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## WAR, VIOLENCE, AND PUNISHMENT: A MEDIA-CENTRIC APPROACH OF SHARIA AND AMERICAN LEGAL DOCTRINES

Yazen Abdin\*

“Fear always springs from ignorance.”  
-Ralph Waldo Emerson<sup>1</sup>

### I. INTRODUCTION

On September 25, 2014, thirty-year-old Alton Nolen walked into Vaughan Foods, an Oklahoma food processing plant, wielding a knife.<sup>2</sup> Nolen proceeded to make his way through the building and then severed the head of a fifty-four-year-old woman.<sup>3</sup> Nolen continued his course and then stabbed a forty-three-year-old woman.<sup>4</sup> Shortly thereafter Nolen was shot, wounded, and apprehended on the scene.<sup>5</sup>

Media outlets, such as Fox News, quickly alerted the public of the “terrorist attack” that had occurred.<sup>6</sup> However, law enforcement officials including the Federal Bureau of Investigation said there was no indication linking the incident to terrorism.<sup>7</sup> It turns out, Nolan’s heinous crime was linked to his being suspended from work due to inflammatory remarks regarding race.<sup>8</sup> Additionally, Nolen had an extensive criminal background including possession of drugs, assaulting a police officer, and fleeing from the police.<sup>9</sup> Although Nolen had served time in prison and was recently fired, the media focused their attention on the man’s religious affiliation as opposed to the crime committed.<sup>10</sup> For example, one Fox News headline read

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1. Ralph Waldo Emerson, *The American Scholar*, Address at Cambridge Before the Phi Beta Kappa Society (Aug. 31, 1837) (transcript available at <http://www.emersoncentral.com/amscholar.htm>).

2. Lydia Warren & Laura Collins, *FBI Probes Conversion to Islam of Fired Store-Worker Who Beheaded Female Co-Worker and Stabbed Another Woman Before Being Shot by Hero Boss Who Was Part-Time Police Officer*, DAILY MAIL (Sep. 25, 2014, 8:37 PM), <http://www.dailymail.co.uk/news/article-2770140/Police-chase-shooting-Oklahoma.html>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Critics Blast Authorities for Treating Beheading as Case of Workplace Violence*, FOX NEWS (Sep. 27, 2014), <http://www.foxnews.com/us/2014/09/27/critics-blast-authorities-for-treating-oklahoma-beheading-as-case-workplace/>.

7. Greg Botelho, *Police: FBI Probing Past of Suspect in Oklahoma Beheading*, CNN (Sep. 27, 2014, 3:17 PM), <http://www.cnn.com/2014/09/26/us/oklahoma-beheading/index.html>.

8. Timothy Williams & Michael S. Schmidt, *Oklahoma Man Is Charged in Beheading of Co-Worker*, N.Y. TIMES (Sep. 30, 2014), [http://www.nytimes.com/2014/10/01/us/oklahoma-man-charged-with-murder-in-beheading-of-co-worker.html?\\_r=0](http://www.nytimes.com/2014/10/01/us/oklahoma-man-charged-with-murder-in-beheading-of-co-worker.html?_r=0).

9. *Id.*

10. *Id.*

“Oklahoma beheading: FBI probing suspect’s recent conversion to Islam,”<sup>11</sup> while a USA Today headline read “Police: Suspect in Okla. beheading was Muslim convert.”<sup>12</sup>

A few days earlier a man killed two victims in Alabama after being fired from his job.<sup>13</sup> The former employee entered the UPS facility, shot two employees, and then took his own life.<sup>14</sup> The facts from both stories are almost identical. However, the latter article makes no mention of the assailant’s religion.<sup>15</sup> In a 2011 report released by the U.S. Department of Justice, it was found that 521 individuals were victims of homicide in the workplace in 2009.<sup>16</sup> To make matters worse, on January 5, 2015, the most recent gruesome attack took place—another beheading.<sup>17</sup> This time it was not a Muslim and the story received no coverage on some media stations.<sup>18</sup>

Later that month, on January 15, 2015, a hostage situation ensued in Porte de Vincennes, Paris, France, where a Muslim man saved fifteen Jews in a supermarket; a story that received nominal media attention.<sup>19</sup> Several questions to ruminate over include: how many instances of violence get publicized, and of those, how many make mention of the assailants religious affiliation?<sup>20</sup> More importantly, why are media outlets focusing so much on Islamic violence as opposed to all acts of violence? Is the information that is being disseminated accurate?<sup>21</sup> Are all Muslims inherently violent or have some gone rogue? Does the Sharia have an insatiable thirst for blood?

