RELIGIOUS SANCTIFICATION OF LABOR LAW: ISLAMIC LABOR PRINCIPLES AND MODEL PROVISIONS

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On January 22, 2004, the President of the AFL-CIO, John J. Sweeney, issued a statement emphasizing the need for instituting a new labor code in Iraq. He noted that, in addition to constitutional reform, it was necessary to bring about a fresh labor regime in the country. The Code in place prior to the invasion of Iraq had been the 1987 Code enacted by Saddam Hussein. This Code, in addition to being a product of its unique political circumstances, remained largely secular in its approach, representative of Saddam’s Baathist party ideology.


2. This process already began in the fall of 2003 under the Coalition Provisional Authority, which undertook to reform the old Iraqi labor code, placing particular emphasis on worker’s rights. It was followed by the International Labor Organization (ILO) revision of the 1987 Iraqi Labor Code (“1987 Code”) that spring. However, at the time of transition, agreement had not been reached on the final version of the new Code, hence leaving the pre-occupation code in effect. See Craig Davis, Reinserting Labor into the Iraqi Ministry of Labor and Social Affairs, MONTHLY LAB. REV., Jun. 2005, at 53, 56 (discussing labor code reform during the transition to the Iraqi Interim Government).

3. Id.

4. These circumstances demonstrated the vindictive nature of Saddam Hussein’s approach to labor in Iraq because, among other things, trade unions and rights of association were banned altogether. See Matthew Harwood, Pinkertons at the CPA: Iraq’s Resurgent Labor Unions Could Have Helped Rebuild the Country’s Civil Society. The Bush Administration, of Course. Tried to Crush Them, WASH. MONTHLY, Apr. 2005, at 24, 25 (“In 1987, Saddam . . . effectively banned trade unions in the public sector, where the majority of people worked.”).

5. The Baath (“Resurrection”) Party formed in 1947 as a secular, Arab nationalist party. Its initial founders were an orthodox Christian and a Sunni Muslim. Their initial mission was to unify the Arabs and to gain freedom from foreign rule. The party gained a stronghold in both Syria and Iraq. See John F. Devlin, The Baath Party: Rise and Metamorphosis, 96 AM. HIST. REV. 1396, 1396-97 (1991) (discussing the beginnings of the Baath party).
Today, the politics of occupation in Iraq, subsequent to regime change, have raised the specter of religious values shaping the future of the Iraqi state more than secular ideologies. The debate surrounding drafting of the new Iraqi constitution, and the draft constitution itself, suggest that religion will play a preeminent role in constructing the new vision of Iraq, regardless of opposition from the outside. It is imperative then that legal reformers, including those who wish to reform the labor code, seek justification from Islamic law (Sharia) and juristic discourses (fiqh) to support any reformulation of the Iraqi labor code. As other reform projects have proven, Muslim nations, eager to assert their Islamic identity in a post-colonial world, seek to pursue reforms that synthesize principles of their faith and requirements of modernity. In Pakistan, for instance, attempts have been made to establish Islamic doctrine as a ‘higher law’ over the ordinary ‘secular law.’ This can be contrasted with Indonesia where a merger between secular and Islamic law has been sought, and Malaysia, which has constructed its own unique formula. Furthermore, as our own legal tradition suggests, ‘morality’ cannot be divorced from the

6. See Editorial, Winners and Losers in Iraq, N.Y. TIMES, Dec. 26, 2005, at A30 (discussing the 2006 Iraqi elections and noting that the “biggest losers were secular parties and those who tried to appeal to all of Iraq’s communities, not just one religion or ethnic group”).

7. See Edward Wong, The Struggle for Iraq: Religious Law; New Iraqi Constitution May Curb Women’s Rights, N.Y. TIMES, Jul. 20, 2005, at A8 (“If adopted, the shift away from the more secular and egalitarian provisions of the interim constitution would be a major victory for Shiite clerics and religious politicians, who chafed at the Americans’ insistence that Islam be designated in the interim constitution as just ‘a source’ of legislation.”).

8. The term “Islamic law” has multiple meanings, but the meaning I am indicating here is in reference to the “Sharia” which is comprised of the two Islamic sources of religious law: Qur’an and Prophetic Tradition. These sources serve as the moral authority for subsequent juristic rulings or, as Khaled Abou El Fadl states, juristic discourses (known as fiqh). KHALED ABOU EL FADL, REBELLION AND VIOLENCE IN ISLAM 1 (2001) (“The negotiative dynamic between rulers and jurists in Islamic history has produced a complex and rich doctrinal discourse.”). At times, Islamic law can also be viewed in its broader sense, which encompasses both juristic interpretations and the sources of law.


10. Donald L. Horowitz, The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change, 42 AM. J. COMP. L. 233, 236 (1994) (“Experiments in Islamic legal change range widely, even within Asia. In Pakistan, there has been an attempt to install Islamic doctrine as higher law, against which ordinary law is to be measured, utilizing judicial review.”).

11. See Id. (“There is no authoritative Indonesian norm of the supremacy of Islamic law; instead, there is a good deal of merger of Islamic and secular principles. . . . [In Malaysia . . . dozens of new statutes and judicial decisions have clarified, expanded, and reformulated the law applicable to Muslims.”).
law and all law is premised on a moral foundation. Hence, it is not so strange that a predominately Muslim polity would seek an Islamic basis for their laws.

Fortunately, Islamic law and its juristic discourses contain a significant number of principles that can provide the philosophical premise for creating provisions in a new Iraqi labor code. Ideas of profit sharing, collective bargaining and even trade unions find justification in Islamic law and have been instituted into the codes of many other Muslim countries. In addition, an Islamic theory of labor presents a philosophical source from which guidance for future developments in the code can spring. Most importantly, by containing an Islamic framework, the code will increase its chances of success since it will certainly be considered more legitimate by the Iraqi people.

This comment aims to explore Islam's philosophy of labor and worker's rights, primarily as it is understood by contemporary Muslim nations and thinkers. Part I outlines the historical and theoretical background surrounding the role of religion in the Muslim state and how Islam is incorporated into constitutions in the Muslim world. In Part II, I discuss why religious 'sanctification' may be important for a labor code in

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12. See Daniel Morrissey, Moral Truth and the Law: A New Look at an Old Link, 47 SMU L. Rev. 61, 62 (1993) ("We must never lose sight of the fact that the law has a moral foundation . . . .") (quoting Justice Anthony Kennedy). Naturally, this does not mean that all moral foundations have to be "religious," but that in countries with populations that associate themselves with a particular religion it is likely that their moral foundations will be influenced by their particular spiritual context. Hence, in the Muslim context, it seems only reasonable that Islam serve as the moral foundation. Adequate consideration must of course be given to minorities whose moral foundations may differ from the majority, but in every polity—secular or theocratic—majority/minority differences will require attention. See also, Joseph Khawam, A World of Lessons: The Iraqi Constitutional Experiment in Comparative Perspective, 37 COLUM. Hum. RTS. L. Rev. 717, 754 (2006) ("While the enshrinement of morals in a constitution should not come to embody the moral command of the majority group's will upon all individuals, a complete denial of that moral identity across government institutions would be equally repugnant to any substantive approach to rights.").

