Jureidini, Ray (2017) "Islamic Ethics and Migrant Labor in Qatar" in Toseef Azid and Necmettin Kızılkaya (eds) *Labor in an Islamic Setting.* London & New York, Routledge: p. 86-100

Islamic Ethics and Migrant Labor in Qatar

Dr Ray Jureidini[1]
Professor, Migration Ethics and Human Rights
Center for Islamic Legislation and Ethics
Qatar Faculty of Islamic Studies
Hamad Bin Khalifa University

ABSTRACT

Islamic ethics such as opposition to usury, the proper and timely payment of wages, the treatment and protection of labour are being challenged in many Arab states that employ migrant workers from Asia. In this paper it will be argued that the recruitment of Asian migrant labor, particularly to the Gulf States, includes violations of these principles. Lack of transparency and corruption in both Muslim and non-Muslim labor recruitment results in a distortion of labor supply that is based more upon ability to pay, rather than the ability to work. Coupled with the biopolitics of the *kafala* system of sponsorship control, migrant workers can become trapped in a structure of recruitment and employment that leads to debt bondage, forced labor, human trafficking and restrictions to freedom of movement. Remedies for the elimination of these practices, based upon human and labour rights that are supported by principles of Islamic ethics, are suggested in a context of increasing pressure and willingness to institute reforms. The analysis is based upon a qualitative study conducted in 2012-13 on the recruitment of migrant labor commissioned by the Qatar Foundation.

INTRODUCTION

This paper is a lay exploration of how it may be possible to understand the structure and treatment of foreign workers in Qatar (and the GCC generally) in terms of Islamic principles, ethics and culture. It is surprising that so little attention has been given to Islamic analyses of the ethics of the conditions of migrant workers in the Gulf States, given that labor or work is such a fundamental principle of virtue and value within Islamic religious philosophy and that

[1] I am grateful to Dr Ahmet Yukleyen, Dr Mohammed Ghaly, Dr Sjoerd van Koningsveld, and Ayaz Asadov for comments and suggestions on an earlier draft. The paper was first presented at the Islamic Economics Workshop III: Labor in Islamic Economics, 3-5 April, 2015, Istanbul, Turkey.

these countries depend so heavily on foreign labour. Indeed, the imperative of work and support for family in Islam is a normative pious activity. Studies in industrial sociology and organizational psychology have conducted studies of the Islamic Work Ethic with surveys to determine levels of commitment to work, job satisfaction and the like. These studies have largely looked towards Muslim employees and managers in Western countries such as Europe and the USA, finding Muslim work ethics akin to, or higher than, Protestant and Catholic work ethics (Zulficar, 2012; Stam, Verbakel & De Graaf, 2013; Possumah, Ismail & Shahimi, 2013; Khan, Abbas, Gul & Raja, 2013). With the exception of Syed (2010), little has been forthcoming in studies of Islamic ethics and the treatment of migrant workers in Muslim-majority countries (MMCs), and in particular the GCC.

It is one thing to speak about the Islamic Work Ethic in relation to the commitment to the moral imperative to work, and work well, but what of Islamic morality in relation to contemporary Islamic economies? The notion of the moral economy has been used in many Marxist critiques of capitalism (Thompson, 1991; Sen, 1999) and in sociological and anthropological analyses that reveal cultural values operating in financial markets exchange (Zelizer, 1994; Jureidini 1988). The idea that inequalities, unprincipled or corrupt forms of capitalist activities have also been addressed in moral terms, if only in relation to violations of the laws of business. Despite classical economics' abhorrence towards state intervention as a moral arbiter in the capitalist economy, it was Polanyi (1957) who observed ironically that it requires state intervention to facilitate a 'free' market (Polanyi, 1957). The social democratic ideal of a welfare state with the moral obligation to help those in need is a counter to laissez faire capitalism. Adam Smith's "invisible hand", the idea that individuals who pursue their own interests will inevitably benefit others (as an unintended consequence) has not been seen as particularly credible. In this sense, strict laissez faire capitalist economics rejects what it sees as emotional, ideological or religious elements in economics and business as irrational and thus unsuitable for capital accumulation. Nonetheless, Smith cautioned:

> [The] disposition to admire, and almost to worship, the rich and the powerful, and to despise, or, at least to neglect, persons of poor and mean condition, though necessary both to establish and maintain the distinction of ranks and the order of society, is, at the same time, the great and most universal cause of the corruption of our moral sentiments. (Adam Smith, 1790: 52)

Smith argued that the populace acceptance of leadership and authority of the powerful led to the state supporting and maintaining the system of inequality and privilege, which he was opposed to. His fear of government was that it supported monopoly practices in the market. "Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all" (Smith, 1937: Book 5, Chapter 1, Part 2).

More contemporary critiques of all types of economic systems that have been based on violations of human rights and labor rights according to UN conventions are also moral critiques. When applied by UN organizations such as the International Labor Organization (2013) as well as NGOs like Amnesty International (2013) and Human Rights Watch (2012), the "naming and shaming" is a moral critique of how citizens and non-citizens in countries around the world are being mistreated according to international principles and international law. Labor, and more recently migrant labor, is given specific attention by the ILO and (internationally) by the International Trade Union Confederation (2014). Indeed, as will be discussed below, Qatar has been specifically targeted by these organizations because of the evidence of labor and human rights violations; and Qatar is currently perceived as being vulnerable to criticism as it is in the international spotlight because of their awarding of the 2022 soccer World Cup.

