

ARTICLE

Special Section: The FIFA World Cup 2022 and the struggle for human rights in Qatar

# Forecasting Human Rights Legacies: On Practices and Principles

Andrew Brady Spalding<sup>1</sup>

<sup>1</sup>University of Richmond School of Law, Richmond, Virginia, United States

Email: [aspaldin@richmond.edu](mailto:aspaldin@richmond.edu)

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## Abstract

Among the many human rights and corruption concerns surrounding the Qatar 2022 FIFA Men's World Cup, two ultimately rose to the fore: labor and LGBTQ+ rights. A careful look at Qatar's response to these issues reveals a sharp and provocative contrast. Though the World Cup organizers and the Qatari Government generally resisted Western criticism of its LGBTQ+ laws and practices, both bodies adopted systemic labor reforms. To the extent these reforms remain in place several years after the event, they can be said to constitute a human rights legacy. This Article explores one angle from which to understand this contrast. It distinguishes between principles, which are deeply rooted in a country's political, cultural, or religious belief system, and practices, which find their support in convenience, profit, and the self-interest of entrenched powers but which lack a deeper cultural, philosophical, or religious grounding. It further argues that sexual morality is best understood in the context of Qatari law and culture as a principle, while the labor abuses are mere practices. This distinction helps explain the disparate levels of reform and legacy: to the extent human rights violations are rooted in principles, the likelihood of reform and therefore of legacy is relatively low; where these violations are rooted merely in practices, the likelihood may be substantially higher. This distinction can also help to predict how future host countries/cities will respond to the human rights standards that megasport governing bodies increasingly enforce.

**Keywords:** Human rights; labor; LGBTQ+; FIFA; Qatar

## A. Introduction

Academics, sports governing bodies, and stakeholders have spoken of legacies for decades. But there now emerges a new legacy, one less tangible than physical infrastructure and less quantifiable than economic returns, but arguably more resonant with the founding ideals of megasports. This new legacy is a human rights and anti-corruption legacy, which I define as laws, policies, practices or norms promoting human rights, transparency, and accountability, that apply beyond the event, remain in place after the event is over, and the implementation of which is accelerated by hosting the event. The strongest candidate for eventually producing such a legacy has turned out to be perhaps the least likely—a tiny, Islamic, Middle Eastern country with relatively weak sporting traditions, no discernable role in the global human rights movement, and far removed both geographically and politically from the historic power centers of international organized sport.

The world well knows the panoply of governance issues Qatar faced at the moment it shockingly won the rights to host the 2022 FIFA Men's World Cup. Credible allegations of bribery

arose, and numerous human rights issues were almost immediately exposed. But in the twelve years between that 2010 award and the 2022 event, two governance issues would emerge as most salient: Labor and LGBTQ+ rights.

On the LGBTQ+ side, the media publicized Qatar's criminalization of homosexuality,<sup>1</sup> the prohibitions on player armbands, and the restrictions on LGBTQ+ speech within the stadiums more generally.<sup>2</sup> On this issue, public perception matches reality— Qatar proved obstinate on LGBTQ+ rights, quite willing to resist Western human rights norms and assert its own value system at the cost of LGBTQ+ players, fans, workers, and advocates.

By contrast, on labor there remains a disconnect between perception and reality. Qatar's labor problems are deeply ingrained in the public's consciousness, and for good reason. However, few know, and fewer yet will publicly acknowledge, Qatar's successes in implementing reforms. Qatar not only improved working conditions on World Cup-related work with its Worker's Welfare Standards but went much further, overhauling its national labor law framework. The labor reforms Qatar adopted as it prepared to host the 2022 FIFA Men's World Cup include: a mandatory, nondiscriminatory minimum wage for all workers; a wage protection system to ensure payment; a Minimum Wage Commission; an overhaul of the *kafala* sponsorship system to include the abolition of no-objection certificates, passport confiscation, and exit permissions; enhanced heat mitigation strategies; various measures to amplify workers' voices and enhance access to justice, including Ministry of Labor committees for resolving labor disputes; enhanced training of labor inspectors to help ensure compliance with these reforms; a workers support and insurance fund; the establishment of visa centers in the migrant workers' home countries; a domestic workers law; and the ratification of two principal international human rights conventions.<sup>3</sup> In so doing, I argue, Qatar laid claim to building the groundwork for the first megasport human rights legacy. Of course, legacies cannot be said to exist until years after the event is over, and thus the jury is still out on Qatar 2022. Only time will tell which of the country's reforms remains in place, survives the inevitable counterpressure and, eventually, becomes a legacy. But the likelihood that some substantial portion of the reforms eventually become legacy would seem high, and if they do, would be highly significant for megasports.