13. This is not an isolated phenomenon. See, Chibli Mallat, On the Specificity of Middle Eastern Constitutionalism, 38 CASE W. RES. J. INT'L L. 13, 28-42 (2006) (discussing the various efforts to incorporate Islam into the laws, particularly constitutions, of Muslim countries like Egypt, Iran, Saudi Arabia and Pakistan.).


countries in the “Islamic world.” Part III touches on the primary justifications for codification and puts forth the primary arguments against it. In addition, I briefly discuss the historical presence of codes in the Muslim world. In part IV, I explain, generally, the process involved in deriving Islamic principles from the sources of Islamic law and how these principles (and opinions of Muslim jurists) can be utilized to develop elements of labor law in Muslim nations. Part V discusses the principles from Islamic law that should guide the creation of a Muslim labor code. Finally, in Part VI, I propose an example of what a model provision for an Islamic labor code could look like, derived from a combination of Islamic principles, Muslim labor codes and the model provisions of the International Labor Organization.

I. BACKGROUND

To appropriately understand the role of religion in the lives of Muslims and, more importantly, in the functioning of the state one would have to survey the last 1400 years of Muslim history. Since this is beyond the scope of this paper, it suffices to say that the Islamic civilization, which by the sixteenth century had come to be “the most widespread and influential civilization in the world[,]” transformed significantly in the seventeenth and eighteenth centuries due to the undermining of its “social and economic structure.” By the twentieth century the Muslim world no longer formed “a single society with a common ongoing cultural tradition” as it had for much of its history to that


19. 3 HODGSON, supra note 18, at 411. The primary reasons for this decline seem to be due to changes occurring in the West which deprived the “Nile-to-Oxus region of its special position in the hemisphere.” Id.
point. The result was a bifurcation of the Muslim world into separate nation-states, modeled on Western countries. Although initial nationalistic intrigues dominated much of the discourse in certain regions of the Muslim world, eventually it is the preservation of religious tradition against the onslaught of change which has occupied the Muslim conscience, such that religion has become "the core of the community heritage." In particular, for many among the "Muslim masses," an Islamic state represents the idea—correctly or not—of a "just social order" which will "look[] after the interest of the common man."

One can see how the need for religion became paramount after the end of colonialism. In nations comprised of many different ethnicities and often without a real sense of 'national' identity, except for the one implanted by foreign powers, a moral standard that people could agree upon was necessary for the rule of law. Religion provides "standards of moral valuation independent of the ephemeral changes in our environment[,"] in ways that other moral standards do not.

Hence, virtually all constitutions of the contemporary Muslim world contain a provision similar to the one in the Iraqi constitution, which states: "Islam is the country’s official religion, and is a foundational source for legislation. No law that contradicts the undisputed provisions of Islam may be established." The inclination towards using religion as an arbiter of

20. Id.
21. See Id. ("Muslim regions . . . are severally articulated into a wider world society, the institutions of which have largely been evolved in the Occident.").
22. Id. at 412. Further indication of this can be seen in the former Muslim republics of the Soviet Union, which have struggled with the new role of religion since their independence from the Soviet Union. See e.g., AHMED RASHID, JIHAD: THE RISE OF MILITANT ISLAM IN CENTRAL ASIA 129-130 (2002) (discussing religious extremism in Kyrgyzstan).
23. CHAUDHRI MUHAMMAD ALI, THE EMERGENCE OF PAKISTAN 372 (1967) (discussing the Indian Muslim population's perspective with regard to the creation of Pakistan, a country created specifically for Muslims).
24. MUHAMMAD ASAD, THE PRINCIPLES OF STATE AND GOVERNMENT IN ISLAM 9 (1961). Similarly, in Iraq, it seems that religion provides a basis upon which some agreement—though not complete agreement—can be achieved between the varying ethnicities and factions vying for power.
25. The above is my translation of the Arabic text of the Iraqi Constitution. An alternate English translation can be found at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/24_08_05_constit.pdf (last visited Nov. 21, 2006) ("Text of the Draft Iraqi Constitution"). See also Ann Elizabeth Mayer, Law and Religion in the Muslim Middle East, 35 AM. J. COMP. L. 127, 135 (1987) (noting that virtually without exception a similar clause exists in the constitutions of every Muslim nation). See generally ASAD, supra note 24, at 1-17 (discussing the process of Islamic constitution-making in Pakistan and debates surrounding the inclusion of Islam); AMIRA EL-AZHARY SONBOL, WOMEN OF JORDAN: ISLAM, LABOR, & THE LAW 8 (2003) (noting the influence of Islam on the constitution and codes of Jordan); Clark Benner Lombardi, Islamic Law as a Source of Constitutional Law in Egypt: The Constitutionalization of the Sharia in
valid law has only increased in the last few decades with the re-emergence of Islamic revivalism and the re-institution of the Islamic identity.\textsuperscript{26} Given the critical role Islam seems to play in legislation in Muslim countries, any labor code formulation will require two primary inquiries for it to be considered legitimate. First, does a particular model provision \textit{contradict} Islamic principles and, second, if it does not contradict any principles, are there Muslim juristic opinions which \textit{support} the provision?\textsuperscript{27} These two considerations are critical since in any Islamic labor code formulation the drafters will aim to create concrete rules out of abstract principles. Thus, their first goal will be to establish whether they have correctly understood the underlying Islamic principle and not directly contradicted any other principle. Having found no contradiction, they will then want to further strengthen their formulation by discovering additional juristic opinions or law from other Muslim nations to authenticate their proposal.

\textbf{II. WHY RELIGIOUS SANCTIFICATION?}

With the above discussion in mind, there are three primary ways in which religious sanctification can be important for the creation of any labor code in the Muslim world: sustainability, adaptability and stability. These outcomes will be difficult to attain through a secular framework because of the unique historical context out of which Muslim nations have emerged. For most of Islamic history, there were no nation states, but a large empire composed of satellite states whose borders were defined by their population's religious convictions, as much as if not more than any

\begin{itemize}
  \item \textit{a Modern Arab State}, 37 \textit{COLUM. J. TRANSNAT'L L.} 81, 82 (1998-1999) (noting the rise of popular movements in Muslim nations over the last 30 years calling for the imposition of some form of sharia into constitutions).
  \item \textit{26. See Mayer, supra} note 25, at 129 (discussing the fact that since the 1967 Arab-Israeli War there has been a "dramatic upsurge" in "movements" calling for a "return to Islam"). Mayer goes on to note that "[s]everal Middle Eastern governments have sponsored Islamization programs." \textit{Id.} Specifically, she cites countries like Egypt, Algeria, Kuwait, Iran, Pakistan, Sudan and other gulf countries that conceded to the demands of Islamization. \textit{Id.} at 130; \textit{See also Rashid, supra} note 22, at 129-30 (2002) (discussing revivalism in the former Soviet bloc); Ethel King, \textit{Cover Up: Veiled in the Mists of Time}, \textit{LE MONDE DIPLOMATIQUE}, Jan. 2006, available to subscribers at http://mondediplom.com/2006/01/14dress (discussing the issue of hijab, the veil, and Muslim identity).
  \item \textit{27. Islam lacks an emphasis on precedence in its jurisprudence, particularly when it comes to case law. The closest idea to precedence exists in relation to the opinions of classical jurists who are considered to have a more authentic understanding of the Islamic scriptures. Auwalu H. Yadudu, \textit{Colonialism and the Transformation of the Substance and Form of Islamic Law in the Northern States of Nigeria}, 9 J.L. & RELIGION 17, 42-43 (1991) (describing the fact that judicial precedent is unknown to the Islamic legal system, but certain processes do exist which somewhat resemble precedence).}
\end{itemize}
In many senses, this continues today with Muslims often considering their local identity and religious identity to reign over their ‘national’ identity.29