But criticism based on human rights principles are not always taken seriously in the GCC, despite having signed and ratified many conventions. The idea of exceptionalism, based upon either *Sharia* law or religio-cultural difference (cultural relativism), is evidenced by reservations to some of the conventions ratified or refusals to ratify. For example, in 1947, the government of Saudi Arabia refused to ratify the Universal Declaration of Human Rights because of its objection to Articles 16 on the freedom of choice of marriage partners and 18 on freedom of religion (see Ignatieff, 2001). Although there have not been such reservations to labor conventions, an analysis of reservations to the CEDAW and CRC conventions argued that a number (but not all) Muslim countries during the 1980s invoked the objections that certain articles of the conventions were either contrary to or inconsistent with *Sharia* law. By the end of the 1990s, with repeals or re-wording of a number of reservations, the language used was more in terms of secular reservations such as conventions being incompatible with national domestic laws so as not to direct criticism toward Islam specifically. It has been concluded that the many variations between Arab and Muslim countries' responses made it

impossible "to say that Islamic law dictates the stances of Muslim countries on whether or not to commit themselves to abide by human rights conventions or to enter reservations …[or] … inspired by an Islamic model" (Mayer, 1996: 43-44; see also Syed, 2010). Mayer's analysis suggests an historical shift in the public sphere from specific references to Islamic *sharia*, to the secular articulation of national laws and rights principles.

At the same time, attempts in the Muslim world to reconcile Islam and the West by emphasizing the commonality of human rights principles in both "traditions" have not been seen as particularly successful (Ignatieff, 2001). Texts highlighting that modern human rights instruments are contained within ancient Islamic ethics and jurisprudence have proliferated, including positive analyses of women's rights through re-readings and Islamic textual analyses (see Mernissi, 1993; Moussalli, 2001). In a highly celebrated work on Islam and the moral economy, Tripp's (2006) main focus is on Islamic moral responses to capitalism and not how Islamic states have established their own production arrangements using massive numbers of foreign labor. The only reference to migrants is that Pakistani, Bangladeshi and Indian workers use the *hawala* system for fund transfers, a method that relies upon trust, but is not specifically Islamic. Critically, the analysis of both secular and Islamic rights is always fraught with the tension between the principle and the reality – "the discrepancy between the ideal and practice, pillars of faith and the pressure of market competition and government prohibition or sanctioning of workers' rights, including the formation of union, and its application" (Syed, 2010: 458).

Of course people from all religions pray for help, but one moral criticism of the hypocrisy of some Muslim business people laments that they begin a transaction or negotiation saying *Bismillah* ("In the name of God") and end in *Alhamdulillah* ("All praise and thanks to God") but in between it is all Adam Smith" (given Smith's moral position as explained above, I would prefer to cite Milton Friedman) (Bazian, 2014). This humorous quip is instructive in that it highlights the tension between the belief in, the wish for and perhaps the habitual reference to divine intervention in a business transaction, yet in practice using secular, rational, profit maximizing behaviour, including *riba* - the antipathy of Islamic economic ethics. For Bazian, it is also a measure of the internalization of Western colonial ideals.

Kafala

The *kafala* system that operates in Qatar requires all foreigners working in the country to be sponsored by a Qatari national (the *kafeel*) in order to obtain a work visa and residency. For foreign companies, the Qatari sponsor must hold a 51 percent stake in the company registered in the state. This arrangement ties the individual or company to an individual citizen who has the power to prevent the foreigner from leaving the country or transferring to another employer.

While the historical origins of the *kafala* system has honourable principles in Islam, it is generally acknowledged that these principles have been corrupted as they have been applied to contemporary economic and labor relations. The historical roots of *kafala* (at least from the nineteenth century) is well summarized by Frantz (2011) as having had a broad set of parameters and applications, from loan guarantees to the guardianship of orphans. Kafala meant a responsibility by a *kafeel* to provide food and care for another, to offer the guarantee that a stranger's presence was not a security threat – as a kind of symbiotic, or "co-joining" of one with another (Frantz, 2011: 97). Frantz also pointed to the Ottoman principle of a guarantor under 612 of the Al-Majallah that states, "A guarantee consists of the addition of an obligation to an obligation in respect to a demand for a particular thing. This is to say, it consists of one person joining himself to another person, and binding himself also to meet the obligation which accrues to that other person" (Al-Majallah Al Ahkam Al Adaliyyah, 2000: Book III). In some ways, the *kafeel* resembles the "fiduciary" under the (British) law of trust. In the same way, it implies a relationship of the power of one over the other (Dito, 2014). However, the *kafala* emphasis upon the sponsor or guardian taking responsibility for another person's actions is different. The fiduciary, or trustee, is entrusted to look after the interests of the client or beneficiary, not to answer for or take responsibility for his or her actions, nor to act as a guarantor in vouching for the other person's *bon a fides* or indeed debts.

It would seem that the provisions of *kafala* were operating in the Gulf States in some loose form from the 1940s. For example, pearl divers were bound by a *kafeel* who owned the fishing boats. As Longva (1977) noted for Kuwait, however, there was no legal reference to *kafala* until the Aliens Residence Law in 1975, despite the requirements from the 1950s and 1960s that foreign businesses required a local Kuwaiti partner with 51 percent ownership and that migrants should be "vouched for by a respected citizen of Kuwait" (Longva, 1997: 78). More clarity and control was required in the 1980s throughout the Gulf States with increasing fears of potential political instability that might arise particularly from non-Gulf Arab

migrants who were settling with their families and in time may agitate for political influence or franchise (such as Palestinians, Nasserite Egyptians and Yemenis). This led to substitute migration, replacing many Arabs with Asian migrant workers (see Jureidini, 2005), with stricter control and management over foreign labor, and where low-income workers were denied having their families accompany them.