That unpopular claim is more aptly defended elsewhere.<sup>4</sup> In this Article I want to briefly ask, why the contrast? How are we to make sense of the juxtaposition between Qatar's labor problems, with which Qatar deliberately engaged and to at least some extent reformed, and its LGBTQ+ issues, which Qatar more obstinately resisted? Why so much progress on one front, and so little on the other? And what implications does this juxtaposition have for the future prospects of human rights legacies?

To make sense of the difference between the progress on labor and the resistance on LGBTQ+ issues, this Article introduces a distinction between a practice, and a principle. It argues that labor in Qatar is best understood as a practice, while the country's official position on sexual morality is better characterized as a principle. As explained below, practices present far stronger prospects for progress than principles. Whether a given human rights issue is better understood as a practice or a principle will thus have significant implications for the likelihood of reform and, ultimately, of legacy.

This Article will first flesh out the notion of a human rights and anti-corruption legacy. It will then develop the distinction between a principle and a practice, and place Qatar's labor reform

<sup>1</sup>See Aimee Lewis, "It's Not Safe and it's Not Right." *Qatar Says All Are Welcome to the World Cup But Some LGBTQ+ Soccer Fans Are Staying Away*, CNN (Nov. 19, 2022), <https://www.cnn.com/2022/11/19/football/qatar-world-cup-2022-lgbtq-rights-spt-intl/index.html>.

<sup>2</sup>See Ellen Ioanes, *Qatar's Anti-LGBTQ+ Policies, Explained*, VOX (Dec. 3, 2022), <https://www.vox.com/2022/12/3/23477966/qatar-anti-LGBTQ+-fifa-world-cup>.

<sup>3</sup>STATE OF QATAR GOV'T COMM'NS OFF., IN FOCUS: LABOUR REFORM, <https://www.gco.gov.qa/en/focus/labour-reform/> (last visited June 4, 2021).

<sup>4</sup>See ANDREW SPALDING, *A NEW MEGASPORT LEGACY: HOST-COUNTRY HUMAN RIGHTS AND ANTI-CORRUPTION NORMS* (2022).

successes and LGBTQ+ shortcomings in this context. It concludes with reflections on the Qatari experience for the future prospects of human rights legacies.

## B. Legacies, Principles, and Practices

The idea that megasports can, and should, leave legacies of any kind gained momentum in the 1990s. With the collapse of the Soviet Union, the rise of globalization and the emergence of more globalized standards of governance, international commentators and policymakers more closely examined the governance of megasports and their impact on host communities. Newcomers to this space, when hearing the word “legacy” invoked, may immediately think of physical infrastructure and long-term economic impacts. But the robust literature on legacy has identified a far broader array of impacts, both positive and negative, which can and should be counted in the legacy ledger.

The leading thinker in this space, Prof. Holger Preuss from Johannes Gutenberg University, distilled decades of analysis into three dimensions of legacy and developed the helpful concept of a “legacy cube.”<sup>5</sup> Preuss’ three dimensions of legacy are planned vs. unplanned, negative vs. positive, and tangible vs. intangible.<sup>6</sup> He ultimately defines legacy as “all planned and unplanned, positive and negative, tangible and intangible structures created for and by a sport event that remain longer than the event itself.”<sup>7</sup> Accordingly, legacies may arise by design or by accident; they may promote generally accepted goals and norms or undermine them; they take the form of physical structures but also economic returns, laws and policies, reputational gains, knowledge, values, or even impressions.