The first reason for the importance of religious sanctification is that it creates long-term prospects for a labor code within a particular Muslim population regardless of who controls the reins of government.30 Although religious ideologies within a particular religion, like Islam, may vary, there are likely to be a set of common principles that can instruct the formation of a labor code. The religious nature of the labor code will allow it to be seen as more authentic—particularly in a post-colonial or post-occupation scenario—and give the population a greater sense of ownership over the law, as compared to adopting codes seen as foreign and, at times, purely Western.31 In addition, similar to the criminal context, the success of the labor code will depend on the layperson’s conception of whether the code is just.32 By having an Islamic underpinning, and in essence a ‘divine’ backing, the proposed code is likely to gain greater legitimacy among a larger segment of the population.33

28. See Abbas Kelidar, States without Foundations: The Political Evolution of State and Society in the Arab East, 28 J. CONTEMP. HIST. 315, 317 (1993) (“Since the emphasis has remained on the identification of people rather than territory, the affinity of the modern concept of state in the Arab world with the religious ethos of the Islamic political culture has been maintained.”).

29. See Id. (describing how the religious bond within the Islamic community “has not been abandoned or replaced” by nationalist sentiment).

30. This is because Islamic scriptures contain a decent amount of content on legal rules and principles, but far fewer on political structures. As Islamic history illustrates, Muslims are likely to follow law as long as it continues to be “Islamic” even if the political ruler is seen as largely un-Islamic. See Maysam J. Al Faruqi, Umma: The Orientalists and the Qur’anic Concept of Identity, 16 J. ISLAMIC STUDIES 1, 33-34 (2005) (“Any political structure developed by Muslims may be legitimate as long as it remains in harmony with the communal identification provided by Islam.”); PAUL M LUBECK, ISLAM AND URBAN LABOR IN NORTHERN NIGERIA: THE MAKING OF A MUSLIM WORKING CLASS 7 (1986) (“The objective of Islam is the creation of a universalistic, openly recruited community of belief that is organized around principles of Islamic law.”).


32. See Paul Robinson, Why Does the Criminal Law Care What the Layperson Thinks is Just? Coercive Versus Normative Crime Control, 86 VA. L. REV. 1839, 1840 (2000) (arguing that “effective crime control requires a criminal code that is seen as adhering to the community’s shared perceptions of just desert.”).

33. For instance, in the Indonesian context, some view their identity as coterminous with Islam and hence critical to legitimizing any government that comes to power. LUCIAN W. PYE, ASIAN POWER AND POLITICS: THE CULTURAL DIMENSIONS OF AUTHORITY (1985) (“[Some Indonesians see] in the Western-trained intelligentsia a product of a godless, materialistic West which was cunningly undermining the very basis of Indonesian identity, which to them was coterminous with Islam.”) (quoting Harry J. Benda). Some
Second, with regard to adaptability, a labor code premised on Muslim values will resonate better with populations in the Muslim world than one that does not take into account these values. Thus, it will presumably be easier to integrate this Code into their lives. In other words, for this Code to be ex ante effective, the rules must be constructed in such a manner that they can be recognized by the average Muslim or at the very least be broadly familiar to them.

Finally, the third reason why religious sanctification can be important is stability, which occurs as a result of religion's ability to transcend many other identities that are present in any one country. This allows a "broad platform for an agreement among large groups" of people as to "what is good... and what is evil," which is an "indispensable requirement for any sort of order in human relations." The European political tradition itself considers "acceptance by the people of the authority of their state to regulate and conduct their affairs" as a pre-requisite to the formation of a nation. In the Muslim context, the situation is complicated by the fact that many of the borders that Muslim nations reside within have been imposed from outside. Hence, a particular group's allegiance to their central government often conflicts with allegiance to ethnic compatriots residing, often at very close distances, across the border in an entirely different nation. The prime example of this would be the Pashtun in Pakistan and Afghanistan, and the Kurds in the Middle East.

Commentators have suggested that "transnational" standards must be imposed to counter the prejudices of local value judgments. See Alvin L. Goldman, Cultural and Economic Perspectives Concerning the Protection of Workers' Social Dignity, in LABOR LAW, HUMAN RIGHTS AND SOCIAL JUSTICE 15-16 (Roger Blanpain ed., 2001). Although transnational standards must be sought after, one cannot ignore the fact that these standards will likely be guided by the local/national cultures of those nations wielding the most power on the international stage. Furthermore, with regard to legitimacy, even if transnational standards are forcefully implemented, in practice people will require the law to be legitimate according to their indigenous values.

34. See e.g., ASAD, supra note 24, at 6-7 (discussing how religion can form "the basis for an agreement... on a moral obligation binding on all members of that group.").
35. See Paul Robinson, Structuring Criminal Codes to Perform Their Function, 4 BUFF. CRIM. L. REV. 1, 2 (2000) (arguing that a criminal code "must be... understood and remembered, and... capable of being applied in daily life by lay persons").
36. ASAD, supra note 24, at 10.
37. Kelidar, supra note 28, at 316.
38. Masao Miyoshi, A Borderless World? From Colonialism to Transnationalism and the Decline of the Nation-State, 19 CRITICAL INQUIRY 726, 729 (1993) ("As the colonizers drew borders at will, inscribing their appropriation on a map, tribes were joined or fragmented.").
39. See, Amir Hassanpour, The Kurdish Experience, MIDDLE E. REP. Jul.-Aug. 1994, at 2, 3 ("Numbering over 22 million, the Kurds are one of the largest non-state nations in the world. Their homeland, Kurdistan, has been forcibly divided and lies mostly within the present-day borders of Turkey, Iraq and Iran, with smaller parts in Syria, Armenia and Azerbaijan."); S.M.M. Qureshi, Pakhtunistan: The Frontier Dispute between Afghanistan
Additionally, the concept of ‘nation,’ as classically understood in the Islamic world, resides outside territorial boundaries and is instead centered around the religious bonds between members of society.\(^4\) Within the borders of Muslim countries there are numerous identities forced to rally around poorly constructed nationalist ideologies which prevent the “development of a uniform political identity in heterogeneous societies.”\(^4\)

