change nor the problem of legal knowledge is going away, it is important to consider both of these in tandem.

Embedded in this issue are two major questions. How is the rule of law understood generally in the contemporary Arab world? Given diverse political meanings for the rule of law, how might the rule of law be related to political opening in particular Arab societies? How do answers to the above two questions inform the possible role, if any, for outside rule-of-law reformers?²¹

¹⁹Random 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*, ed. Mansoor Moaddel (New York: Palgrave Macmillan, 2007), pp. 107 and 122, and James Zogby, *What Arabs Think* (Utica, NY and Beirut: Zogby International, 2002).

²⁰See the priority attached to rule-of-law reform in the U.S. Department of State's 2007–2012 public strategy document. USAID, *Strategic Plan: Fiscal Years 2007–2012*.

²¹Mednicoff's efforts to address these three broad questions inform an ongoing book project, which will include in different and expanded form the present discussion. The work generally is grounded in diverse methods. Mednicoff and collaborators have conducted interviews with Arab lawyers, legal policy experts, and law students in five country cases of Egypt, Jordan, Morocco, Qatar, Tunisia, and the United Arab Emirates, a group of diverse and important contemporary Arab states. Mednicoff has analyzed data on Arab political performance and popular attitudes that are increasingly available through international projects like the World Values Survey and institutions such as the World Bank. Mednicoff has drawn on the literatures that discuss Arab and comparative law and non-democratic regime resilience, although these are

Out of this broad research comes the present discussion, which focuses on the notion that at least some Arab Gulf states may present a possible pathway for linking rule-of-law development with political opening, in response to the second broad research question.

Identifying such a pathway is important, as there has long been a tension between the egalitarian ideals and legalist nature of Islam and the historical legacy of law in the service of authoritarianism that increasingly subordinated these ideals to centralizing, secular legal praxis in recent decades. In Arab countries in particular, historical experience and comments of interviewees²² suggest a deep, basic tension in the rule of law as a means of boosting central political enforcement or *state power*, and the rule of law as facilitating individual liberty, or *citizen empowerment*. This basic tension is directly mirrored in actual Western political practice and attitudes toward Arab states, and erupted to strong effect in 2011 in Tunisia, Egypt, and other societies that have repressed legal actors rather than linking them to internal reforms.

The next portion of this analysis looks at these tensions in more detail prior to elaborating on how Qatar and the UAE may represent a pathway connecting change in the rule of law and legal actors with gradual political opening.

The Rule of Law in Contemporary Arab Contexts: How Do Shari‘a and History Inform Current Issues?

In one form or another, the rule of law has long been critical as doctrine in the Arab world.²³ Thus, discussion about the rule of law in Arab states cannot proceed without recognizing that the general concept has deep Middle Eastern

not usually considered in tandem. Finally, Mednicoff has engaged in participant observation, as well as content analysis and interviews of American rule-of-law aid workers and specialists.

²²E.g., interviews by Mednicoff with three anonymous Moroccan (May 2008) and two anonymous Qatari (May 2007) law students; interviews by the author with one anonymous senior Moroccan legal official and Moroccan Attorney Amin Hajji (May 2008).

²³The 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.

roots. Indeed, Islam's long history of prioritizing law and mechanisms for its evolution means that one indigenous Arab version of rule-of-law ideals remains very popular today.²⁴

More specifically, Islam originated as a social system that combined “*al-din wa-l-dawla*” — religion and polity. 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.

While facets of contemporary Western and global articulation of the rule of law cannot simply be retrofitted 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. 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.²⁵

The complex political and doctrinal history of shari‘a merits far more detailed treatment than can be undertaken here. Yet several significant points, though they might be partial over-simplifications, facilitate an appreciation of the ongoing influence of Islamic ideals in 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 toward the latter. Second, the ideals of Islamic politics and the rule of law remained a useful political language after the end of Islamic government in many areas of the Middle East and North Africa. Moreover, the scholarly, non-codified history of Islamic law

²⁴Noah Feldman, *The Fall and Rise of the Islamic State* (Princeton, NJ: Princeton University Press, 2008), pp. 20–21.

²⁵For a general account of the tension between the ideal and practice of the rule of law in Islam, see Khaled Abou el Fadl, *Islam and the Challenge of Democracy* (Princeton, NJ: Princeton University Press, 2004), pp. 12–14.

is closer to the Anglo-American common law tradition than subsequent major legal influences in many Middle Eastern countries.