> The kafala system emerged recently as an administrative tool institutionalising a broader system of patronage and control over labour which had long been in place. It functioned to ensure that no more workers entered than jobs existed, that they were personally tied to a national, and that they stayed only as long as they were employed.
>
> Because most foreign workers lack the right to associate, organise, or vote and are subject to deportation, the system has effectively out-sourced the least wanted, most difficult, dangerous and low-paid work to a vast, politically impotent workforce. (Frantz, 2011: 99)

It also effectively prevents the operation of a local labor market for migrant labour, and where citizens are virtually guaranteed employment in the public sector. Private Qatari sponsors/employers (*kafeel*) control the entry, exit and employment transfer of all employees. Foreign employees are not free to change employers without their *kafeel's* permission, requiring a Non Objection Certificate (NOC). The number of NOCs provided on an annual basis is not known, but it can be assumed to be relatively small. In this sense, there is no real labor market operating in Qatar and the other GCC states, perhaps with the exception of Bahrain. In 2009, Bahrain abolished the requirement for the employer's permission to change employers, but in 2011 from internal pressure, regulated that employees must first provide a minimum of one year's service. In Qatar and Saudi Arabia, the sponsor must approve an exit visa to allow foreign employees to leave the country, although there are current plans to reform this in Qatar (see below). These controlling elements have been seen as violating fundamental rights of freedom of movement (withdrawing one's labor and leaving the country). The ITUC and others have characterized it as a modern form of slavery, particularly in relation to low-skilled and vulnerable workers in the construction and service sectors and domestic workers in households (the latter being excluded from the protections of the labour law). There is nothing particularly Islamic in these regulations, but they do lend themselves to practices of forced labor and serious violations of the universal rights to freedom of movement and association (see Jureidini, 2014). As Kamali (2011: 10) suggests, "Although slavery has disappeared, when a government ordains that its people may not leave their country without some special exit visa given as an act of grace, that government is in effect

restricting the freedom of an entire people within the boundaries of its territory." The *Sharia*-based Cairo Declaration of Human Rights in Islam (1990, Article 12) states clearly: "Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country." The fact that migrant domestic workers are routinely denied leaving the household in which they work and construction workers having no choice of accommodation are breaches of this principle.

On the other hand, these measures may have been developed out of a xenophobic fear of those being invited into the country to work. Early Islam taught that it is important to enlist the assistance and services of both believers and non-believers, but only those who are trustworthy, competent and ethical (see Ramadan, 2007: 83). In the modern period, trust is not required as long as there is a legal system that guarantees the rights of both the employer and employee. However, when it states in the Qur'an (28:26), "Truly the best of people for thee to employ is one who is competent and trustworthy", it is also assuming the principle of appointment by merit and against nepotism and discrimination (Syed, 2010: 459).

Not knowing how trustworthy all of the people invited to work in the country were (from technicians, architects, bankers, accountants, engineers to low-skilled labourers), the *kafala* system of control offered a measure of insurance, particularly where extradition treaties were small and historically ineffective (Jureidini, 2014). For example, a survey in 2011 by Deloitte Corporate Finance showed that one in three GCC enterprises experienced at least one fraudulent incident annually. Fourteen percent of these were valued at over $1 million and seven percent over $10 million (*Emirates 24/7*, 2011). Thus, it is unclear whether the *kafala* arrangements are incidental to, the cause of, or a protection from fraud.

In a more recent essay, Dito (2014) argues that the *kafala* system where responsibility and authority is delegated to private citizens is not just a system of administration, but serves to cement the relationship between the state and its citizens. He argues it is an effective means for the (rentier) state's lack of capacity to deal with a huge foreign presence and thus both state and citizens control the right of entry to the country. It is also a means for government wealth distribution among the citizens in both public and private industry sectors, minimizing the competition between elite families and the maintenance of socio-political power structures, to the exclusion of foreigners. Indeed, one requirement in Qatar is that when an employee completes a contract and returns home, s/he cannot return to work for another employer within two years (although this may be reduced to 6 months in line with other GCC

countries such as KSA). As with domestic workers, these provisions seem to be preventative measures from divulging information from one household or enterprise to another.

Unions and Collective Bargaining

As Azid (2005) explains, whether as an employee, employer, supervisor or manager, Islam prefers to adopt a holistic vision or conceptualization of industrial relations as fraternal and cooperative, rather than as having opposing interests (complimentary versus conflicting interests). For the first six centuries of Islam, industries were organized in corporations or guilds that were very powerful. However, following the post-colonial period, many MMC governments banned unions and strike action for they were deemed to be political and security threats. Where unions were allowed, they privileged nationals and excluded foreign workers (Syed, 2010).

Thus, one of the strongest and most consistent external criticisms of Qatar and the Gulf States has been the prohibition against foreign labor forming trade unions, collective bargaining and strike action. Qatari labor law does provide for the formation of labor unions but is largely restricted to Qatari citizens. Since only 6 percent of the workforce are Qatari citizens and less than one percent employed in the private sector, the provision is deemed largely irrelevant. There are provisions for "joint committees" at the enterprise level, but with equal representation from employers and employees, but these cannot be considered as unions, although they may be the location for collective dispute resolutions (see Qatar Labor Law, 2014, Articles 116-124).

Drawing on the work of Gamal al-Banna (*al-Islam wa'l Harakah al-Naqabiyyah*), Kamali (2011: 172) argued that trade unions are not only acceptable, but necessary "to prevent exploitation and ensure justice", for that is also a primary goal of Islam. But this comes with religious conditions and convictions:

> A *Shari'ah* compliant workers union must, however, internalize Islamic values and conduct its activities as a carrier of its message, which is the quest for justice in the first place. It should neither be aligned with socialism nor capitalism, nor should it become a partisan movement that only fights for a faction at the cost of the common good for society. (Kamali, 2011: 173-174).