It should be noted that religious identity, in the Islamic context, is not necessarily tied to any particular “political structure,” but often relates to matters that can be broadly treated as law.\(^4\) Hence, one could say that in the context of a Muslim country, it is the legal framework that requires proper accommodation of Islam, not necessarily the political.\(^4\)

It should also be noted that the reasons for seeking ‘religious sanctification’ of a labor code relate to the region’s recent history of colonialism.\(^4\) Some have argued that the role of Islam in the Muslim Middle East, for instance, would have been “radically different” were it not for European imperialism occurring at the moment when these countries were adapting to the modern world.\(^4\) Furthermore, reversion to religion often occurred as a consequence of the fact that secularism itself was discredited as “borrowing of alien, Western institutions.”\(^4\)

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40. See Kelidar, supra note 28, at 317 (“[T]he emphasis . . . remain[s] on the identification of people rather than territory, the affinity of the modern concept of state in the Arab world with the religious ethos of the Islamic political culture has been maintained.”). See also Al Faruqi, supra note 30, at 33 (2005) (“The building block of Muslim collective identity is a religious concept and a source of identification . . . [and] its definition is firmly rooted in religion.”).

41. Kelidar, supra note 28, at 315.

42. Al-Faruqi, supra note 30, at 33 (“The Muslims see their community as a religious community, requiring adherence to religious beliefs and laws rather than to political structures.”).

43. This is primarily because the Qur’ān leaves open how the governing structure of a collective should be formed. See id. (“There is no specifically political identity assumed or provided for in the Qur’ānic umma.”).

44. See TAMARA SONN, A BRIEF HISTORY OF ISLAM 123 (2004) (outlining the relationship of colonialism and Islamic reform in Iran). One could possibly go further and cite the growth of Islamic political movements indicated in some part by the rise of Jamaat-i-Islami in Pakistan, the Muslim Brotherhood in Egypt and Hamas in the Palestinian territories. Although these groups have distinct political platforms, they all advocate a greater role for religion in Muslim political life. See generally KHALED HROUB, HAMAS: POLITICAL THOUGHT AND PRACTICE (2000) (describing the organization and its history generally); RICHARD P. MITCHELL, THE SOCIETY OF THE MUSLIM Brothers (1993) (describing the organization and its history generally); SEYYED VALI REZA NASR, THE VANGUARD OF THE ISLAMIC REVOLUTION: THE JAMA‘AT-I-ISLAMI OF PAKISTAN (1995) (describing the organization and its history generally).

45. Mayer, supra note 25, at 127.

46. Id.
A. Justification for Codification

At this point it will serve us to briefly turn to the issue of codification and some of the questions around its implementation. A general survey of Islamic history indicates that codification is potentially problematic given the great discretion that Islamic law traditionally gives to judges. This discretion is considered a necessary flexibility that allows the judge to address a range of circumstances which may arise in different cases that come before him.

However, over the course of the 20th century significant arguments were put forward promoting the utility of codifying the law. The most obvious utility stems from the fact that codification helps nations contend with the increased demands of modern administrative states by creating greater internal uniformity. Furthermore, it provides citizens with greater access to more predictable, and potentially less biased, decision-makers. Unlike the criminal law where Islamic law has articulated some very specific rules and principles, codifying rules relating to labor is a more challenging task since it is less developed. This of course presents

47. See WAEL HALLAQ, THE ORIGINS AND EVOLUTION OF ISLAMIC LAW 89 (2005) ("What is certain is that from the very beginning . . . the qadis were in the habit of asking 'people who know' about difficult cases they faced . . . in other words, the legal specialists were and remained for many centuries a fixture of the court even when they were not physically present in it."). See also BERNARD WEISS, THE SPIRIT OF ISLAMIC LAW 113 (1998) (noting that the authority of the legal specialists "derived from the respect accorded them by the rest of society."); Lama Abu Odeh, The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia, 52 AM. J. COMP. L. 789, 796-797 (2004) (indicating that the current Islamic states are the results of codification).

48. Arguments for judicial flexibility are seen in contexts, besides the Islamic one, where attempts at codifying customary law were undertaken. See e.g., LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 403-04 (2nd ed. 1985) (discussing the views of James C. Carter who was a fierce opponent of codification in the United States during the late 19th century); Notes and News, The Move Towards Codification, 2 J. AFR. L. 73, 74 (1958) (noting that some people reject codification in the African context because of the "excessive rigidity" that would come with it).

49. See FRIEDMAN, supra note 48, at 403-11 (discussing the evolution of American statutory laws).

50. The uniformity argument was prominent particularly in American debates on legal reform and codification. Id. at 408.

51. In fact, one of the reasons the XII Tables were adopted in Rome in or about 450 B.C. was because the ability of courts to create law was seen as enabling judges to grant favor to those litigants from his own social class against those who were not. Sigmund Samuel, The Codification of Law, 5 U. TORONTO L.J. 148, 150 (1943-1944).

52. For Islamic Penal law, see generally, IBN RUSHD, THE DISTINGUISHED JURIST’S PRIMER I & II (Imran Ahsan Khan Nyazee trans., 1994); IMRAN AHSAN KHAHN NYAZEE, GENERAL PRINCIPLES OF CRIMINAL LAW: ISLAMIC AND WESTERN (1998) (setting forth a comparison study on English and Islamic penal law); MOHAMED S. EL-AWA, PUNISHMENT IN ISLAMIC LAW: A COMPARATIVE STUDY (2000).

53. See generally M. UMER CHAPRA, ISLAM AND THE ECONOMIC CHALLENGE (1992)
opportunities and obstacles. It allows one to be creative with regard to the types of provisions that can be proposed while making it harder to achieve consensus since 'principles' are open to a broader range of interpretation than explicit rules. This is not to say that there is not sufficient literature pertaining to different aspects of labor. For instance, jurists have regularly written about the various rules governing the employer/employee relationship in the "hiring" context. However, they have been less prolific with regard to the particular subject of worker rights in this relationship.

B. Codes and Labor Law in the Muslim World

As mentioned previously, with European domination and modernization came the wholesale adoption of Western models of legal codification. This meant abandoning the "medieval juristic treaties [of Islamic law] and borrowing European law-largely codified law on French models." The process was conducted both through borrowing by choice, encouraged by Muslim leaders enamored by Western institutions, and through pressure exerted by Europeans.

The principles of labor law can be found in Muslim legal discourse as early as the formative years of the Islamic faith. The period of Islam’s initial formation is marked by two primary economic means of production: agriculture and trade. Hence, Islamic law generally discusses labor law in these two contexts. The Muslim scripture—the Qur’ān—spends significant space discussing labor law as it relates to slavery which was widespread at the time of the Qur’ān’s first appearance. In essence then, the context of slavery serves as the absolute baseline for guidelines pertaining to worker treatment. The master-slave relationship functions as a precursor to the employer-employee dynamic. In addition to

(discussing the economic systems of Islamic and non-Islamic states); Khalil-ur-Rehman, supra note 14. This is an important point to keep in mind since perusal of any pre-modern treatise on law (and for that matter most modern treatises) will show that there is no specific discussion of 'Islamic labor law' but rather divided discussions on topics like ‘wages,’ etc. E.g., Rushd, supra note 52.