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. Religious scholars were the natural source for legal interpretation, because the Prophet Muhammad's status as God's final prophet meant that either his recorded prophecies in the Qur'an or the sayings (*hadith*) attributed to him, known together with his teachings as the sunna, formed the basis of the most reliable dicta for ordering society. 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 the Prophet's death meant that legal needs and sources were too diverse to allow for simple derivation from the founding documents of the religion. Over time, scholars built an elaborate intellectual interpretative edifice to find ways to codify and extend through reason and analogy (*qiyas*) and interpretation (*ijtihad*) these original authoritative sources of Islam.²⁶ The result was a diverse, non-monolithic, and long-lasting system of jurisprudence and social growth.

One of the central and enduring doctrines of Islamic jurisprudence was the leader's status as custodian or servant of communal law, rather than its progenitor. As a result, rulers were to be judged by qualified Islamic scholars and Muslims more generally on their record of executing and enforcing Islamic law. This clear theoretical limit to the leader's legislative powers and discretion were subject to the realities of a depoliticized, diffuse, pre-modern imperial citizenry, which could either allow centralized political excess or heighten the importance of the scholars' work. Yet Islamic law's dependency on scholars meant that the ruling political elite "was largely, if not totally, absent from the legal scene."²⁷ 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

²⁶Chibli Mallat, "From Islamic to Middle Eastern Law: A Restatement of the Field (Part II)," *American Journal of Comparative Law* 52 (2004): 285.

²⁷Wael Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2004), p. 204.

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, the Islamic political order began to take a back seat to the beginnings of local nationalism and efforts at centralization.

Whatever the particular cause,²⁸ 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. At that point, the Islamic Ottoman Empire disappeared and the Arab regions were divided into mostly colonial enclaves. 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 as a term for colonial government enforcement and bureaucratic centralization.

The fact that Muslim Arab states could not resist modern Western domination doomed Islamic government in most of the Middle East for much of the colonial and early postcolonial periods. However, Islamic political theory remained a significant source of basic ideals, particularly with respect to the rule of law. One relevant normative influence is justice as a value that is centrally and popularly embedded in Islam. Justice as a concept and a discourse is ubiquitous in the Qur'an. 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. Thus, discussions of many of the issues that frame legal discourse are ingrained 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.²⁹

²⁸For 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 due to modern political developments, see Feldman, *The Fall and Rise of the Islamic State*, pp. 59–75, and Hallaq, *The Origins and Evolution of Islamic Law*, p. 205.

²⁹George N. Sfeir, *The Modernization of Arab Law: An Investigation into Current Civil, Criminal and Constitutional Law in the Arab World* (San Francisco, CA: Austin & Winfield, 1998), pp. 11–12.

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: 1) 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 2) resources autonomous from the state are needed to check leaders' actions. This classical Islamic distrust of government and an emphasis on law as a constraint on authority helped ground the influence of Islamic scholars and would sound quite familiar to many Americans.³⁰

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 it from the legal centralization of a civil law system.³¹ Thus, American and Arab lawyers may share a similar understanding of the importance of locally-based legal processes, among other things. However, Islamic legal development, unlike Anglo-American common law, derived doctrine more from scholarly opinion and consensus than through judicial opinions, which tended to be brief and not necessarily prone to creating binding precedent.³²

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. 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, it produced a patchwork of legal orders in a given society, rather than the relatively long-standing unitary national legal system that occurred in

³⁰Ellis 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*, eds. Ellis Goldberg, Resat Kasaba, and Joel S. Migdal, (Seattle, WA: University of Washington Press, 1993), pp. 251, 255, and 263.

³¹Lawrence Rosen, *The Justice of Islam* (Oxford: Oxford University Press, 2000), pp. 48–49.

³²Chibli Mallat, *Introduction to Middle Eastern Law* (Oxford: Oxford University Press, 2007), p. 61.

the United States. Second, it set up an authoritarian norm that law would in fact be subordinated to imperial political power. Third, it spurred a tendency for constitutions to exist without a significant history of judicial interpretation.

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 contrast with the U.S. norm of a single basic constitutional document that can only be modified with difficulty.