That is, Islamic trade unions should differentiate themselves from the conventional union activities that are confined to bargaining for wages and conditions of work. Islamic trade unions must include the spiritual element that work is in the "service of God and must therefore integrate the meaning of religion and its teachings on trust, honesty and God-consciousness" (Kamali, 2011: 174). Indeed, "the *fiqh* literature does not address this subject [workers associations] in any details as workers unions did not exist in earlier times" (Kamali, 2011: 173).

Strike action is not formally banned in Qatar, but requires a number of procedural actions before it may be carried out with at least two weeks notice. When they occur without authority, workers are likely to be deported, as is the case in other Gulf States. Hearing a case against an employer is difficult and permission to collectively withdraw labor is unlikely. Unfortunately without legal representation (which unions usually provide) it is almost impossible to do (see Gardner et. al., 2014).

From an Islamic perspective, according to Qureshi and Tabaloglu, "Islam discourages wildcat strikes and lockouts" (in Azid, 2005: 97). This arises because Islam does not accept the idea of conflicting class interests in the Marxian sense and assumes a classless society. Employers and employees are viewed as essential elements in the production process without distinction. In this sense, it "presents a solution to the conflict between labor and capital" (Azid, 2005: 105). There is a God-given balance to everything and so the different factors of production are seen as complementary. Further, from an ethical perspective, because "Islam determines all rights and duties for both parties [employers and employees], there is a minimum chance of conflict occurring" (ibid: 107). As Tripp points out, nineteenth century Islamic scholars,

> acknowledged that disparities of wealth existed and that absolute material equality was neither achievable nor desirable, but they did not believe that this should be the basis for class formation and social division. (Tripp, 2006: 55).

Idealistically, conformity with Islamic principles of fair wages, decent work and living environments and the prevention of exploitation should obviate the need for industrial relations conflict. Islam does admit that conflicts or disagreements between employees and employers can occur; that we are all human and vulnerable to violations of ethical principles and practices, but that fairness and justice must prevail for both employers and employees. In

a 2002 fatwa (84820) on IslamOnline, a Qatari-sponsored website, it is stated: "If the objective [of a strike] is to get some rights for the workers, such as getting delayed salaries, then there is no harm in doing this, because the employer has not fulfilled one of the conditions of the contract" (in Quasem, 2014: 11).

> In almost all MMCs, the right to work is a public policy. However, in case of disputes between employers and employees, the state often serves as the ultimate arbitrator. Though the objective is to defend and protect workers' rights and ensure the welfare of the society, in many cases, government officers or judges in the Laour Court, have no coherent guidelines upon which to make their judgments. (Syed, 2010: 458)

The role of the state in industrial relations disputation is also recognized in the Cairo Declaration of Human Rights in Islam (1990, Article 13) that states: "Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias."

Thus, the Qatar Labour Law of 2004 requires that if a dispute cannot be initially be resolved within the enterprise Joint Committee, the Department of Labor at the Ministry of Labor and Social Affairs is to be notified of the issue by both the workers and employer. If it is not resolved at that point, the Department will mediate. If the mediation does not work within 15 days, and if the parties are willing, the Department will refer the issue to a Conciliation Committee that will consist of the chairperson appointed by the Minister and representatives from employer and employees. Specialist consultants may also be invited. A decision on the dispute must be made within one week that is to be binding for both parties. If either of the parties is not willing to participate in a Conciliation Committee, the matter is referred to an Arbitration Committee consisting of a judge as the president, a nominee of the Minister, a representative from the Qatar Chamber of Commerce and a representative of the workers nominated by the (exclusively Qatari) General Union of the Workers of Qatar. Employers must continue to employ the workers during a conciliation or arbitration process (see Qatar Labor Law, 2004: Articles 128-134). It would seem that only Qataris are allowed strike action if the dispute settlement procedures fail. Strike action requires agreement by three quarters of the General Committee of Workers of the trade or industry and two weeks notice. Strike action is not allowed in "vital public utilities such as petroleum and gas related industries, electricity, water, seaports, airports, hospitals and transportation" (Qatar Labor

Law, 2004: Article 120).

The question is whether industrial disputes that cannot be resolved through recourse to Islamic moral principles in practice (with state or religious intermediaries) are a challenge to Islamic assumptions of a harmonious unitary structure of production are an ideal that require practical solutions in the reality of industrial disputation. The assumption that relations of work between employer and employee "are not merely mechanical but become fraternal" (Azid, 2005: 100) is a largely unrealized objective, particularly where a wide gulf exists between Qatari citizens and non-citizens and laws that provide strict limitations to collective bargaining and collective action. On employment relations, Syed (2010) provides and instructive tension between the adversarial pragmatism of Al Banna whose focus is on Islamic justice and the idealist assumptions of egalitarianism of Al Faruqi whose focus is on harmonious unity. Citing Al-Mawardi, Syed explains that employers should refer to the Islamic courts for the assessment and resolution of labor disputes. The reality of contemporary Qatar and other GCC countries suggests that the state has no tolerance for disharmony or collective disputation between employees and employers. Clearly, spontaneous actions that result from pent up frustration of unresolved disputes are deemed unacceptable.