The human rights and anti-corruption legacy—again, defined as laws, policies, practices, and/or norms promoting human rights and transparency, that have application beyond the games, will endure after the games are over, and the development of which is accelerated by hosting the event—fits neatly within this cube. It is planned, positive, and intangible. Where the implementation of human rights and/or anti-corruption laws, policies, practices, or norms is accelerated by hosting an event such as the FIFA Men’s World Cup, and “remain longer than the event itself,” they become a legacy.

But conceptually—and, as explained below, the Qatari experience teaches—a given host country may make substantial progress on one human rights issue, while steadfastly refusing to budge on another. Why the difference? And is this outcome predictable? The distinction between a principle and a practice may help answer these questions.

We might define here a “principle” as a norm that is deeply rooted in the public ideology and civic culture of a country. One scholar defines a legal principle as “basic norms that represent the general consensus on basic society understandings.”<sup>8</sup> Similarly, another defines principle as a “fundamental value” that is “handed down from one century to another” and thus “appears with such an aura of prestige and authority as to seem almost indisputable and ineluctable,” achieving “legitimacy on its own.”<sup>9</sup> It may be enshrined in foundational texts and public documents. It will be taught in schools from a young age and invoked at community celebrations. National leaders will preach this principle, sometimes in good faith and sometimes in bad. Principles will doubtless be implemented imperfectly. But there again, critics of this imperfection will invoke the principle, and thus the critique of the state’s failings itself affirms the principle.

<sup>5</sup>Holger Preuss, *The Conceptualisation and Measurement of Mega Sport Event Legacies*, 12 J. SPORT TOURISM 207, 211 (2007).

<sup>6</sup>OLYMPIC LEGACIES: INTENDED AND UNINTENDED: POLITICAL, CULTURAL, ECONOMIC, AND EDUCATIONAL 41 (J.A. Mangan & Mark Dyerson eds., 2013) (citing Chris Gratton & Holger Preuss, *Maximizing Olympic Impacts by Building Up Legacies*, 25 INT’L J. HIST. SPORT 1922 (2008)).

<sup>7</sup>See Preuss, *supra* note 5, at 211.

<sup>8</sup>Jordan Daci, *Legal Principles, Legal Values and Legal Norms: Are They the Same or Different?*, 2 ACADEMICUS INT’L SCI. J. 109, 109 (2010).

<sup>9</sup>Guido Alpa, *General Principles of Law*, 1 ANN. SURV. INT’L & COMP. LAW 1, 2 (1994).

A practice is different. It is born of expediency or profit, not of sacred or quasi-sacred text. It is reinforced not by the concept's inherent persuasiveness and irresistible moral power, but by self-interest, inertia, and/or the human capacity for cruelty or at least the knowing deviation from our intuitions of justice. It does not find its origins in foundational texts; it is not enshrined in the sacred public documents; it is not recited by children at school or adults at festivals. If endorsed, it is often in private, in hushed tones. Less commonly it may be endorsed publicly, only by persons whom most can see lie on the losing side of history: The reactionaries, the entrenched interests, the shock jocks. Even so, it may nevertheless be implemented systematically, in ways the state tolerates or even reinforces. Its roots may still run deep, but those roots lie in convenience and demagoguery rather than in public philosophy and civil discourse.

Ultimately, "practice" and "principle" may be best understood as end points on a continuum, rather than absolutely distinct categories. A given norm may lie closer to one than to the other, and its proper placement may well prove a topic of serious scholarly dispute. Even so, the conceptual distinction may help to explain what happened in Qatar, and what may happen in future megasporting events.

### C. Comparing LGBTQ+ and Labor: Reforms, or Lack Thereof

When examining the extent to which Qatar reformed its practices, if not its laws, in the course of hosting the FIFA Men's World Cup, labor and LGBTQ+ rights provide a sharp juxtaposition. Consider first the LGBTQ+ issues, where Qatar demonstrated little willingness to meaningfully reform its LGBTQ+ practices in the World Cup, much less reform its national legal framework.