The legal system of every contemporary Arab nation is a unique mixture of Islamic, Ottoman, European, and post-independence laws, though this is less true in the Gulf.³³ This *mélange* of legal sources in most Arab societies did not in itself preclude legal clarity or checks on authority. However, along with the divisive territorial and ethnic logic that European colonial powers frequently evinced 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 U.S. efforts to enhance the rule of law.³⁴

First, it means that the jurisprudential reference points of lawyers in the United States are not likely to be of direct use to most Arab societies. Further, the lack of systemic unity has contributed to political situations in which post-colonial Arab leaders have had many incentives to centralize their authority and no real legal impediments to doing so. 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 the indigenous citizens. Colonial regimes used invented political forms such as mandates and protectorates to cloak their use of raw power, and Arab nationalist elites were socialized into this system. Legal norms and institutions under colonialism made readily apparent the contradictions between stated and true purposes. These norms and institutions were somewhat successful at centralizing political and economic administration. However

³³For a succinct summary of the combination of sources of law in each Arab area, see Brown, *The Rule of Law in the Arab World*, pp. 3–5. To be sure, a number of territories escaped direct foreign domination, most notably in the Arab Gulf. Yet even in these places, Western legal ideas and practices have supplemented indigenous combinations of Islamic and customary law.

³⁴Roger Owen, *State, Power and Politics in the Making of the Modern Middle East* (New York: Routledge, 2000), p. 11.

much Arab nationalists rebelled against colonial rule, they also learned that the lofty promises of colonial political ideas were generally subservient, or even in contrast, to the reality of police control. Facing economic and other challenges, these nationalists unsurprisingly 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. We have argued 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 a relative lack of an autonomous, precolonial, unified legal order in these states and the particular repressive nature of colonial governments. More subtle is the suggestion 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 encourages conflict between local and global law.

In short, it is easy for Arabs to view the rule of law in the West in a manner similar to some American legal scholars on the left, as primarily an ideology of political control, not as a possible check on political abuse or guarantee of individual rights. This view 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. 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.³⁵

Despite this authoritarianism, Arab regimes have not lacked clear legal structures. For example, most Arab states have basic laws or constitutions. Thus, Arab constitutions exist and may matter, but they have had much less of

³⁵Samir Khairi Tawfiq, *Mabda Siyadat Al-Qa'nun* (The Principle of the Rule of Law) (Baghdad: 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.

a history of institutionalization and independent judicial interpretation than the U.S. constitution.

This difference is neither surprising nor unknown to American rule-of-law experts. In fact, given Arab political centralization, the very existence of constitutions is at least as interesting a political phenomenon as the dearth of independent judicial interpretative traditions of these documents.³⁶ For the purpose of this paper, it is worth underscoring the challenge that the juxtaposition of constitutions and political regimes with few genuine legal checks poses for building broad social support, or even judicial competence, for global ideals of the rule of law.

Hence, many Arab citizens have had 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. 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.

Together, these historical experiences mean that the theory and practice of the rule of law in contemporary Arab politics has had a fragmented quality. On the one hand, Islamist political ideology grew throughout the Middle East in the 1980s and 1990s to become the dominant contemporary trope of political discourse and opposition. 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.³⁷ The most frequent rallying cry or demand of

³⁶For a detailed discussion of the political roles for Arab constitutions, see Nathan Brown, *Constitutions in a Non-Constitutional World* (Albany, NY: State University of New York Press, 2002).

³⁷Even a country with as developed secular legal and social traditions as Egypt makes Islam its basic source for legislation in Article 2 of the pre-2011 revolution constitution. For a discussion of this, see Baudouin Dupret, "La Chari'a est la Source de la Législation: Interprétations Jurisprudentielles et Théories Juridiques," in *L'état de Droit Dans le Monde Arabe*, ed. Ahmed Mahiou, (Paris: CNRS, 1997), pp. 125–142.

regime opponents before the 2011 Arab uprisings and a strong slogan since is the amplification or restoration of shari'a law.³⁸

The extent to which Islam and shari'a should inform the rule of law and what forms this should take is currently a complicated area of great debate and discussion among Arab and non-Arab Muslim scholars. Adding to the complexity of this issue is the theoretical contradiction between the Islamic ideal of *siyasat al-shari'a* (the government of God's law) and *siyadat al-qa'nun* (the sovereignty of man-made law). The latter term, the general way in which the Western idea of the rule of law is translated into Arabic, conveys with it a patina of illegitimacy to some, although by no means all, Muslims.³⁹ Like other broad ideological frames, Islam allows for diverse interpretations 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. These are the forces combined for analytical purposes as "the legal complex" in a recent study of law and democratization.⁴⁰

Yet the standing of members of the Arab legal complex is the flip side of the fragmented nature of contemporary rule of law. Lawyers are sometimes part of an active and growing transnational movement of Arabs linked to global rights NGOs and rule-of-law advocates, and are open to more direct import of Western ideas or experiences with legalist reform. Reflected in international fora and documents such as the *Arab Human Development Reports*, this posture does not reject the importance of Islamic identity or law *per se*. Rather, it is a preference, or at least a willingness, to articulate theories of legal and political

³⁸Feldman, *The Fall and Rise of the Islamic State*, p. 105.