Debt Bondage and Usury

What is also interesting, particularly from the perspective of migrant workers is the Islamic abhorrence towards debt. The notion that being in debt while going to and being in another country is an undesirable burden that makes one vulnerable away from home. Even gifts are a burden. As the anthropologist, Marcel Mauss (1990/1920), points out, a gift brings with it the moral obligation to reciprocate – that is to return the gift in some way. In this sense, a gift may be synonymous with a debt. "… the Prophet and his Companion [Abu Bakr] were going through a trial of vulnerability…. When Muhammad emigrated, he took care to owe nothing to anyone (he refused gifts, settled his debts and gave back the deposits he held)" (Ramadan, 2007: 82). His obligations and debt were to be to God alone. Thus, we have an episode in the very early days of Islam that indicates it is necessary that migration should be unburdened by debt in order for the migrant to be able to establish his or her goals. In his last speech, the Prophet included the following: "All debts must be repaid, all borrowed property must be returned, gifts should be reciprocated and a surety must make good the loss to the assured" (Siddiqui, 2008: 90).

The characterization of migrant workers being "trapped" on arrival in the country is not far from the truth (International Labor Organization, 2013). Those who are trapped, however, are more likely to be those who have taken out loans, sold family assets and used hard earned savings to pay recruitment agencies exorbitant amounts to secure the job. The amounts they pay can range from $600-$2,000 and those who expect higher paying positions can pay up to $10,000. Those taking out loans, from loan sharks, banks or the recruitment agency itself, have to pay usurious interest rates ranging from 30-60 per cent (Endo and Afram, 2011). The entrapment arises because once the person arrives in the country, they must accept whatever is offered to them, even if it is something far less than they were promised or agreed to before departing their home country. They have no means to turn back and return home. They would need to repay the loan and interest and they would have to pay their return airfare, which they do not have. Unbeknownst to the migrant workers, much of the money they pay recruiment agencies is used for kickback bribes to personnel of the employing companies in the destination countries (see Jureidini, 2014).

There has been a history over these practices that have been characterized as a "blame game", where the destination country blames those in the origin country and vice versa. In the scenario described in the previous paragraph, it seems clear that there is collusion between the intermediaries in the origin countries and those in the destination countries (for greater detail, see Jureidini, 2014). In an age of globalization, with bilateral and multilateral governmental collaboration, "hiding' behind arguments that the sovereignty of nation states cannot be interfered with, does not seem convincing. Turning a blind eye to the circumstances by which workers are recruited is no longer considered acceptable. Workers in debt are obliged to work until their debts are paid. In Islam, debt is something that is abhorred. An individual's soul cannot rest until his/her debts are paid. Hassan (2011), in a passionate critique of *riba* in western finance and the superiority of Islamic finance says emphatically, "we cannot tolerate going to bed one night in debt." While debt obviously occurs, *zakat* can be used to alleviate it for those who are unable to.

Should Muslim employers allow or accept that their employees are in debt, specifically in order to be employed with them? This is an important issue because of the vulnerability it places the migrant worker in, leading to debt bondage and forced labor. ILO Convention 181 stipulates that workers should not pay recruitment agency fees. Indeed, the Qatari Labor Law

also prohibits recruitment fees being paid for by workers (Article 33). The fact that exorbitant charges to workers in the origin countries, some of which is paid to employers in the destination country in the form of bribes, means that intervention is required. The debt certainly guarantees a low labor turnover, but is contrary to Islamic principles, Qatari law and international labor law. It would seem, therefore, that Qatari employers are implicated in the usury practiced in the origin countries (even if without their knowledge) and should be obliged to act against it. Jureidini (2014) and others have recommended that a reformed system of recruitment that deals only with "ethical recruitment agencies" who do not take money from workers will go a long way to undermine the debt bondage and the corruption that accompanies it (see also Verite, 2013).

There have been examples of employing companies reimbursing workers the money they paid to recruitment agencies. For example, in 2010, computer company Apple Inc. decided, as a result of an audit of their suppliers, to reimburse migrant workers for the recruitment fees they had paid since 2008 (the total amounted to $2.2 million) (Handley, 2012). Other examples, including Nike and the US State department, have emphasized the ethical problems associated with migrant workers paying agents to get jobs. Indeed, the worker welfare standards instituted by the Qatar Foundation in 2013 and the Supreme Committee for the 2022 World Cup in 2014, mandate that workers are not to pay recruitment agencies, either in Qatar or in their home countries. These principles, however, are based upon international standards as in the International Labor Organization's Convention 181 and Qatar's Labor Law (2004). In a recent case in Qatar, a contractor seeking to comply with the worker welfare standards reimbursed their employees all the money they had paid the recruitment agency, but in turn claimed those funds back from the agency.

From an Islamic perspective, the reimbursement of worker's debt for the recruitment charges (better known as extortion) can be invoked as a responsibility of the employer or *kafeel*. The Islamic Encyclopedia identifies a type of *kafala* coming from the *fukaha*, likening it to the Western institution of the "surety-bond", namely the *kafala bi'l-mal*, by which "the surety [*kafeel*] stands as a pledge to the creditor (*makful lahu*) that the obligation of the principle debtor will be fulfilled." While there are several nuances to cater for different conditions and agreement conditions, this is nonetheless a promising avenue to propose an Islamic remedy to the debt bondage circumstances that most migrant workers face. In other words, the *kafeel*

acts as a guarantor for the loan and repays the debt. More importantly, perhaps, is seeking the elimination of these recruitment payments by workers altogether, obviating the debt.

WAGES

A very powerful principle of justice in Islamic Sharia is enshrined in the teachings of how to treat employees or labor. Syed refers to the concept of *ehsan*, namely "goodness and generosity in employee relations ... [with] … a special emphasis on social justice and considers ethical behaviour to be an integral part of Islamic economics" (Syed, 2010: 460).