The airwaves have been infiltrated with Islamophobia<sup>22</sup> and anti-Muslim rhetoric; popular culture, including but not limited to entertainment,<sup>23</sup> the internet,

11. *Oklahoma Beheading: FBI Probing Suspect’s Recent Conversion to Islam*, FOX NEWS (Sep. 27, 2014), <http://www.foxnews.com/us/2014/09/27/woman-beheaded-at-oklahoma-food-distribution-center-police-say/>.

12. Doug Stanglin, *Police: Suspect in Okla. Beheading Was Muslim Convert*, USA TODAY (Sep. 26, 2014, 9:21 PM), <http://www.usatoday.com/story/news/nation/2014/09/26/oklahoma-beheading-muslim-convert-police/16263941/>.

13. Dana Ford, *3 People Dead in Alabama UPS Shooting*, CNN (Sep. 23, 2014, 5:21 PM), <http://www.cnn.com/2014/09/23/justice/alabama-ups-shooting-deaths/>.

14. *Id.*

15. *Id.*; see also *Oklahoma Beheading: FBI Probing Suspect’s Recent Conversion to Islam*, *supra* note 11.

16. Bakary Seckan, *Workplace Violence in America: Frequency and Effects*, JOURNALIST’S RESOURCE (May 12, 2013), <http://journalistsresource.org/studies/economics/workers/workplace-violence-america-frequency-effects#sthash.IQ1P1jvt.dpuf>.

17. Eric Boehlert, *The Gruesome U.S. Beheadings Fox News Ignored*, MEDIA MATTERS FOR AMERICA (Jan. 5, 2015, 10:48 AM), <http://mediamatters.org/blog/2015/01/05/the-gruesome-us-beheadings-fox-news-ignored/202009>.

18. *Id.* (Fox News for example, who had fixated on the beheading involving the Muslim assailant, did not cover the recent non-Muslim story at all.)

19. *This Muslim Saved 15 Hostages in a Jewish Supermarket in Paris*, EGYPTIAN STREETS (Jan. 10, 2015), <http://egyptianstreets.com/2015/01/10/this-muslim-saved-15-hostages-in-a-jewish-supermarket-in-paris/>.

20. Boehlert, *supra* note 17.

21. Katie Zavadski, *Fox News Guest Sorry for Making up Facts About Islamic Rule in England*, NEW YORK MAGAZINE (Jan. 12, 2015, 11:01 AM), <http://nymag.com/daily/intelligencer/2015/01/expert-sorry-for-making-up-facts-about-islam.html>; see also *Fox Correction: “We Have Made Some Regrettable Errors On-Air Regarding The Muslim Population In Europe,”* MEDIA MATTERS FOR AMERICA (Jan. 18, 2015, 9:34 AM), <http://mediamatters.org/video/2015/01/18/fox-correction-we-have-made-some-regrettable-er/202183>.

22. See Nancy Fuchs Kreimer, *The Good News About American Islamophobia*, HUFFINGTON POST (Sep. 16, 2011, 12:34 PM), [http://www.huffingtonpost.com/nancy-fuchs-kreimer/islamophobia-in-america\\_b\\_960140.html](http://www.huffingtonpost.com/nancy-fuchs-kreimer/islamophobia-in-america_b_960140.html).