³⁹One 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 *dawlat al-haq wa-l-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.

⁴⁰Terence C. Halliday, Lucien Karpik, and Malcolm M. Feeley, eds., *Fighting For Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (Cambridge: Cambridge University Press, 2007).

reform in terms translated directly from global usage such as *dimuqratiyya* (democracy), *huquq al-insan* (human rights), and *siyadat al-qa'nun* (rule of law). This tendency can be grounded in skepticism about traditional Islamic terms adapting to modern political debates, or a desire to avoid overburdening religious concepts with excess contemporary meaning, or both.

However, this indigenous Arab reformist tendency within sections of the legal complex is not very likely to find broad sociopolitical support, unlike Islamist political expression. In diverse Arab countries such as Egypt, Morocco, and Qatar, 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.⁴¹ At the same time, there is tremendous cynicism about American foreign politics and aid generally, and a lack of confidence in domestic legal and political institutions.⁴² A century of popular historical associations of Western legal and political ideals with colonial and postcolonial highly centralized governments suggests a broad sense of mistrust with respect to the concrete prospects of rule-of-law reform. Of course, all of this may be changing as the Arab events of 2011, and the demands of many activists around law and justice, reconfigure the nature and politics of law in the Middle East.

Gulf Exceptionalism and the Rule of Law — A Possible Reformist Way Forward?

What is striking about the Arab Gulf is its exceptionalism with respect to much of the above trajectory of Arab legal politics, which may suggest a pathway for legal reform and political liberalization that is not based on the sort of systemic overthrow that has occurred in other Arab societies. This section explores

⁴¹This is on the basis of preliminary qualitative surveys that Mednicoff has administered to lawyers and law students in Morocco and Qatar, as well as several longer interviews. However, Mednicoff is still collecting this data and is careful at this stage to limit general and specific conclusions until data collection has progressed further.

⁴²See, for example, the summary information and data files available at the International Foundation for Electoral Systems' project on the rule of law in Arab countries; available online at <http://www.ifes.org/features.html?title=Reports%25%20Arabs%20Open%20to%20Democratic%20Reforms%20despite%20Setbacks>.

this possible pathway with particular reference to Qatar and the United Arab Emirates.

The recent historical exceptionalism lies in the Arab Gulf states' general lack of intensive colonization, which meant that the triple combination of the growth of strong coercive institutions, the radical diminution of the scope of shari'a law, and the mosaic hybridity of the legal system was much less potent in those states than elsewhere in the Arab world. This likely created a political background in which state institutions were less centralized and defined. It also created a system in which associations of Western legal ideals and practices with coercion and hypocrisy were less sharply etched.

But what marks the Arab Gulf as most distinct with respect to legal and political reform is its recent pattern of hyperglobalization⁴³ and the ensuing combination of possibilities for change within the system. The key here is not economic liberalization *per se*, but rather the multiple points of pressure on domestic policy due to economic openness. The sheer quantity of commercial and educational exchanges, high proportion of foreign workers in the labor force, presence of foreign companies and international NGOs, multiplicity of trade agreements, and participation in international organizations and networks combine to globalize most elements of domestic policy. The repercussions of Gulf economic and other open policies entail exposure to foreign expectations and requirements; by participating in transnational business, Qatar and the UAE have implicitly recognized transnational standards for workers' rights, trade regulations, and rule of law more generally. Recognition has opened the door to criticisms of falling short of those standards.

⁴³By "hyperglobalization," we refer to the accelerated process of globalization that has taken place in societies like Qatar and the UAE. The process is distinguished by both the speed of change and the scope of change, the latter evident from the comparatively limited size and global connectedness of these societies prior to the past several decades of petroleum revenue-funded dynamism. We are not using the term in the more specialized academic sense of the "hyperglobalization thesis," which suggests that recent globalization generally has reduced the scope of action for national leaders. See Evelyn Huber and John D. Stephens, "State Economy and Social Policy in Global Capitalism," in *A Handbook of Political Sociology: States, Civil Societies, and Globalization*, eds. Thomas Janoski, Robert Alford, Alexander M. Hicks, and Mildred Schwartz, (Cambridge: Cambridge University Press, 2005).