The most common complaints of migrant workers in Qatar and the other GCC countries concern wages; that they are: 1) not paid what they were originally promised; 2) they are not paid at all; 3) they are not paid on time. Islamic principles insist that workers should be paid on time and with a pre-agreed transparent wage, or set wage. Quoting Ibn Taimiyah, Azid explains that wages should be agreed to and fixed before the commencement of the work, "so that the employer might not reduce their wages, nor the labourers demand more than their due wages" (Ibn Taimiyah, in Azid, 2005: 115). However, in the recruitment of migrant workers, there is a widespread practice where workers do not sign a contract until their arrival in the country, or the pre-departure contracts agreed to are substituted by another contract with lower wages (Jureidini, 2014). Countries like the Philippines and Ethiopia where there is joint liability legislation, workers can seek reimbursement for the wages lost from the recruitment agency. Mostly, however, workers have little or no redress for fear that by complaining they will lose their jobs and be repatriated or deported back home.

Migrant workers are very reliant upon being paid on time, because most of their wages are remitted home to support their families. Delayed payment therefore affects the livelihood of their families. Further, their wages must also be used to pay their debts. Non-payment of debts on time can also affect their families, who may be threatened with retribution. The Islamic principle of paying wages properly and promptly is summed up elegantly by the dictum, "give the laborer his wages before his sweat dries away" (Ibn Maajah). In response to the many complaints over many years, Qatar has recently announced it will introduce legislation mandating that employers make direct transfers of wages into bank accounts, so there are official records of the amount paid and the timing of payment that can be reconciled with the contract.

Another wage issue is the violation of the principle of equal pay for equal work. Drawing on Al Farouki, Azid (2005: 99) states: "Islam stands for equal pay for equal work" and also, "it is not permitted to make women and children work for less wages, because exploitation of human resources is not allowed in Islam" (op.cit.: 97). In Qatar, however, there are numerous examples of workers in construction, services and domestic work being paid different wages. For some the differences may be relatively small, but for others quite considerable. These wage differentials are mostly based on nationality. For example, both males and females from the Philippines are likely to receive a higher wage than those from Bangladesh or Nepal doing the same work, but less than those who are from Turkey or Lebanon (see Jureidini, 2014). At best, it could be argued that such wage differences arise because labor recruitment takes place on international labor markets, with labor origin countries competing with one another. It is also unclear how the wages are determined. Labor origin country governments provide recommended wage levels by occupation and there are also bilateral government negotiations as well, including for migrant domestic workers. In the absence of standardized wages according to occupation, it is not clear how the wage differentials are to be overcome. In most countries, this has been established over many decades with collective and sometimes tripartite bargaining.

Muslims, non-Muslims, Citizens or non-Citizens?

Azid (2005:102) emphasizes that "Islam does not differentiate between Muslim and non-Muslim workers. The rights of labor are clear in this system". That is, labor is undifferentiated according to religion and nationality. It would seem, therefore, that all Islamic ethical principles concerning labor and labor relations can be applied to the foreign contract labor in Qatar and the Gulf States. In reality, there are distinct differences in the privileges of citizens compared with non-citizens. The United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990/2003) insists that migrants should be treated equally as the citizens of a country. This convention has has had relatively little support worldwide and has not been ratified by any of the GCC states. It is unlikely to be, given the strict social, political and economic demarcation lines between citizens and non-citizens under the *kafala* system.

Asadov (2015) provides an insightful critical analysis of Wahhabist literalist *fatawa* regarding migrant workers in Saudi Arabia. From the official English website of GPSRI, "alifta.net", he cites *fatawa* advising that non-Muslims generally should be removed from the

Arabian peninsular and that non-Muslims should certainly not be employed as drivers or servants. He explains that the judgment does not make sense in reality because they are allowed to be there by law and because there is a high dependency upon foreign and non-Muslim labor in the country (and throughout the GCC). Using Nancy Fraser's (2008) conception of abnormal justice, it is argued that justice for migrant workers under these conditions cannot be pursued or achieved by normative discourse, for there is no single conception of justice. The issues that have been raised concerning migrant workers in MMCs,

> have been shaped by modern phenomena of globalization, transnational migration, neo-liberal trade structure, inequalities caused by global capitalism, increases in extreme poverty and international conflicts. To redress injustices under these 'abnormal' circumstances requires arguments beyond state-centered, territorial bounded and 'distant other' understanding. (Asadov, 2015: 14)

CONCLUSION

In this paper, I have tried to discuss a number of issues as they pertain to the contemporary problems and criticisms of Qatar in relation to the condition and treatment of its foreign workforce. In an attempt to understand the Islamic principles and ethics as applied to these problems, we can posit that many of these complaints by and on behalf of migrant workers refer to violations of Islam as well as human rights as expressed in secular discourse.

What seems to me to be a glaring absence is, first, the lack of reference to Islam and Islamic jurisprudence in Qatari labor law and the law of sponsorship. These documents, although sometimes poorly written in the English versions, do not make it clear that there are Islamic foundations to their drafting. At the same time, the many critical reports on Qatar's treatment of migrant workers from organizations such as the International Labor Organization, Amnesty International, Human Rights Watch, the International Trade Union Confederation and the United Nations High Commissioner for Human Rights (and others), make no reference at all to Islamic ethics and jurisprudence. There seems to have been little or no consideration for the particularities of Islamic religious and cultural norms and beliefs as a part of their engagement with these important and often profound issues.