23. See, e.g., Aaron Sankin, *Iraq War Veteran and Libertarian Activist Grills Moviegoers About ‘American Sniper,’* DAILY DOT (Feb. 3, 2015, 10:50 AM), <http://www.dailydot.com/politics/american-sniper-adam-kokesh/?fb=dd>; Khaled Beydoun & Abed Ayoub, *Hollywood Shoots Arabs: The Movie*, ALJAZEERA (Jan. 25, 2015,

and the daily news have all contributed to the fear mongering.<sup>24</sup> “Americans’ opinions of Arabs and Muslims have declined steadily, according to a poll released by the Arab American Institute. . . .”<sup>25</sup> All the while, legal scholarship focusing on Islam and Sharia has sidelined the media’s role in promoting hate and fear while simultaneously neglecting the overlap between Sharia and American Common Law. This article aims to fill that void.

Amidst all the controversy over religion in the media, Sharia law has found itself at the center of the conversation several times.<sup>26</sup> Specifically, Sharia law has been portrayed as violent and barbaric, especially by Western media.<sup>27</sup> This has led to the presumption that Sharia law is intolerant, cruel, and unjust.<sup>28</sup> The issue is so popular that there are even two Wikipedia pages dedicated to the topic titled “Islam and violence”<sup>29</sup> and “Quran and violence.”<sup>30</sup> Furthermore, a recent poll found that 47% of Americans believe “Islam and American values are incompatible.”<sup>31</sup> Although Sharia law has been stigmatized by the media and in the minds of many Americans, Sharia law has substantial similarities with American law. This may come as a surprise to many readers considering what they hear and see, especially with the routine surfacing of extremists groups and the increased chaos occurring in so-called “Muslim countries”<sup>32</sup> which has exacerbated the problem.<sup>33</sup> The considerable negative focus by the media has made Sharia law appear strange and outdated,<sup>34</sup>

7:04 PM GMT), <http://www.aljazeera.com/indepth/opinion/2015/01/american-sniper-hollywood-iraq-201512552746382833.html>.

24. James Zogby, *Arab Americans and American Muslims Are at Risk*, HUFFINGTON POST (Aug. 2, 2014, 10:41 AM), [http://www.huffingtonpost.com/james-zogby/arab-americans-and-american-muslims-are-at-risk\\_b\\_5644041.html](http://www.huffingtonpost.com/james-zogby/arab-americans-and-american-muslims-are-at-risk_b_5644041.html).

25. Taylor Wofford, *Islamophobia in America on the Rise, Poll Shows*, NEWSWEEK (July 31, 2014, 3:54 PM), <http://www.newsweek.com/islamophobia-america-rise-poll-shows-262478>.

26. See Omar Sacirbey, *Sharia Law in the USA 101: A Guide to What It Is and Why States Want to Ban It*, HUFFINGTON POST (July 29, 2013, 7:10 AM), [http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban\\_n\\_3660813.html](http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html); Driss Ridouani, *The Representation of Arabs and Muslims in Western Media*, RUTA: REVISTA UNIVERSITÀRIA DE TREBALLS ACADÈMICS, núm. 3 (2011), available at <http://ddd.uab.cat/record/70865>; Daniel Burke, *After Paris Attacks, 7 Questions Being Asked About Islam*, CNN (Jan. 13, 2015, 12:54 PM), <http://www.cnn.com/2015/01/10/living/questions-islam/>.

27. Bill O’Reilly, *Bill O’Reilly: Is Islam a Destructive Force in the World?*, FOX NEWS (Oct. 6, 2014), <http://www.foxnews.com/transcript/2014/10/07/bill-oreilly-islam-destructive-force-world/>.

28. *Id.*

29. *Islam and Violence*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Islam\\_and\\_violence](http://en.wikipedia.org/wiki/Islam_and_violence) (last visited Jan. 14, 2015).

30. *Quran and Violence*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Quran\\_and\\_violence](http://en.wikipedia.org/wiki/Quran_and_violence) (last visited Jan. 14, 2015).

31. MICHAEL VAVRUS, *DIVERSITY EDUCATION: A CRITICAL MULTICULTURAL APPROACH* 130 (2015); see also Daniel Cox, *What It Means to Be an American: Attitudes in an Increasingly Diverse America Ten Years After 9/11*, BROOKINGS (Sep. 6, 2011), <http://www.brookings.edu/research/reports/2011/09/06-american-attitudes>.