International scrutiny comes to bear through the presence of international media, education centers, and human rights organizations. These institutions are those that interrogate whether or not the Qatari and Emirati governments are meeting the standards formally acknowledged or professedly enforced. The crucial question is whether all these international pressure points actually result in *de facto* change, or merely give rise to a plethora of formal laws, reports, agreements, conferences, and events with little substantive repercussions. Countries like Qatar and the UAE face great pressure at the level of workers' rights, but it is precisely at this level that national identity comes into tension with international expectations and creates a dilemma for the government. If improving economic development before political rights has been a model in other parts of Asia, the speed and rapidity of global enmeshment of this broad strategy in Gulf Arab countries creates the possibility of a novel legal framework.

Given the Arab Gulf's extraordinary amount of capital and imported labor, hyperglobalization exposes in particularly acute ways tensions between national development/control and universalizing international legal norms. One manner in which this plays out with respect to the status of non-native workers is a general tendency for Western-based lawyers to assume the need and possibility for bringing global human rights law to Qatar and the UAE based on the relative under-development of formal legal institutions in these countries. On the local side, this can lead both to sensitivity around perceived Western condescension and neo-imperialism, or, more likely, official governmental efforts to highlight the compliance, and even leadership, of the Gulf in fealty to international law. This helps make sense, for example, of Qatar's role in hosting global legal luminaries at the Qatar Law Forum in May 2009. The event was meant to signal that Qatar was a global player in the arena of law — hardly the backwater center of weak legal institutions and protections for non-natives that Western rights lawyers and legal consultants might assume it to be.

Gulf hyperglobalization means an intensification of points of contact between diverse perspectives and actors relevant to the rule of law. The multiplicity of these actors, because of the influx of workers and institutions from all over the world and the heightened international scrutiny that this

entails, creates variation and hybridity around the rule of law that is unusual, particularly given the Arab Gulf societies' relative dearth of legal and other sociopolitical infrastructure prior to the oil boom.

The most significant of these hyperglobalized legal points of contact are:

- Law enforcement
- Legal education
- Activism around human rights
- Media expansion and openness

The above areas each entail diverse ideas about the meaning of the rule of law and justice that allow for varied outcomes and do not generally reduce to simple conflicts between the religious and the secular, Western and Arab.⁴⁴

Both conflictive and consensual elements of rule-of-law ideals and institutions are highly visible in the Arab Gulf. A state like Qatar, which has shown a fairly strong ability to moderate conflicts between and among domestic and global rule-of-law issues, illustrates a possible pathway for political liberalization without system overthrow. The UAE, which has been somewhat less successful at mitigating these conflicts, presents a more problematic picture with respect to specifically political liberalization.⁴⁵

Law enforcement is central to the contestation of legal norms and its relation to more open politics. With respect to non-citizen visitors and workers, this tension is front and center. On the one hand, the essence of these countries' hyperglobalized growth strategies requires relatively open borders and legal reforms that address the worst abuses of labor exploitation. Indeed, both Qatar and the UAE have legislated specific improvements for non-citizen workers in recent years. On the other hand, concern around the control of large majorities of non-native populations, along with general global patterns of migration

⁴⁴Indeed, the majority of South Asians among the resident population of both Doha and the two major cities of the UAE suggests the importance of moving beyond simple dichotomies between the West and the Arab world more generally.

⁴⁵We do not wish to overstate the possible differences in the liberalizing trajectory of the rule of law between these two Gulf societies, especially with the likely pressures around political opening that regimes are experiencing after the popular overthrow of the Tunisian and Egyptian governments.

securitization in general, have led these same countries to apply state-of-the-art biometric and other arguably intrusive measures of enforcing visa holders' subjection to host state control.

Legal enforcement with respect to non-citizens can also be used to appeal to elements of national culture. This, too, has been more evident in Dubai than in Doha. Prosecutions and harsh judicial punishment by Dubai courts of instances of public lewdness, sexual behavior, or drinking, despite the city's cosmopolitanism, are clear cases of legal enforcement triggered by strong symbolic native concerns about threats to traditional culture represented by contemporary hyperglobalized development. Such legal enforcement confirms the delicacy of the tightrope with respect to foreign workers and citizens that Arab Gulf officials walk.

The extraordinary, perhaps unprecedented, trajectory of rapid development of Gulf cities like Doha and Dubai from backwater trading posts to cities of global influence has required an enormous influx of professional experts in law itself. Because these cities lacked indigenous tradition around the teaching, practice, and regulation of law, they have had to build legal infrastructure in a very short time. This has entailed a very fluid environment for both conflict and consensus around global and local legal training, ideas, and practices.