56. Id. at 128.
57. Id.
58. See generally 1 Hodgson, supra note 18 (1974) (setting out the first part of an Islamic history).
60. Rushd, supra note 52, at 264-307.
61. See Qur’ān 24:33 ("[F]ree those captives . . . who wish to buy their freedom . . . .")
discouraging relations based on forced servitude, the Qur'an strongly encouraged emancipation of slaves. Among other things, this can be seen as a basis for supporting free mobility of labor. For those who decided to retain their slaves, they were guided by instructions from Islamic sources to treat slaves in a manner similar to treatment of "one's kin.

Other literature from that period, which does not necessarily relate religious perspectives, shows that the mood of certain segments of classical Muslim society was very negative when it came to the workforce. In fact, certain poetry from the 8th century indicates a class-based system with a "hierarchy of trades." Some studies suggest that 9th century Muslim legal scholars perpetuated this hierarchy and general dislike for laborers by creating discriminatory laws against the labor class.

However, despite evidence of contempt for the labor class, it should be noted that, traditionally and in modern times, Islamic law, and Muslims in general, viewed 'labor' in and of itself in very favorable terms—particularly hard labor. Labor is generally encouraged because it is seen as a means of attaining "honour" and "respect" in society which in turn leads to a greater sense of self-worth. In the 9th and 10th century, with the growing spread of asceticism in Muslim society, many writings began to reflect the importance of working. Economic activity was seen as a "duty

62. Id.
64. MAYA SHATZMILLER, LABOR IN THE MEDIEVAL ISLAMIC WORLD 375 (1994) ("On the whole, the perception of the physical outlook of workers in general, and of menial laborers, in particular, as opposed to that of the aristocracy was clearly and loudly negative."). It should of course be noted that the individuals making these observations were from the middle-class and likely judged these workers through their own class-based stereotypes.
65. Id. at 371 (referring to Ummayad poetry being dominated by pre-Islamic mentalities that retained this hierarchy).
66. Id. at 373 (referring to places like Baghdad and Basra, where legal scholars instituted measures forbidding certain "occupation holders from marrying women of a higher social status," or from serving as "witnesses.")
67. ALLAMA YUSUF AL-QARADAWI, ECONOMIC SECURITY IN ISLAM 39 (Muhammad Iqbal Siddiqi trans., 1981) (quoting the Prophet Muhammad's esteem for those who work with their hands). An excellent classical example of this is from Ibn Qutayba (828-889) who, despite opposing certain movements representing the labor class, noted that many of the menial trades were carried out by the most esteemed members of Muslim society: the Prophet's companions. SHATZMILLER, supra note 64, at 375.
68. QARADAWI, supra note 67 at 49.
69. SHATZMILLER, supra note 64, at 377 (discussing the Hanbalite renunciation of Zuhdite ascetic practices with various treatises including one entitled: "The call to engage in commerce, in production, in labour, and to reject those who call for indifference in forsaking of labour.").
incumbent on the individual” and one treatise went so far as to consider labor “sacred.” The latter view is perpetuated in modern times as well.

C. Deriving Islamic Legal Principles

Prior to applying Islamic legal principles to the creation of model labor code provisions it is important to understand how these principles are generally derived. The critical sources informing Islamic law can be divided into primary and secondary sources. The primary source of Islamic law is known as the Qur’an, which is generally considered the same scripture that was canonized in the 7th century. In addition to strict monotheism and final accountability at the end of time, the Qur’an serves as a central component of the Islamic faith. As one commentator has noted, it is the “world in which a Muslim lives.” The Qur’anic content is quite diverse and includes legal guidelines separately instructing individual Muslims and Islamic governments.

The secondary source of Islamic law is the Prophetic tradition, which is comprised of two main elements: the customary practice (sunna) and verbal transmissions (hadith) of the Prophet Muhammad. The former, sunna, consists of religious norms of practice conducted during the lifetime of Muhammad, while the latter chronicles the sayings and behavior of Muhammad on a variety of different matters.

Muslim legal scholarship, particularly in the pre-modern period, has

70. Id. at 378, 380 (referring to Hanbali writings and the Risala written by the Ikhwan al-Safa’, respectively. The latter compared labor to God since the “artisan creates new forms from raw material which has no form, and in doing so, he incorporates and utilizes intelligence and thought.”)

71. AбуHASAN BАNI SАDR, WORK AND THE WORKER IN ISLAM 9 (1980) (“the relation between the Creator and his Creation is based on labor.”)

72. For a general study of this, see generally TАHA JАBIR AЛ ‘ALWАNI, SOURCE METHОDОLOGY IN ISLАMIC JURISPRUDENCE (Аnas S. аl Shaikh-ali & Yusuf TaIal DеЛorenzо eds., 2d ed. 1991).

73. See, ROGER ALLEN, AN INTRODUCTION TO ARABIC LITERATURE 61 (Cambridge University Press, 2000). Muslims view the Qur’an not as a “book inspired or influenced” by God, but as his “direct speech.” FARID ESАCK, QUР’АN, LIBЕRATIОN & P LURALI М 53 (1997)


75. SEYVЕD HОSSЕIN NАSR, IDEАLS AND REALITIES OF ISLАM 41 (2d ed. 1975).

76. Scholars differ as to whether the Qur’an is primarily a legal text or not, but some suggest that close to five hundred verses of the Qur’an are legal in nature. WАЕL HАLLAQ, А HISTОRY ОF ISLАMIC LЕGАL ТЕОRIЕS: АN INTRODUСTIОN TO SUNNI USUL AL-FIQH 3 (1997).

77. NA SR, supra note 75, at 99.

78. FАZLУR RАHМАN, ISLАM 53-54 (University of Chicago Press, 1979). The Prophetic tradition has generally been seen as a complimentary source of information on the Qur’an and correct behavior.
been dominated by juristic discourses attempting to derive rules from the aforementioned sources. Muslim jurists function similar to the American Legal Institute (ALI) in that they are independent jurists (faqih) outside the official courts but, despite having no binding authority, their opinions carry weight with the government appointed judges (qadis). Over time, several schools of legal thought have developed, each presenting their own methodologies on how to interpret the Islamic sources. Each developed a system in which they prioritized certain interpretive tools over others. They negotiated a relative hierarchy between tools like analogical reasoning (qiyas), independent reasoning (ijtihad), scholarly consensus ('ijma), custom ('urf), public interest (istislah) and juristic preference (istihsan).