32. See Sadiq Reza, *Islam and International Law: Torture and Islamic Law*, 8 CHI. J. INT’L L. 21, 25–26; see also Qasim Rashid, *Shariah Law: The Five Things Every Non-Muslim (and Muslim) Should Know*, HUFFINGTON POST (Nov. 4, 2011, 10:16 AM), [http://www.huffingtonpost.com/qasim-rashid/shariah-law-the-five-things-every-non-muslim\\_b\\_1068569.html](http://www.huffingtonpost.com/qasim-rashid/shariah-law-the-five-things-every-non-muslim_b_1068569.html) (The author of this article does not refer to any country as “Muslim” because although many countries are densely populated by Muslims, different countries have varying levels of commitment to the Sharia and apply it subjectively.).

33. Rashid, *supra* note 32.

34. Sahar F. Aziz, *Sticks and Stones, The Words That Hurt: Entrenched Stereotypes Eight Years After 9/11*, 13 N.Y. CITY L. REV. 33, 37–44 (2009).

however, this article demonstrates that Sharia is not as peculiar as it is portrayed to be.<sup>35</sup>

It may go without saying that people do not always practice their faith according to the letter. Islam is no exception. Humans are imperfect by nature; therefore, it is unjust to analyze Sharia law based on how some Muslims act. This article has three purposes. Firstly, it attempts to dispel stereotypes by focusing on the content of Sharia law rather than how various individuals have conveniently interpreted it. After all, laws should not be judged based on how people follow them; rather they should be judged based on the content and principles contained within their writings. Secondly, this article will examine various aspects of Sharia law that have been emphasized by the media, such as wars, crimes, punishments, and aggression. The third goal is to highlight similarities and differences between the laws that govern the United States and Sharia law by comparing and contrasting various legal doctrines. In advancing these propositions, this article argues that the Sharia is not any more violent than Common Law doctrines; rather it is human beings who purport violence.

## II. SHARIA MOVEMENT

There have been circulating rumors in the media that Muslims in America want to implement Sharia in the United States.<sup>36</sup> Republican presidential candidate, Herman Cain, stated, “. . . that he would not even nominate an American-Muslim to his Cabinet because in his words, Muslims ‘are trying to force Sharia law on the people of this country.’”<sup>37</sup> The uproar over Sharia has led to some states including Alabama, North Carolina, and Oklahoma to take action in violation of the First Amendment.<sup>38</sup> According to the Brookings Institution and the Public Religion Research Institute, 30% of Americans believe American Muslims want to establish Sharia in the U.S.<sup>39</sup>

Currently, there are two Muslim Americans in congress—Keith Ellison and Andre Carson—and both have stated on record that they are opposed to implementing Sharia in the United States.<sup>40</sup> Additionally, the “longest-serving Muslim state-elected official, Larry Shaw” has made no efforts or comments to

35. See *infra* notes 201–17 (For example, treason is punishable by death under the common law. Many crimes are treated the same way under both Sharia and common law.).

36. Sacirbey, *supra* note 26.

37. Dean Obeidallah, *Why Do Republicans Love Sharia Law?*, ISLAMOPHOBIA TODAY (Apr. 11, 2011), <http://www.islamophobiatoday.com/2011/04/19/why-do-republicans-love-sharia-law/>.

38. See Sarah Topy, *Sharia Law in the Sooner State and Beyond: How the First Amendment Impacts the Future of Anti-Sharia Law Statutes*, 80 U. CIN. L. REV. 617, 617–26 (2011); *Sharia Law in America*, <http://www.billionbibles.org/sharia/america-sharia-law.html> (last visited Jan. 10, 2016); Julia Edwards, *Alabama Voters Pass Sharia Law Ban*, HUFFINGTON POST (Nov. 5, 2014, 2:41 AM), [http://www.huffingtonpost.com/2014/11/05/alabama-sharia-law\\_n\\_6105086.html](http://www.huffingtonpost.com/2014/11/05/alabama-sharia-law_n_6105086.html); Mark Joseph Stern, *Even Crazier in Alabama*, SLATE (Nov. 5, 2014, 5:30 PM), [http://www.slate.com/articles/health\\_and\\_science/jurisprudence/2014/11/alabama\\_foreign\\_law\\_amendment\\_challenges\\_supreme\\_court\\_on\\_gay\\_rights\\_death.html](http://www.slate.com/articles/health_and_science/jurisprudence/2014/11/alabama_foreign_law_amendment_challenges_supreme_court_on_gay_rights_death.html).