Qatar and the UAE presented close to a tabula rasa in many areas of contemporary national bureaucratic development, particularly education. They have attracted and continue to attract world class universities, opening themselves to the influence of preeminent global academic establishments and the world-class professors associated with them. These foreign academics have their own ideas about liberal arts and education, which are highly globalized notions that cluster around free enquiry. Lacking generations of an education system and established administrative subcultures, Qatari and Emirati students are therefore exposed to diverse global ideas in an environment of rapid restructuring.

Both Qatar and the UAE have shown signs that their diverse populations of global and native residents and broader international connections have fostered legal reforms that might be associated with more open politics. In Qatar, in recent years, these include:

- The College of Law at Qatar University splitting from the College of shari'a, with accompanying curricula reform and global legal influence.
- A new dedicated tribunal for international commercial and civil disputes.
- The formation of and efforts to establish standards for the Qatar Bar Association.

In the UAE, examples are:

- More pervasive legal enforcement in non-rights arenas such as vehicular traffic laws.
- Increasing the use of courts, including against prominent citizens, such as the Shaykh Issa trial (despite Issa's ultimate acquittal).⁴⁶
- Increased rights for non-citizen workers, based on substantial labor law overhaul.⁴⁷

The above reforms only indirectly relate to the oil wealth of Arab Gulf countries. The rapid developmental imperatives that hydrocarbon revenues have made possible created the dynamic patterns of global and native interactions around law both within the resident populations and across borders. It is these interactions that create possibilities for legal change that are politically opening. At the same time, distinctions in development strategy, as can be teased out between comparative discussion of Qatar and the UAE, also suggest possible differences in legal reforms and their political consequences.

⁴⁶Shaykh Issa is a brother of the ruler of the UAE who was acquitted on charges of torture, despite the existence of a video of him beating an Afghan merchant in 2004. For a summary of the Shaykh Issa case, see Marten Youssef, "Sheikh Issa Acquittal: Government 'Does Not Interfere' in Court Matters," *The National*, 13 January 2010, available online at <http://www.thenational.ae/apps/pbcs.dll/article?AID=/20100113/NATIONAL/701129852/1010>; Human Rights Watch, *UAE: Sheikh's Trial Insufficient to Stop Torture*, 10 January 2010, available online at <http://www.hrw.org/en/news/2010/01/10/uae-sheikh-s-trial-insufficient-stop-torture>. For a general analysis that confirms and suggests many of our points here, see Christopher Davidson's 10 January 2011 blog discussion, "Rule of Law in the United Arab Emirates: 2010 Review," available online at <http://www.currentintelligence.net/gulfstream>.

⁴⁷For more on these increased rights, see Mednicoff's work on this issue sponsored by the Center for International and Regional Studies at the Georgetown School of Foreign Service in Qatar, currently under review. An overview of this work is available online at <http://cirs.georgetown.edu/publications/summaryreports/>.

Qatar, which has prioritized educational reform through Education City and other developments, and regional media openness through Al Jazeera, has generally been building legal educational and associational infrastructure. More open discourse among lawyers and the public, which highlights the politically liberalizing potential of law, would seem to be the result. Since the first Qatar Law Forum in 2009, the country has continued to seek to establish itself as an internationally recognized regional and even global leader in rule-of-law development. The second forum, which took place in May 2012, covered topics ranging from courts and constitutions to Islamic finance dispute resolution, global legal questions, and freedom of expression. Later the same year, the forum held a symposium on anti-corruption and the rule of law in London; partnership between the United Kingdom and Qatar on improving the rule of law was emphasized at a gathering of prominent legal professionals and academics from several countries.⁴⁸

Qatar has also utilized the UN as a forum and partner in building international prominence on rule of law and anti-corruption. In 2009, Qatar hosted a UN session on anti-corruption; two years later, in December 2011, the Rule of Law and Anti-Corruption Center opened in Doha as an independent institution functioning in partnership with the UN.⁴⁹ The following April, Qatar committed \$4 million to the United Nations Development Programme's Anti-Corruption and Integrity in the Arab Countries initiative. Qatar has been actively involved in the implementation of the project, and stands out in the region by virtue of this (financial) commitment to anti-corruption.⁵⁰

By its own account, Qatar has demonstrated commitment to rule of law through participation in UN meetings, as well as through efforts to participate

⁴⁸“Qatari Attorney General Talks Anti-Corruption and Rule of Law in London,” Qatar Law Forum, 17 December 2012, available online at http://www.qatarlawforum.com/wp-content/uploads/2012/01/QLF_17_December_2012_news_release.pdf.