There is a myriad of examples. During the World Cup itself, Qatar largely suppressed symbols reflecting LGBTQ+ pride and equality. The most prominent example of this was the ban on the "One Love" captain's armband. As a protest against Qatar's anti-LGBTQ+ laws, several football team captains were set to wear an armband with the words "One Love" surrounded by a rainbow-colored heart during the group stage games.<sup>10</sup> However, within hours of kickoff, teams were told that captains wearing this armband would receive an immediate yellow card for violating FIFA's prohibition on "political statements."<sup>11</sup> While FIFA itself issued the ruling, it would seem likely that the organization acted at the behest of the Qatari government. Similarly, reports indicated that many fans were barred from wearing rainbow-themed gear inside the stadium, despite representations that this would be allowed.<sup>12</sup> Foreign governments voiced their frustration with FIFA's prohibition on the "One Love" armbands. German foreign minister Annalena Baerbock stated that if international sports officials censor away representations of fair play and diversity then they will "destroy football."<sup>13</sup> Furthermore, U.S. Secretary of State Anthony Blinken criticized the prohibition by stating that "any restriction on freedom of expression" was "always concerning."<sup>14</sup> Whether the suppression of this speech at the stadiums reflected erratic enforcement by ground-level security guards, or instead a high-level decision among the organizers to spurn Western human rights standards, remains unknown. Regardless, to those on the ground, Qatar's obstinance was unmistakable.

<sup>10</sup>See Armani Syed, *The "One Love" LGBTQ+ Rights Armband Is Causing a Stir at the Qatar World Cup*, TIME (Nov. 21, 2022), <https://time.com/6235503/one-love-armband-qatar-world-cup>.

<sup>11</sup>*Id.*

<sup>12</sup>See Leo Sands & John Hudson, *Rainbow-Wearing Soccer Fans Confronted at Qatar World Cup*, WASH. POST. (Nov. 22, 2022), <https://www.washingtonpost.com/sports/2022/11/22/rainbow-flag-fifa-soccer-qatar/#>.

<sup>13</sup>See *Fifa verbietet nun auch noch belgische Trikots*, WELT (Nov. 21, 2022), <https://www.welt.de/sport/fussball/article242242459/WM-2022-Fifa-verbietet-nach-One-Love-Binde-auch-belgische-Trikots.html?cid=search.product.onsitesearch>.

<sup>14</sup>See Tucker Reals & Holly Williams, *Blinken Calls FIFA's "One Love" Armband Ban "Concerning" as LGBTQ+ Soccer Fans Lament "Tarnished" World Cup*, CBS NEWS (Nov. 22, 2022), <https://www.cbsnews.com/news/2022-world-cup-fifa-qatar-lgbtq-armband-blinken-freedom-expression/>.

Qatar's approach to labor deserves a very different narrative, even if that narrative never made its way into the public commentariat or consciousness. Qatar's atrocious labor rights landscape, as of 2010 when it won the rights to host the event, was well-publicized largely through a series of independent reports. While the International Trade Union Confederation was calling attention to Qatar's labor problems soon after the Qatar hosting announcement,<sup>15</sup> the first major report to publicize these problems appeared in the British newspaper *The Guardian*. Published in September of 2013,<sup>16</sup> the report put human faces on abusive labor practices as workers voiced their frustrations with the *kafala* system, breach of employment contracts, passport confiscation, and lack of freedom of movement. The video report went inside a Qatari migrant worker camp to show cramped living quarters, unsanitary bathrooms, and kitchens infested with bugs, which the workers described as very typical for their living accommodations. So too did the report compile a wide range of evidence that Qatari employers were engaging in abusive and exploitative practices that constitute modern-day slavery—as defined by the International Labor Organization (the "ILO")—despite assurances that workers' rights would be respected. More reports followed. Amnesty International released "Qatar: The Dark Side of Migration" in November 2013 and would continue to observe and report on issues in Qatar.<sup>17</sup> Five months later, in February of 2014, the UN Human Rights Council released its second cycle periodic review of Qatar's human rights record—the first cycle review occurred in 2010 and the third cycle in 2019.<sup>18</sup> In April of 2014, the UN Special Rapporteur on Human Rights of Migrants released a report on the human rights of migrants, which implicated Qatar.<sup>19</sup>