All this is relevant to the following discussion because it suggests that certain factors must be kept in mind while pursuing the forthcoming exercise of constructing Islamic labor provisions. First, although there are points of agreement among the schools of law, different nations have adopted different legal methodologies, hence model provisions must be flexible enough to be altered for adaptation to different national contexts. Second, there are constraints to interpreting the Islamic sources, which must be obeyed in order to maintain legitimacy. These differences of opinion extend to discussions on labor and the principles that guide it.

79. Id. at 69; See also ALWANI, supra note 72, at 81.
80. FAZLUR RAHMAN, ISLAM 80-81 (1979). Some countries have formalized committees of scholars that advise the government on the Islamic validity of legislation. See The Website of the Council Of Islamic Ideology, http://www.cii.gov.pk/ (last visited Nov. 21, 2006) (describing the Council's duty to advise the legislature of Pakistan "whether or not a certain law is repugnant to Islam.").
81. The four main Sunni schools of legal thought are the Hanafi, Maliki, Shafi'i and Hanbali, while the major Shia school is the Jafari. There are other nominal schools of thought like the Dahiris, Ibadis and Zaydis. These schools are named after their primary founders and teachers. The schools were later expanded and built upon by the students of these founders. NASR, supra note 75, at 104.
83. Id.
84. See WAINES, supra note 63, at 74. There is of course significant overlap between the legal opinions emerging out of these different schools of Islamic legal methodology. Hence, there is likely to be significant similarity on the issue of labor as well.
85. Id.
86. Given the scope of this paper, I will not delve into the intricate details regarding differences among the schools of thought and only address them where pertinent to the discussion.
D. Guiding Principles for an Islamic Labor Code

The first principle guiding the notion of labor in Islamic law is the emphasis on work. Almost without exception, Muslim jurists have a presumptive rule that requires every individual to work and support himself and his family, except in extreme circumstances. As the contemporary Muslim jurist, Yusuf al-Qaradawi has stated, “work is the first weapon to fight poverty” and the Prophet Muhammad is reported to have said that “there is no better food [than] what has been earned by the use of both . . . hands.” There is another tradition that reports that “when a man works to feed his family he is performing as much an act of worship as if he were praying.” In this sense then, the act of “earning one’s daily bread” is considered to be a religious obligation and central to making one’s life “religiously meaningful.” In fact, the general expectation in Islam is that a person “produce[s]” more than he or she “consumes.” Thus, there is a strong emphasis on helping the individual become self-reliant and “self supporting.” Bearing this in mind, there is significant religious support for securing the rights of those who work. For instance, a Prophetic tradition reports that an individual who takes away rights of a worker should be considered an oppressor. To illustrate this, it is useful to consider some areas where Islamic law provides guidance about the labor context.

88. CHAPRA, supra note 53, at 210-211.
89. AL-QARADAWI, supra note 67, at 34
90. Id. at 39.
91. NASR, supra note 75, at 98.
92. Id. One famous story recounts how a religious scholar was asked what he would say when he met God, and he responded that he would “die obeying God” because he earned a “living” for himself and his “dependents by the dint of [his] labor.” SADR, supra note 71, at 18 (1980).
95. KHALIL-UR-RAHMAN, supra note 71, at 71.
96. Generally speaking, this labor context in Islamic law is often represented by jurists as a form of contracting between two parties. The two forms it can take are ijarā (contract for hire) or jū’āla (contract for beneficial use). HASSAN, supra note 54, at 156 (discussing the definition of ijarā and jū’āla according to classical jurists, the Qur’ān and hadith). See also, RUSHD, supra note 52, at 265 (noting that the base rule, based on general consensus, is that it is lawful to hire people for acts permitted by Islamic law).
1. Wages

Islamic law takes a very strict approach to payment for services. The Prophet is reported to have said that the worker should be given his wages before "his sweat dries." This suggests that payment should be made as soon as possible and not postponed. This notion is reinforced by the second ruler of the Muslim polity after the death of Muhammad: Umar bin Khattab. Umar seems to suggest a preference for paying wage laborers daily. In addition, in the case of non-payment for services rendered, the person defaulting on their obligation is severely referred to as one of the three types of people who will be an "enemy of God" on the Day of Judgment. Furthermore, with regard to the amount of "real wages" in a Muslim society, Islamic juristic discourses suggest that it should be "at least at a level that would enable employees to fulfill all their and their families' essential needs in a humane manner."

2. Employer-Employee Relationship

The employer-employee relationship is considered quite important for the overall functioning of society. Although Islam recognizes that social divisions are going to exist in any community, these divisions should not be used to exploit other groups. It has been suggested that an employer should consider their employees "as members of their own family." For instance, in the case of setting working hours, employers are told not to force employees to "work beyond their capacity" and if the workload is "excessive" then they are told to "share the burden." The Muslim scholar, Maulana Manazir Ahsan Gilani has gone as far as suggesting that the basic necessities of an employer and employee should be the same and that the number of "working hours should be fixed according to the

98. Hodgson, supra note 18, at 206.
100. Id. at 81.
102. There are two critical requirements for the employee-employer relationship. First, a wage must be fixed and, second, the action for which compensation is received must be defined. Rushd, supra note 52, at 271.
103. The Employer and the Employee—Islamic Concept 98-99 (Hakim Mohammed Said, ed. 1972) [hereinafter Islamic Concept] (quoting the Qur’anic verse noting that people have been placed at higher stations in life so that others can take work from them).
104. Chapra, supra note 53, at 253.
106. Ahmad, supra, note 94, at 76.
capacity of (each) worker.”¹⁰⁷ A more classical definition of what is ‘basic’ can be found with Abu Ishaq al-Shatibi’s useful division of goods into “necessities,” “wants,” and “luxuries.”¹⁰⁸ He suggests that necessities are what are needed for subsistence and are “indispensable” for human survival.¹⁰⁹ Wants are items that improve one’s “quality of life” while removing “bearable hardship and difficulty.”¹¹⁰ Finally, luxuries are products that “add beauty” to one’s life.¹¹¹ For our purposes, the criterion set out by the International Labor Organization is particularly helpful since it specifically defines basic needs to include ‘minimum requirements of a family for private consumption,’ notably food, shelter and clothing, and ‘essential services’ provided by and for the community at large, such as safe drinking water, sanitation, public transportation, and health and education facilities.”¹¹² Although this seems a bit of an extreme interpretation of the Islamic principles, it foreshadows the fact that an underlying egalitarian ethic is present.¹¹³ Furthermore, some basis for setting minimum requirements exists with Islamic law generally obliging Muslims to pay the poor-tax (zakat), but exempting all those whose net worth does not reach a minimum level (nisab).¹¹⁴

3. Profit-Sharing

One mechanism that has been encouraged under Islamic law is that of mudaraba (also spelled muzaribat or mudarabah) or profit-sharing.¹¹⁵ The basic principle at work is that “[e]very firm should be required to establish a profit-sharing scheme for [its] employees.”¹¹⁶ In other words, this is a situation where one person invests while the other person works and “through mutual consent” they divide the profit.¹¹⁷ How this would work is