It has been suggested that "Islam's normative teachings are inconsistently followed in MMCs, and remain heavily influenced by local cultural traditions" (Syed, 2010: 465). Apart

from the generalized rules of justice and equity, "Islam does not give a detailed plan for employment relations, nor was it possible to have such a plan because of the temporal and technological gaps between the advent of Islam and the industrial revolution in the west" (ibid). However, it does not seem adequate to explain the absence of ethics and justice by reference to "local cultural traditions". Perhaps more enlightening, Quasem (2014) asserts that the labor relations discourse in Qatar (and the GCC) is overwhelmingly secular, with almost no reference to Islam in the construction of Qatar's labor and sponsorship laws, as well as in the media debates about migrant rights violations and proposed reform, or in the complaints by Muslim foreign workers. Even the *ulema*, it is argued, are themselves controlled by the *kafala* sponsorship and engaged in self-censorship in the face of an "all-powerful state", resulting in "a complete absence of policies influenced by this class [*ulema*] … In both the principle and practice of human rights discourse, Islam in Qatar is inaccessible" (Quasem, 2011: 12-13). Indeed the history of European colonization and modernization was accompanied by "the wholesale adoption of Western models of legal codification. This meant abandoning the medieval treaties of Islamic law" (Zulfiqar, 2007: 431).

It is hoped that raising the issues of debt-bondage and forced labor, of wages and wage payment, of control and freedom of movement can attract more Muslim policy makers into engaging with reform that will eliminate the worst forms of violations of ethical principles and human rights for those who are most vulnerable to exploitation. Interestingly, it has been suggested that "some managers in MMCs may believe that they are following Islamic instructions in their conduct despite contradictory evidence. Therefore, Western managers [or human rights critics?] should not confront them directly but should carefully sensitize them to the reality of conflicting demands of work and faith" (Syed, 2010: 465).

In Qatar, five main legislative changes were promised for "early 2015", but which have now been postponed to "late 2015":

1. The *kafala* system will take sponsorship out of the hands of individual citizens (who currently have the authority to determine who enters and exits the country and who can change employers). The sponsor will be the state, which is normally the case.

2. All employers will be required to pay wages through a bank transfer. This will provide an official record of whether the wages are being paid properly in terms of the amount and whether on time. These two are the major complaints by workers in Qatar.

3. The exit visa requirement will be abolished, but employees leaving the country must give 72 hours notice. This will give time for employers to object and request a travel ban. For this they must provide a valid reason, which will (hopefully) require a proper and prompt judicial review with conciliation and arbitration procedures.

4. No Objection Certificates (NOCs) are currently required from an employer/sponsor, if a person wants to change employers in Qatar. The new provision will allow workers to change employers without permission at the end of their contract. If a contract is "indeterminate", it will be after 5 years employment.

5. Currently if an employee finishes a contract and returns home, s/he still needs and NOC if wanting to return to Qatar to another employer. Without that, they cannot return for 2 years. That period will be reduced to 6 months.

It is by no means clear that all of the rights violations identified are perpetrated by Qatari citizens and the Qatari authorities. They are not. Non-Qataris, both Muslim and non-Muslim, are involved in the day-to-day practices of discrimination, exploitation and humiliation. But Qatar is ultimately responsible, as the state has acknowledged. As a fundamental principle in Sharia, "Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty" (Cairo Declaration of Human Rights in Islam, 1990, Article 11a). Although the current proposed reforms may not meet the standards being asked of them from external critics, there is a momentum. To what extent these reforms will be implemented and in a timely manner, remains to be seen. What should be made clearer, however, is that there are (or should be) fundamental Islamic principles that lie at the heart of the understanding of the role of work and treatment of labor within an Islamic economic system. The distinction between the normative principles of Islam and the actual practices as applied to migrant workers in Qatar and the GCC is not a cause for mere criticism, despair or demonization, but an ongoing ongoing call for radical enlightenment and reform.

REFERENCES

Amnesty International (2013) *The Dark Side of Migration: Spotlight on Qatar's Construction Sector Ahead of the World Cup*, London, Amnesty International.

Asadov, Ayaz (2015) "Saudi Scholars and the Challenge of Migrant Workers", unpublished graduate essay for CMS 502 Contemporary Muslim Political and Economic Thought, Qatar Faculty of Islamic Studies, Doha, Qatar. [with permission from the author]

Ashwin, Sarah and Clarke, Simon (2002). *Russian Trade Unions and Industrial Relations in Transition*. New York, Palgrave.

Azid, Toseef (2005). "The Concept and Nature of Labor in Islam: a Survey", *Review of Islamic Economics*. 9(2), 93-124.

Bazian, Hatem (2014). " Islamic Political Ethics Through a De-Colonial Frame". Public Lecture Panel, Islamic Studies Summer School, 17 June 2014, Granada, Spain.

Cairo Declaration on Human Rights in Islam (1990) U.N. GAOR, World Conf. on Hum. Rts., 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation]

Conway, G. (1997). *Islamophobia: A Challenge For Us All*. Report of the Runnymede Trust Commission on British Muslims and Islamophobia.

Dito, Mohammed (2014) "Kafala: Foundations of Migrant Exclusion in GCC Labor Markets", in Omar AlShebabi, Adam Hanieh, Abdulhadi Khalaf, *Transit States: Labor Migration and Citizenship in the Gulf*. Pluto Press.

Endo, Esaku & Afram, Gabi (2011), *The Qatar-Nepal Remittance Corridor: Enhancing the Impact and Integrity of Remittance Flows by Reducing Inefficiencies in the Migration Process*, World Bank, Washington.

Emirates 24/7 (2011). "1 in 3 GCC firms affected by fraud". Sunday, May 22, 2011. http://www.emirates247.com/business/corporate/1-in-3-gcc-firms-affected-by-fraud-2011-05-22-1.395775 (accessed 25 February 2015)

Frantz, Elizabeth (2011). Exporting Subservience: Sri Lankan Women's Migration for Domestic Work in Jordan. PhD Thesis. Department of Anthropology, London School of Economics.

Fraser, Nancy (2008). "Abnormal Justice" *Critical Inquiry* 34 (3):393-422.