Far less appreciated, and quite predictive of Qatar's eventual posture on labor reform, was a report released to the public in 2014. The Qatari national government commissioned the international law firm DLA Piper to perform an independent review of Qatar's legislative and enforcement framework for its labor laws.<sup>20</sup> The report substantially corroborates, and indeed relies on, the prior outside reports. To complete the independent review, DLA Piper reviewed reports, national and international legislation, treaties, and internationally recognized best practices, and consulted with the relevant Qatari government agencies and stakeholders. The report identifies nine key issues for examination: Recruitment agents and fees, *kafala* sponsorship system, contract misrepresentation and substitution, wages, health and safety, accommodation, labor inspections, freedom of association and collective bargaining, and access to justice.<sup>21</sup>

Quite notably, Qatar elected to conduct an independent, rather than an internal, investigation, evincing a genuine interest in understanding the full scope of its labor issues. Put another way, the investigation was structured to afford the Qatari government comparatively little oversight and control over the law firm's investigation and findings. The report's findings largely corroborated the previous reports by *The Guardian*, Human Rights Watch, and Amnesty International. Once released, Qatar conspicuously declined to discredit or otherwise distance itself from it. In effect, Qatar was leaning in.

<sup>15</sup>Qatar: No World Cup Without Labour Rights, INT'L TRADE UNION CONFEDERATION (Nov. 17, 2011), <https://www.ituc-csi.org/qatar-no-world-cup-without-labour>.

<sup>16</sup>Pete Pattison, Revealed: Qatar's Work Cup "Slaves," THE GUARDIAN (Sept. 25, 2013), <https://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves>.

<sup>17</sup>AMNESTY INT'L, QATAR: THE DARK SIDE OF MIGRATION: SPOTLIGHT ON QATAR'S CONSTRUCTION SECTOR AHEAD OF THE WORLD CUP (2013), <https://www.amnesty.org/en/documents/MDE22/010/2013/en/>.

<sup>18</sup>U.N. HUM. RTS. COUNCIL, UNIVERSAL PERIODIC REVIEW SECOND CYCLE QATAR, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/QAindex.aspx>.

<sup>19</sup>See U.N. General Assembly, Human Rights Council, Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, on His Mission to Qatar (3 to 10 Nov. 2013), U.N. Doc: A/HRC/26/35/Add.1 (Apr. 23, 2014), <http://undocs.org/A/HRC/26/35/Add.1>.

<sup>20</sup>ANDREW SPALDING, A NEW MEGASPORT LEGACY 194–97 (2022).

<sup>21</sup>See generally *id.*



Of course, outside pressure remained. Two formal complaints were filed with the ILO against Qatar alleging Qatar's nonobservance of the Forced Labor Convention and the Labor Inspection Convention: The first, in January 2013, by the International Trade Union Confederation and the International Federation of Building and Wood Workers, and then, the second, in June 2014 by delegates of twelve member states.<sup>22</sup> After some wrangling, the Qatari government and the ILO agreed to establish a Technical Cooperation Programme.<sup>23</sup> This program was launched to ensure accurate compliance with ratified labor conventions and to apply fundamental principles and rights at work in Qatar in a gradual manner for the duration of the program beginning in 2018 and ending in 2020.<sup>24</sup> A governance structure was created to foster collaboration between the ILO and the Ministry of Administrative Development, Labour, and Social Affairs—hereinafter the Ministry of Labour—the entity responsible for labor and employment affairs related to Qatari citizens and foreign residents.<sup>25</sup> It is hard to imagine that Qatar's reforms would have occurred to such an extent absent the ILO complaint and the Technical Cooperation Programme. Even so, Qatar participated in the reform process with a degree of cooperation unseen in any prior megasport host.