39. Cox, *supra* note 31.

40. See Obeidallah, *supra* note 37.

propose legislation in favor of Sharia.<sup>41</sup> Finally, Dearborn, Michigan, has the highest concentration of Muslims; “[h]owever, Dearborn Mayor Jack O’Reilly . . . said in an interview last year: ‘There’s no Sharia law in Dearborn, Michigan . . . . It isn’t even talked about in Dearborn.’”<sup>42</sup>

Although they are often viewed as outsiders, Muslims have lived in the United States since its foundation.<sup>43</sup> It is estimated that between “600,000 to 1.2 million slaves in the Antebellum South were Muslims.”<sup>44</sup> With more than 2.5 million Muslims in America today<sup>45</sup> and well over one billion in the world,<sup>46</sup> one could argue it is prejudicial and unwarranted for the media to call the entire religion violent based on the actions of select groups, especially since Muslims have been living in America peacefully since its inception.<sup>47</sup>

### A. The Foundation (Sharia Basics)

Sharia law is often misguidedly called Islamic law, which gives the incorrect impression that Sharia law consists solely of criminal rulings and punishments.<sup>48</sup> Due to this, many erroneously believe that Sharia law is merely a penal code.<sup>49</sup> Rather, Sharia law literally means “a path to be followed” and is the law of the Islamic religion.<sup>50</sup> The primary objective of Sharia is the good of mankind.<sup>51</sup>

The Islamic Shari’ah removes from human beings harmful, burdensome customs and superstitions, aiming to simplify and ease the business of day-to-day living. . . . And they are meant to benefit everyone in the community – rich or poor, rulers or ruled, man or woman – as well as to benefit the whole of humanity [throughout the earth] . . . .<sup>52</sup>

41. *Id.*

42. *Id.*

43. PRECIOUS RASHEEDA MUHAMMAD, *MUSLIMS AND THE MAKING OF AMERICA: 1600S TO PRESENT* 4 (2013).

44. KHALED A. BEYDOUN, *ISLAM INCARCERATED: RELIGIOUS ACCOMMODATION OF MUSLIM PRISONERS BEFORE HOLT V. HOBBS* 8 (forthcoming 2015) (manuscript at 8) (on file with authors).

45. Ben Winsor, *9 Famous Americans You Probably Didn’t Know Were Muslim*, BUSINESS INSIDER (Oct. 27, 2014, 4:07 PM), <http://www.businessinsider.com/these-9-famous-americans-are-all-muslim-2014-10>.

46. See Hannamayj, *2.2 Billion: World’s Muslim Population Doubles*, TIME (Jan. 27, 2011), <http://newsfeed.time.com/2011/01/27/2-2-billion-worlds-muslim-population-doubles/>.

47. MUHAMMAD, *supra* note 43, at 27.

48. See *Understand Shariah God’s System of Law*, THE DEEN SHOW, <http://thedeenshow.com/watch/3228/understand-shariah-gods-system-of-law> (last visited Jan. 14, 2015).

49. See Sacirbey, *supra* note 26.

50. *Id.*

51. SHEIKH YUSUF AL-QARADAWI, *THE LAWFUL AND THE PROHIBITED IN ISLAM* at XXI (1999).

52. *Id.* at XXII.