¹¹⁰. Id.
¹¹¹. Id.
¹¹². Ahmad, supra note 94, at 76.
¹¹³. For more on this egalitarian ethic, see Al-Tawhid, supra note 93, at 180-84.
¹¹⁴. A. Zysow, Zakat, in ENCYCLOPEDIA OF ISLAM (1991) (discussing that zakat is due to the state only if a minimum quantity, nisab, is held by a person).
¹¹⁵. Islamic Concept, supra note 103, at 68; Taqi Usmani, Islamic Finance, available at http://www.darululoomkhi.edu.pk/fiqh/islamicfinance/mudarabah.html; Jeanette A. Wakin, Mudaraba, in ENCYCLOPEDIA OF ISLAM (1991) (describing mudaraba as a “a commercial association whereby an investor entrusts capital to an agent who trades with it and shares with the investor a pre-determined proportion of the profits.”).
¹¹⁶. Chapra, supra note 53, at 254.
that an “agreed proportion of the firm’s net profit” would be set aside annually to be partly distributed among the employees as a “profit-sharing bonus” and partly utilized to improve their benefits.\textsuperscript{118} For instance, among other things, the proceeds could be used to better working conditions, purchase health benefits for workers, provide “food subsidies” or “educational allowances” for children, etc.\textsuperscript{119}

This notion of profit sharing is even embodied in some interpretations of the welfare taxation scheme (\textit{zakat}) in Islamic law which was previously mentioned.\textsuperscript{120} In this scheme, ‘labor’ and ‘capital’ are considered as ‘investments’ and equal contributors to society and hence, taxation rates are set according to the return on one’s investment of labor and/or capital.\textsuperscript{121} Revenue from goods or production is divided up into three separate categories describing the relationship of labor and capital used to generate the revenue. The first category is revenue generated from goods produced through the input of \textit{both} an individual’s labor \textit{and} his capital. This will be taxed at five percent.\textsuperscript{122} The second category is revenue generated from goods produced through the input of \textit{either} labor \textit{or} capital. This category will be taxed at ten percent.\textsuperscript{123} The final category is when revenue is generated from goods produced through the input of \textit{neither} labor \textit{nor} capital, for instance, if you were to happen upon a pot of gold through no labor or investment of your own. This will be taxed at twenty percent.\textsuperscript{124} Hence, the more you invest in society, with your capital, labor or both, the less you get taxed.

\section*{III. A Model Islamic Labor Code: Foundational Provision}

In order to begin the discussion on how to construct model provisions for an Islamic labor code, we must start with a template. This template should be derived on the basis of both international and Muslim precedent. From an international perspective, the most appropriate template to begin any discussion on labor codes will be the International Labor

\begin{itemize}
\item \textsuperscript{118} CHAPRA, \textit{supra} note 53, at 254.
\item \textsuperscript{119} \textit{Id.}
\item \textsuperscript{120} \textit{Zakat} is considered one of the five pillars of Islam. The word \textit{zakat} itself “derives from the verb \textit{zakā}, which means to purify (also with the connotation of growth or increase).” Benthall, \textit{supra} note 87, at 29. Hence, the “meaning is usually taken to be that, by giving up a portion of one’s wealth, one purifies that portion which remains, and also oneself, through a restraint on one’s greed and imperviousness to others’ sufferings.” \textit{Id. See also}, IBN TAYMIYYAH, \textit{KITāB AL-IMĀN} (BOOK OF FAITH) (Salman Hassan Al-Ani & Shadia Ahmad Tel trans., 1999).
\item \textsuperscript{121} JAVED AHMAD GHAMIDI, \textit{QANūN-E-Ibādāt} 113 (2004).
\item \textsuperscript{122} \textit{Id.}
\item \textsuperscript{123} \textit{Id.}
\item \textsuperscript{124} \textit{Id.}
\end{itemize}
Organization's Declaration on Fundamental Principles and Rights at Work adopted in 1998. This declaration lays out four main areas: (1) freedom of association and the right to collective bargaining; (2) the elimination of forced and compulsory labor; (3) the abolition of child labor; and (4) the elimination of discrimination in the workplace.

From a Muslim perspective, the Organization of Islamic Conferences—a body representing Muslim countries and countries with significant Muslim populations—adoption of a worker's rights provision in Article 13 of the Cairo Declaration on Human Rights in Islam (adopted in 1990) will be the most useful precedent. The entire text of Article 13 is as follows:

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled — without any discrimination between males and females — to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. 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.

As one can observe, the text above does not contain any notions of collective bargaining, though it does seem to guarantee other important rights. However, this does not mean that a collective bargaining right must be left out of any Islamic labor code. With regard to child labor, given

126. International Labor Organization Declaration on Fundamental Principles and Rights at Work, supra note 125.
129. Id. (emphasis added).
130. However, this will not necessarily be an easy task, as is shown in the Iranian context. Farhad Nomani & Sohrab Behdad, Class and Labor in Iran: Did the
the economic situations of many Muslim countries it will be difficult to ban this altogether. However, by creating provisions that allow for humane working conditions, one is indirectly protecting children from abusive conditions. Special provisions protecting the working environment for children can also be included. One should bear in mind that the constitutions and other laws of a particular country would work in conjunction with any labor code, thus also serving to protect against the exploitation of children. This is of course an area which will require further development based on specific contexts. In addition, it should be kept in mind that many Muslim countries may have laws that discourage women from working. Although such laws exist, no prohibition against women working is contained within Islamic law, and hence there is strong argument to leave any discrimination against women out of a model Islamic labor provision.

Given the above considerations, one could propose a model Islamic provision which was the basis of a more extensive labor code in the following manner:

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131. See generally, Martin Brockerhoff and Ellen Brennan, The Poverty of Cities in Developing Regions, 24 POPULATION AND DEV. REV. 75 (1998) (studying whether residents of large developing cities have better living conditions than those of smaller developing cities, and the impact of population size and growth rate on cities' wellbeing).

132. Andrew Collver & Eleanor Langlois, The Female Labor Force in Metropolitan Areas: An International Comparison, 10 ECON. DEV. & CULTURAL CHANGE 367, 372-73 (1962). See generally, Judith Tucker, Egyptian Women in the Workforce: An Historical Survey, MIDDLE E. REP. Aug. 1976, at 3 (surveying Egyptian women's role in the work force historically and into the present); Nadia H. Youssef, Differential Labor Force Participation of Women in Latin American and Middle Eastern Countries: The Influence of Family Characteristics, 51 SOC. FORCES 135, 135 (1972) (testing "[t]he relative importance of marital and fertility characteristics upon female employment rates . . . in an attempt to explain the significant differential in women's nonagricultural participation rates between Latin American and Middle Eastern countries."). There are of course some fundamental issues in how work is measured, particularly in the developing country context. Often times, women's work is “grossly underestimated by the dominant conceptualization and measurement of work.” Debra A. Donahue, Measuring Women's Work in Developing Countries, 25 POPULATION AND DEV. REV. 543, 544 (1999).