The result was a systemic legislative overhaul of Qatar's labor rights regime. Qatar reformed the employee-sponsorship system known as *kafala* by abolishing requirements of an exit permit for workers to leave the country, as well as eliminating no-objection certificates from their employer to change jobs. Qatar adopted a minimum wage that does not discriminate on basis of nationality, which includes thresholds not just for wage but also for food and accommodation. The country created a Minimum Wage Commission to oversee implementation and a Wage Protection System to monitor payment to workers. It created the Worker's Support and Insurance Fund, and improved its online complaints platform to increase workers' access to Ministry of Labor. It adopted legislation to protect workers from heat stress during summer, which included expansion of hours during which work is prohibited, and a threshold for stopping work regardless of time. Qatar established visa centers in countries of origin, reducing fraud and abuse in the recruitment process. Of course, legislative gaps remain, and enforcement challenges loom. The country has already seen shortcomings in implementing *kafala* reforms and the payment of wages. The time it takes a worker filing a complaint to get a court date remains far too long, and implementation of fair recruitment standards is proving difficult.<sup>26</sup> Nevertheless, Qatar emerged from the FIFA Men's World Cup with among the most progressive labor protections in the Middle East.

Without the World Cup, the various independent reports would never have garnered so much attention and in some cases may not have been written. Qatar would be under no more international pressure to reform its labor laws than any other country from the Middle East or elsewhere. Neither can one imagine, absent the World Cup, Qatar demonstrating the same resolve to align its national legislative framework with Western standards. To the extent these reforms remain in place, they will be rightly understood as a human rights legacy of the megasport event.

Why Qatar bent so far on labor rights, and so little on LGBTQ+ rights, is surely a complex question with numerous contributing factors. This Article tries to capture one of them.

<sup>22</sup>International Labour Office, *Complaint Alleging Non-Observance by Qatar of the Forced Labor Convention, 1930 (No. 29), and the Labor Inspection Convention, 1947 (No. 81), Made by Delegates to the 103rd Session (2014) of the International Labor Conference Under Article 26 of the ILO Constitution*, GB.323/INS/8 (Rev.1), at 3 (Mar. 16, 2015), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_348745.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_348745.pdf).

<sup>23</sup>*Id.*

<sup>24</sup>International Labour Office, *Follow-Up to the Decision Adopted by the Governing Body at its 331st Session to Support the Technical Cooperation Programme Agreed Between the Government of Qatar and the ILO and its Implementation Modalities*, GB.334/INS/8, at 1 (Oct. 24, 2018), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_647832.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_647832.pdf).

<sup>25</sup>See INT'L LAB. ORG., PROJECT OFFICE FOR THE STATE OF QATAR, [https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/briefingnote/wcms\\_648005.pdf](https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/briefingnote/wcms_648005.pdf); see also MINISTRY OF LAB., ABOUT THE MINISTRY, <https://www.mol.gov.qa/ar/ministry/Pages/About-the-Ministry.aspx>.

<sup>26</sup>*Overview of Qatar's Labour Reforms*, INT'L LAB. ORG., [https://www.ilo.org/beirut/countries/qatar/WCMS\\_760466/lang-en/index.htm](https://www.ilo.org/beirut/countries/qatar/WCMS_760466/lang-en/index.htm).

#### D. Qatari Principles, Qatari Practices

The status of LGBTQ+ rights and labor rights, respectively, as either a practice or a principle depends mainly on their relation to Qatar's public philosophy, which is of course Sunni Islam. Of the four primary schools of Sunni thought—Hanafi, Shafi, Maliki, and Hanbali<sup>27</sup>—Qatar identifies with the Hanbali school, which can be traced back to the Wahhabi movement founded in Saudi Arabia near the end of the 18th century.<sup>28</sup> Wahhabism sought to return to the “pristine purity of early Islam” free of “innovations contrary to its true spirit.”<sup>29</sup> Today, Qatar differs markedly from its Hanbali neighbor, Saudi Arabia, in the relation between religion and the state—Qatar has no morality police, its religious schools have no institutionalized role in political decision-making, and the country lacks a native Ulama—a body of specialist Islamic scholars.<sup>30</sup> Qatar has sought to shape an identity as a “moderate” Islamic state, though some suspect this has more to do with currying Western favor than actually governing more liberally.<sup>31</sup> Even so, one scholar believes that “religiosity will be increasingly looked to as a means of preserving indigenous culture” in Qatar.<sup>32</sup> Evidence of religiosity abounds. Sharia law continues to provide the main source of Qatari legislation,<sup>33</sup> all private schools and kindergartens are required to teach “Islamic Education” to its students as an individualized course,<sup>34</sup> Friday is widely reserved for religious observance,<sup>35</sup> and Qatar bans the use and sale of alcohol and pork products to its Muslim citizens.<sup>36</sup> Facing the deluge of Western institutions, norms, commentary, and persons, Qatar preserved and has steadfastly defended its Islamic religious identity.