⁴⁹Francesca Astorri, “Qatar Opens Anti Corruption Center,” *The Peninsula*, 12 December 2011, available online at <http://www.thepeninsulaqatar.com/qatar/175469-qatar-opens-anti-corruption-centre.html>.

⁵⁰United Nations Development Programme (UNDP), “Qatar and UNDP Finalize Agreement to Set Up Arab Region Anti-Corruption Initiative in Doha,” 25 April 2012, available online at <http://www.undp.org/content/undp/en/home/presscenter/articles/2012/04/25/qatar-and-undp-finalize-agreement-to-set-up-arab-region-anti-corruption-initiative-in-doha/>.

in international conventions on rule of law and human rights. Qatar asserts successes at the national level by making rule of law an organizing principle for public life and by promoting transparency in political administration.⁵¹ These efforts have been driven by the desire to attract foreign investment, as demonstrable commitment to anti-corruption and rule of law signals an attractively reliable and familiar environment for investment capital from abroad. Qatar has succeeded in gaining a number one rating among Middle Eastern countries for low levels of corruption, according to the 2011 public perceptions index published by Transparency International.⁵²

Qatar has also shown commitment to developing a national judicial apparatus whose standards, frames of reference, and procedures are familiar and acceptable to foreign investors and businessmen. The Qatar International Court and Dispute Resolution Center (QICDRC) was founded in 2009 with the mandate to adjudicate transnational disputes involving Qatar or relating to entities based there. The court is empowered to make judgments on the basis of international common law and itself is independent from all other Qatari legal institutions, although it is supported by the Qatari government.

In February 2013, the QICDRC issued a publication laying out a plan for improving judicial and legal education in Qatar. Central to the plan is the creation of an International Judicial and Legal Education Institute, building on the success of Qatar's Centre for Legal and Judicial Studies. Again, the goal is to rise to a place of international prominence, this time in the field of educating members of the legal profession itself. The legal referents would be international, rather than indigenous to Qatar or the region more broadly. The content and purpose of the curriculum will be provided by the Institute, thereby establishing a flagship role for Qatar in international legal development.

Qatar has demonstrated much less willingness to respond to international pressure to address the treatment of foreign workers, despite intense pressure and international publicity surrounding construction for the 2022 World Cup.

⁵¹“Qatar Stresses Importance of Rule of Law,” *The Peninsula*, 12 October 2012, available online at <http://thepeninsulaqatar.com/latest-news/210579-qatar-stresses-importance-of-rule-of-law.html>.

⁵²See <http://www.transparency.org/cpi2011/results>.

Human Rights Watch in particular has relentlessly pressured the country to address the working conditions of its largely migrant construction labor force. In May 2012, Qatar vaguely promised to consider ending its highly criticized sponsorship (*kafala*) system and replace it with a contract system for foreign workers. In response to pressure from the International Trade Organization, Qatar also agreed to organize a labor committee as a substitute for a labor union. However, non-citizens would not be eligible to participate.⁵³ As of March of 2013, Qatar has announced that it is working on a new law to protect worker health and safety. Thus, Qatar's focus remains on legislation rather than enforcement. Though Qatari courts have been cracking down on local commercial fraud under the auspices of the Consumer Protection Department, this is yet another example of Qatar's preference for promoting smooth and efficient business transactions while making little headway in terms of substantive rights of foreign workers.

The UAE has done far less than Qatar to encourage more politically open or globalized education, at least now that the excitement of having satellite campuses of New York University and the Sorbonne has ebbed. And while legal education and process are growing in the UAE, the country's developmental strategy prioritizes rapid economic and tourist growth, which favors legal regulation that maximizes financial transactional stability and order.

On the other hand, the UAE has felt compelled to respond more directly to pressure in relation to its labor law, leading to extensive new legislation. A new federal labor court system was set up to provide a fast track for labor dispute resolutions. These courts were first in place in Dubai and Abu Dhabi and are being implemented across the country.

In 2011, a major labor law reform addressed complaints against the *kafala* system of sponsorship for foreign workers by granting workers the right to move between employers. Provisions regarding minimum wages, vacation time, and

⁵³“Good News For Migrant Workers — Qatar to Drop Sponsorship and Adopt Recruitment on Contract System,” *Asian Tribune*, 6 May 2012, available online at <http://asiantribune.com/news/2012/05/06/good-news-migrant-workers-%E2%80%93-qatar-drop-sponsorship-and-adopt-recruitment-contract-sy>.

safety and health protection for construction workers have also been put in place. The Ministry of Interior made it illegal for a company to withhold any workers' passports, although there has been difficulty in enforcing this provision. The Ministry of Labor also cancelled new licenses for foreign recruiters who are not in compliance with the laws. The UAE also signed bilateral agreements with labor source countries upholding particular workers' rights insisted on by their governments. Finally, the UAE has been the first in the region to put in place legislation regulating the relationships between domestic help and employers; the law upholds the Convention on the Elimination of All Forms of Discrimination against Women.