133. Madeleine Bunting, Can Islam Liberate Women?, GUARDIAN UNLIMITED, December 8, 2001, www.guardian.co.uk/Archive/Article/0,4273,4314573,00.html (last visited Nov. 21, 2006). In fact, there is precedent in early Islamic history for women working, let alone textual backing for a woman's right to earn a living in the Qur'an itself. See, LAMYA' AL-FARUQI, WOMEN, MUSLIM SOCIETY AND ISLAM, 8 (1988) (discussing references within the Qur'an to property ownership and inheritance by women).

134. In addition to other sources cited, I benefited particularly from the code of conduct established by the Worker’s Rights Consortium. WORKERS RIGHTS CONSORTIUM, MODEL CODE OF CONDUCT, available at http://www.workersrights.org/wrc_coc.pdf. In addition, I also benefited from the various conventions ratified by the International Labour Organization. See International Labour Organization, Database of International Labour
ARTICLE I: FUNDAMENTAL RIGHTS OF EMPLOYEES

Section 100: Freedom of Choice
(a) Every employee shall be given the freedom to choose their employment.
(b) Every employee shall have the right to terminate their employment, subject to any reasonable contractual obligations.
(c) All forms of compulsory and forced labor shall be abolished, including, but not limited to: bonded labor, forced prison labor, indentured labor and slavery.
(d) All rights delineated in this Article are applicable to both private and public industrial undertakings.

Section 200: Wages
(a) Wages will be set in accordance with the prevalent market standard for a similarly situated occupation and comply with all prevailing laws and regulations.
(b) Wages must, at a minimum, insure that each employee is able to satisfy their basic needs in relation to food, shelter, clothing and health.
(1) Basic needs shall be defined according to standards set by international norms and consensus of Muslim jurists in a particular country. 135
(c) Payment of wages will be based upon prevailing industry standards and customary law for that particular occupation. 136
(1) However, employees in minimum wage positions will have a right to contractually request payment of wages at the completion of each day. 137
(2) An employer is exempt from this request if they can reasonably establish that it would cause undue hardship to their operations, but at the very minimum will be required to provide a living wage for each week.

Section 300: Work Hours
(a) No employee will be subjected to work hours that are beyond his

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136. The notion of customary law is embodied in the Islamic legal concept of ‘urf. HALLAQ, supra note 76, at 681.
137. KHALIL-UR-REHMAN, supra note 14, at 69.
or her individual capacity.\textsuperscript{138}

(b) Work hours will generally be set according to industry standards, customary law and international guidelines for employee health and safety.

(c) Every employee will be entitled a fifteen minute break for each prayer that falls during his or her working day.\textsuperscript{139}

  (1) In addition to this time, during the month of Ramadan, employees will be given adequate time at sunrise and sunset to begin and end their fasts.

  (2) During Ramadan, employers will be expected to adequately ensure that employees are not worked to a point detrimental to their health.

(d) Adequate space will be arranged by the employer to allow workers to pray daily. This space should be large enough to at least accommodate a congregation of 5 people.\textsuperscript{140}

(e) Every employee will have the right to two hours paid leave every Friday to attend weekly prayer services if Friday remains a working day.\textsuperscript{141}

(f) Similar accommodations will be made for all religious groups on their particular day of worship if that day is a working day.

(g) Every employee will be guaranteed at least one day off in every seven week period, in addition to vacations and holidays, including religious holidays.

(h) All overtime work will be voluntary and compensated at a premium rate based on prevailing industry standards.

(i) Female employees will be given adequate maternity leave, if they so require, for a period of time in line with international standards.

  (1) No such employee will be subjected to dismissal or threat for taking maternity leave.

  (2) Employers will provide appropriate services and accommodation to women in connection with their pregnancies.

Section 400: Work Discrimination

(a) No employee will be subjected to discrimination or intimidation in the workplace on the basis of their gender, ethnicity and religious, tribal, regional or political affiliation.\textsuperscript{142}
(1) Specifically, discrimination is prohibited in the context of hiring, salary, benefits, advancement, discipline, termination and retirement.

(b) Migrant workers of other nationalities will be subject to the same protections given ordinary citizens.

(c) Special circumstances permit discrimination where the purposes of the job could not be satisfied without such discrimination.

Section 500: Work Place Conditions
(a) Every employee is entitled to working conditions which are not hazardous to their health and well-being.

(b) Every employer shall ensure that their operations, and those of their subcontractors, comply with all workplace regulations governing health and safety.

(c) Every employer shall ensure that their operations, and those of their subcontractors, comply with all International Labor Organization convention standards.

Section 600: Collective Bargaining
(a) Employees will have the right to form associations to represent their interests in relation to their employers based on the Islamic principle of consultation.143

(b) No employee will be subject to harassment, intimidation or retaliation for their efforts to organize or bargain collectively.

(c) These associations may be disbanded by the State in situations where they significantly disrupt the State function.144

Section 700: Profit-Sharing
(a) Every Employee is entitled to partially share in the profits of his or her Employer either through:
(1) Monetary compensation, or;
(2) Benefits provided by the employer in relation to:
   (i) Improvement in worker conditions
   (ii) Educational Allowances
   (iii) Health Benefits
   (iv) Food, Clothing and Housing subsidies

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143. With regard to Islamic principles of consultation, see QUR’AN 42:38 (“[W]hose affairs are settled by mutual consultation . . .”).
144. Based upon the Islamic legal concept of fasad fi’l ard or “causing disorder on earth.” JAVED AHMAD GHAMIDI, BURHAN 81-90 (2001).
IV. CONCLUSION

As one can tell, the above provision is very cursory and requires more detail, but serves to outline some of the factors to be considered when drafting an Islamic labor code provision. For instance, important details that will need to be worked out are definitions of key terms within the text. The conventions and codes used as guides to create the above model provision can serve in the same capacity when further advancing a model Islamic labor code. The secular nature of those codes is not as relevant since their underlying values are often in line with Islamic legal principles. In the areas where there is divergence, adjustments will need to be made. We need look no further than our own history of labor law here in the United States to find that religion has often been evoked in the worker's rights context. When seeking principles upon which to base their claims to rights, workers have opened the Bible arguably as much as the Constitution.

In the final analysis, a model Islamic labor code can function similar to the International Labour Organization's eight guiding conventions by proposing similar provisions that are backed by and adapted to Islamic principles. The legitimacy that is often lacking in Muslim countries for general international conventions may be more readily available with Islamic conventions since a pre-existing base of legitimacy already exists. Unlike the international conventions, Islamic conventions will not require the same type of persuasion as long as they are considered to be authentically in line with Islamic principles. This then can be the launching point for the development of more elaborate indigenous labor regimes, not just in Muslim countries, but in the rest of the non-Western world.


146. For a discussion on the eight conventions, see National Research Council, Monitoring International Labor Standards 1 (2004) (summarizing regional forums “designed to provide the [Committee on Monitoring International Labor Standards] with a broad range of international perspectives on the many complex issues related to monitoring compliance with international labor standards, particularly within developing countries.”).