While some commentators dispute the status of homosexuality in Islam, or at least the appropriate role of the state in punishing it, Qatar has adopted the mainstream Islamic approach of treating it as a sin and punishing accordingly.<sup>37</sup> Drawing on Sharia precepts, Qatari law directly punishes members of the LGBTQ+ community simply for their status as non-heterosexuals.<sup>38</sup> Qatari law criminalizes same-sex sexual activity under its Penal Code and carries a maximum of seven years imprisonment.<sup>39</sup> Qatar is one of the few Muslim countries that does not punish acts of homosexuality with corporal punishment, but instead with fines and jail times. While Qatar reduced the harshness of that section of its code in 2004, homosexuality remains criminalized under Qatari law and pleadings to reform the law went conspicuously unheeded.<sup>40</sup> Perhaps

<sup>27</sup>EUROPEAN PARLIAMENT, BRIEFING: UNDERSTANDING THE BRANCHES OF ISLAM: SUNNI ISLAM 4 (Feb. 2016), [www.europarl.europa.eu/RegData/etudes/BRIE/2016/577963/EPRS\\_BRI\(2016\)577963\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/577963/EPRS_BRI(2016)577963_EN.pdf).

<sup>28</sup>See A. Nizar Hamzeh, *Qatar: The Duality of the Legal System*, 30 MIDDLE E. STUDS. 79, 79–90 (1994).

<sup>29</sup>EUROPEAN PARLIAMENT, *supra* note 27, at 6.

<sup>30</sup>See Birol Baskan & Steven Wright, *Seeds of Change: Comparing State-Religion Relations in Qatar and Saudi Arabia*, 33 ARAB STUDS. Q. 96, 96–111 (2011).

<sup>31</sup>See Annelle R. Sheline, *Shifting Reputations for “Moderation”: Evidence from Qatar, Jordan, and Morocco*, 12 MIDDLE E. L. & GOVERNANCE 109 (2020).

<sup>32</sup>See Baskan & Wright, *supra* note 30, at 110.

<sup>33</sup>U.S. STATE DEP'T, QATAR, <https://2009-2017.state.gov/documents/organization/171743.pdf>.

<sup>34</sup>See Tawfiq Nasrallah, *Qatar: Arabic, Islamic Education Now Mandatory at All Private Schools*, GULF NEWS (May 21, 2021), <https://gulfnnews.com/world/gulf/qatar/qatar-arabic-islamic-education-now-mandatory-at-all-private-schools-1.79361274>.

<sup>35</sup>See Kushboo Shah, *The Crossroads of Religion and Culture in Qatar*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS.: JYAN BLOG (Oct. 14, 2021), <https://berkeleycenter.georgetown.edu/posts/the-crossroads-of-religion-and-culture-in-qatar>.

<sup>36</sup>See Tom Cotterill, *What Laws Will World Cup Fans Have to Obey in Qatar?*, DAILY MAIL (Nov. 18, 2022, 9:02 AM), <https://www.dailymail.co.uk/news/article-11443723/World-Cup-2022-laws-Qatar-alcohol-LGBTQ+-wear.html>.

<sup>37</sup>See, e.g., Nicole Kligerman, *Homosexuality in Islam: A Difficult Paradox*, 2 MACALESTER ISLAM J. 52, 53–54 (2007) (discussing the view of homosexuality in Islamic doctrine and practice).

<sup>38</sup>*Id.*

<sup>39</sup>Qatar, HUM. DIGNITY TR., <https://www.humandignitytrust.org/country-profile/qatar/>.