Gardner, A, Pessoa, S. & Harkness, L. (2014) "Labor Migrants and Access to Justice in Contemporary Qatar". Monograph, Middle East Center, London School of Economics.

Handley, Paul "Apple admits supplier abuse of workers" Jan 13, 2012 http://www.google.com/hostednews/afp/article/ALeqM5iu2G1KRpbNOVpHzm25yQZRAKq_yA?docId=CNG.f77e9d612f9c4a19533cba3c1418e5a2.351, Retrieved 6 August 2013.

Hassan, Hussein Hamid (2011). "Islamic Economics: Solution for the World Crisis."

https://www.youtube.com/watch?v=Qh3me1gKQkA (accessed 19 February 2015)

Human Rights Watch (2012) *Building a Better World Cup*, New York, Human Rights Watch.
Ignatieff, M. (2001) "The Attack on Human Rights" in *Foreign Affairs* (Online), November/December (http://www.foreignaffairs.com/articles/57421/michael-ignatieff/the-attack-on-human-rights)

International Labor Organization (2013). *Tricked and Trapped: Human Trafficking in the Middle East*. International Labor Organization, Geneva.

International Trade Union Confederation (2014) *Facilitating Exploitation: a review of labour laws for migrant domestic workers in the Gulf Cooperation Council Countries*, ITUC, CSI IGB, November 2014.

Jureidini, Ray (2014) *Migrant Labor Recruitment to Qatar*: Report for Qatar Foundation Migrant Worker Welfare Initiative, Bloomsbury/Qatar Foundation, Doha, Qatar. (158 pages)
http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf

Jureidini, Ray (1988). *Life Insurance and superannuation: a sociological study of moral values in economic life*. PhD Thesis. School of Social Sciences, Flinders University of South Australia.

Kamali, Mohammad Hasim (2011). *The Right to Education, Work and Welfare in Islam*. The Islamic Texts Society.

Kamali, Mohammad Hasim (2011) *Citizenship And Accountability Of Government: An Islamic Perspective,* The Islamic Texts Society.

Khan, K., Abbas, M., Gul, A., & Raja, U. (2013). Organizational Justice and Job Outcomes: Moderating Role of Islamic Work Ethic. *Journal of Business Ethics*, 112(2),1-12.

Mauss, M. (1990/1922). *The Gift: forms and functions of exchange in archaic societies*. London: Routledge.

Mayer, Ann E. (1998). "Islamic Reservations To Human Rights Conventions: A Critical Assessment". *Recht van de Islam* 15: 25-45.

Mernissi, F. (1993). *Women and Islam: An Historical and Theological Inquiry*. (Transl. M. Lakeland), Cambridge University Press.

Moussalli, A. (2001). *The Islamic Quest for Democracy, Pluralism and Human Rights*. University Press of Florida.

Polanyi, K. (1957). *The Great Transformation*. New York: Basic Books

Possumah, B. T., Ismail, A. G., & Shahimi, S. (2013). Bringing Work Back in Islamic Ethics. *Journal of Business Ethics*, 112(2), 257-270.

Quasem, Mayesha (2014) "The Prospects for Change in Qatar's Human Rights Discourse as Future Hosts of the 2022 World Cup", Tenth Biennial Graduate Student Conference paper, *Conflict Studies and Global Governance: The New Generation of Ideas*, American University, School of International Service, 31 October – 1 November, 2014, Washington. http://www.umb.edu/editor_uploads/images/mgs/45_The_Prospects_for_Change_in_Qatar%E2%80%99s.pdf

Ramadan, Tariq (2007). *In the Footsteps of the Prophet: Lessons from the Life of Muhammad*. Oxford University Press.

Sen, Amartya (1999). *Development as Freedom*. Oxford: Oxford University Press.

Siddiqui, Haroon (2008) *Being Muslim: a groundwork guide*, Ontario, Ontario Arts Council.

Smith, Adam (1790/2006). *The Theory of Moral Sentiments*. Sao Paulo, MetaLibri. http://www.ibiblio.org/ml/libri/s/SmithA_MoralSentiments_p.pdf (accessed 19 January 2015)

Smith, Adam (1776/1937). *The Wealth of Nations*. London, Random House. https://www.marxists.org/reference/archive/smith-adam/works/wealth-of-nations/index.htm (accessed 10 February 2015)

Stam, K., Verbakel, E., & De Graaf, P. M. (2013). Explaining Variation In Work Ethic In Europe: religious heritage rather than modernisation, the welfare state and communism. *European Societies*, *15*(2), 268-289.

Syed, Jawad (2010) "Principles of Employment Relations in Islam: a normative view", *Employee Relations*, Vol. 32 Issue 5, pp 454-469.

Thompson, Edward P. (1991). *Customs in Common*. New York: New Press.

Tripp, Charles (2006). *Islam and the Moral Economy: The Challenge of Capitalism*. Cambridge University Press.

Turner, Bryan (1974). *Weber and Islam: A Critical Study*. London & Boston, Routledge and Kegan Paul.

Verite (2013). "Corruption & Labor Trafficking in Global Supply Chains". White Paper, www.verite.org, December 2013.

Zelizer, V (1994). *The Social Meaning of Money*. New York: Basic Books

Zulfikar, Y. F. (2012). Do Muslims believe more in Protestant work ethic than Christians? Comparison of people with different religious background living in the US. *Journal of Business Ethics*, *105*(4), 489-502.

Zulfiqar, Adnan (2007) "Religious Sanctification of Labor Law: Islamic Labor Principles and Model Provisions", *University of Pennsylvania Journal of Labor and Employment Law*, Vol. 9, (2), pp. 421-444).