The UAE has claimed that its enforcement of these reforms is robust. Among other things, the government employs hundreds of inspectors, fines companies that fail to pay employees adequately or in a timely fashion, and has established a 24-hour hotline for workers' complaints. In August 2012, 20 new sanctions for breaches of labor law were put in place.

Yet there is considerable inconsistency about enforcing labor rules and policies. One reason is the diversity of actors in the UAE's relatively young federal system, in which courts have only recently gained experience and legitimacy as actors. Grievances are supposed to be resolved through the Ministry of Labor prior to entering the court system. Also, because countries like the UAE frame the presence of non-native workers partially as a security issue, it is not easy enforcing non-citizen rights, at least when they are perceived as a possible threat to natives. A final and important issue is the lack of transparency of the policy process in the UAE. For example, in 2006 a senior official pledged to allow labor unions in the construction sector; however, a strike in 2007 along with citizens' general insecurities regarding foreign workers led to this promise going unmet. Labor unions remain illegal.

As this unfulfilled pledge suggests, statements around enforcement mechanisms for non-citizen workers' rights have a strong symbolic rather than practical content, especially given the difficulty for external data collection regarding their enforcement. The Shaykh Issa case mentioned above is a prominent example of officials' ability to claim that a fair enforcement process favoring foreign workers' rights took place. Yet despite the case going to court, officials protected the evidence presented in the case, which resulted in an

acquittal that did not favor the victim, a foreign worker. Thus, announcing or setting up mechanisms to enforce foreign workers' rights appeals to officials, but only if those same mechanisms do not later put them in a position in which their political standing is under threat. This calculus may help make sense of why Qatar, in contrast to the UAE, has announced fewer specific enforcement mechanisms for workers' rights, instead asserting leadership through global conferences on the rule of law.

Further highlighting the complex relation between legal reform and democratic opening, increased Emirati use of the courts and even clarified rights for workers may serve the interests of procedural smoothness more than political opening. Indeed, the use of the judicial system to threaten politically outspoken Emiratis in the spring of 2011 is a sign of the potential for increased legalism to be a tool of repression rather than reform.⁵⁴

We are not suggesting, therefore, that young Arab Gulf countries fit into a simple pattern of legal growth based on Western-propelled or inevitably politically liberalizing responses to their relative legal underdevelopment. Rather, the wealth and global ambitions of Gulf countries, together with their prior insulation from widespread global legal penetration, create diverse opportunities and intense encounters around different notions of locally appropriate best legal practices. The result of this rapidly-growing and rapidly-shifting terrain for legal reconfiguration is a variety of areas and possibilities for either expansion or retrenchment, which are based on different Arab Gulf societies' particular national or sectoral developmental priorities.

Conclusion

One can find examples of, as well as points of divergence in, the way that Arab Gulf societies have avoided the pitfalls of connecting global ideals and historical practice around the rule of law to reformist politics. The unique combination present in Doha, Dubai, and Abu Dhabi of limited conflictive historical encounters between Western legal domination and shari'a, the dearth

⁵⁴See Human Rights Watch, "UAE: Activists Arrested for 'Opposing Government'," 25 April 2011, available online at <http://www.hrw.org/en/news/2011/04/25/uae-activists-arrested-opposing-government>.

of strong legal establishment development, and the logic of hyperglobalization, have united to make Qatar and the UAE possible laboratories for contemporary globalist legal hybridization. Such hybridization contains the potential for particular legal norms and structures that are congruent with both international law and local historical practice. When this happens, the politically liberalizing potential of law can be realized.

Yet the global and regional environments in which Gulf societies find themselves are far from easy. The inequalities left in hyperglobalization's wake are alarming, while the pressures for rapid political reform unleashed throughout the Arab world are mounting. There is some evidence that Gulf rulers after 2011 may be pulling back on reforms that increase the linkage of legal ideals and institutions to political accountability.⁵⁵ One might hope, nonetheless, that these rulers might draw the opposite conclusion from regional events about the need for both law and open politics.

⁵⁵See Christopher M. Davidson, "Why the Sheikhs Will Fall," *Foreign Policy*, 26 April 2013, available online at http://www.foreignpolicy.com/articles/2013/04/26/why_the_sheikhs_will_fall.