<sup>40</sup>See generally *id.*

capturing this enduring sensibility, a Qatari ambassador for the World Cup notoriously stated that homosexuality is “a damage in the mind.”<sup>41</sup>

Sexual morality is therefore deeply rooted in Qatar’s public philosophy and, as such, is properly understood as a principle. Once framed as a principle, Qatar’s resistance to Western reform pressures is perhaps no less frustrating but far more predictable.

By contrast, the labor practices that became the target of so much Western criticism and reform pressure find no such justification in Islamic political philosophy. Professor Ray Jureidini, from the College of Islamic Studies at Hamad Bin Khalifa University in Doha, has demonstrated that although the normative principles of *kafala* have deep roots in Islamic jurisprudence related to the “trust, care, responsibility and obligations in relation to the presence and employment of foreigners,” in modern practice throughout the GCC region “the exploitative potential has overtaken the ethical guidelines.” The modern abuses of these deeply-rooted principles of *kafala*, not to mention myriad other abuses such as unsafe working conditions, and failure to pay wages, have no principled basis in Islamic jurisprudence or anywhere else. He concludes that “the contemporary problems of *kafala* are primarily because of the abuse of the principles rather than the principles themselves.”<sup>42</sup> Similarly, Houtan Homayounpour, the former head of the Qatar office of the ILO, has argued that under traditional *kafala* principles “the sponsor was supposed to take care of [the migrant worker], ensure their safety . . . and well-being. And over time, because of various changes to legislation, this became a power imbalance between workers and employers, and eventually opened the workers to abuse.”<sup>43</sup> In the eyes of both commentators, Qatar’s abusive labor practices are divorced from any underlying normative support in Islamic thought. The Western critique of Qatar’s labor practices focuses on these abuses, not the underlying principles.

Put another way, Qatar’s labor rights problems are better framed as practices than as principles. While there was, and is, organized resistance to the ongoing reform movement, this resistance cannot find nearly the justification in Qatari political thought that sexual morality can find for those inclined to look. Resistance to Qatar’s various labor reforms was rooted in custom, profit, and the exploitation of power imbalances, not in the Quran or Islamic jurisprudence more broadly. That being the case, years of external and internal political pressure successfully produced a substantial overhaul of Qatar’s labor rights framework. That overhaul, should it remain in place significantly beyond the 2022 megasport event, becomes a human rights legacy.

## E. Conclusion

The distinction between practice and principle may have explanatory power beyond Qatar. It can help predict the likelihood of human rights reforms, and legacies, for future megasport hosts. Of course, principles do not inevitably trump practices, and the multiplicity of factors that contribute to the relative strength of each is a question beyond the purview of this Article. Nevertheless, consider, for example, the next FIFA Men’s World Cup and the co-host which this author knows best, the United States. Human rights observers will call attention to a panoply of areas in which the U.S. fails to conform to global human rights standards. On which of these issues is the U.S. more, or less, likely to adopt reforms in preparation for the event? The next several years will tell. But some of those departures from global practice originate in U.S. political philosophy, the

<sup>41</sup>Qatar Official Says Homosexuality Is “Damage In The Mind” Before World Cup Kicks Off, SKY SPORTS (Jan. 16, 2023), <https://www.skysports.com/football/news/11095/12742403/qatar-official-says-homosexuality-is-damage-in-the-mind-before-world-cup-kicks-off>.

<sup>42</sup>Ray Jureidini & Said Fares Hassan, *The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform*, in *MIGRATION AND ISLAMIC ETHICS* 93 (2019).

<sup>43</sup>Kali Robinson, *What is the Kafala System?*, COUNCIL ON FOREIGN RELS. (Nov. 18, 2022), <https://www.cfr.org/background/what-kafala-system>.



Constitution, and revered episodes of U.S. history. These are instances of American Exceptionalism, and are best understood as principles. Where nonconformity with global human rights standards is so rooted, sustained resistance can be expected. But where the departure is merely one of convenience, profit, and inertia, in the face of outside pressure the U.S. may—or may not—prove amenable to reform. Which American human rights issues are principles or practices is of course a complex topic for another time, but one well worth considering.

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