The aim under Sharia is to achieve preservation of life, religion, reason, lineage, and property.<sup>53</sup> In Islam, religion and law are interconnected.<sup>54</sup> Therefore, Sharia law encompasses many different subjects including, but not limited to, restrictions and prohibitions, but also ethics, private matters, and public affairs.<sup>55</sup> Although this article focuses on wars, crimes, punishments, and aggression, Sharia law covers a vast array of topics and gives guidelines or rules on just about every aspect of life including marriage, property, eating, grooming, entertainment, etiquette, employment, contracts, dress attire, speech, and several other aspects.<sup>56</sup> It is literally viewed as an *entire way of life* by Muslims.<sup>57</sup>

Original Sharia law is derived from a combination of two primary sources: the *Quran* (sometimes spelled Qur'an or Koran) and the Sunnah.<sup>58</sup> The *Quran* is the holy book of Muslims which was revealed to the Muslim Prophet Muhammad, and the Sunnah is Muhammad's teachings and practices.<sup>59</sup> Within Sharia law, it is important to note that there are five pertinent categories that Sharia rulings fall into.<sup>60</sup> The first level is *haram*, which means forbidden.<sup>61</sup> The second is *makruh*, which is disliked.<sup>62</sup> The third is *mubah*, which is neutral or permissible.<sup>63</sup> The fourth is *mustahab*, which is recommended or encouraged.<sup>64</sup> The fifth and final category is *fard*, which means obligatory.<sup>65</sup> These categories can be compared to U.S. statutes with affirmative commands (i.e. pay taxes) or prohibitive statutes (i.e. do not drink and drive).<sup>66</sup>

Islam is a monotheistic religion with much in common with the other Abrahamic faiths like Judaism and Christianity and has much overlap with Judaic law.<sup>67</sup> The word Islam is an Arabic word derived from the word *salam*, which means peace.<sup>68</sup> Therefore, Islam is often translated as peaceful submission (to the will of God).<sup>69</sup> Islam has five core pillars which technically make one a Muslim; a Muslim is

53. Dr. Abdurrahman al-Muala, *Crime and Punishment in Islam (Part 1 of 5): Introduction*, RELIGION OF ISLAM, (Mar. 8, 2006), <http://www.islamreligion.com/articles/253/viewall/>.

54. See Noel James Coulson, *Shari'ah*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/EBchecked/topic/538793/Shariah> (last visited Jan. 13, 2015).

55. *Id.*

56. Toni Johnson & Mohammed Aly Sergie, *Islam: Governing Under Sharia*, COUNCIL ON FOREIGN RELATIONS, (July 25, 2014), <http://www.cfr.org/religion/islam-governing-under-sharia/p8034>.

57. Coulson, *supra* note 54.

58. Johnson & Sergie, *supra* note 56.

59. Abed Awad, *Does Islam Really Condemn Converts to Death?*, CNN (June 6, 2014, 8:28 AM), <http://religion.blogs.cnn.com/2014/06/06/does-islam-really-condemn-converts-to-death/>.

60. *Five Categories of Laws in Islam*, IMAM REZA NETWORK, <http://www.imamreza.net/eng/imamreza.php?id=5631> (last visited Oct. 16, 2015).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Five Categories of Laws in Islam*, *supra* note 60.

66. Mary Ann Glendon, *Common Law*, BRITANNICA ONLINE ENCYCLOPEDIA, <http://www.britannica.com/topic/common-law> (last visited Oct. 17, 2015).

67. See *Religion: Three Religions, One God*, PBS, <http://www.pbs.org/wgbh/globalconnections/mideast/themes/religion/index.html?pagewanted=all> (last visited Jan. 14, 2015).

68. M. Abdulsalam, *What Is Islam? (part 1 of 4): The Core of Islam*, THE RELIGION OF ISLAM (Mar. 18, 2014), <http://www.islamreligion.com/articles/6/viewall/what-is-islam/>.

69. *Id.*

someone who practices or follows the religion of Islam.<sup>70</sup> The first pillar is the *shahada*, or the testimony of faith.<sup>71</sup> That is the sincere belief in the one deity who created everything (i.e. God, or Allah, in Arabic).<sup>72</sup> The Arabic word used for God is *Allah*, which is neither masculine nor feminine.<sup>73</sup> The second pillar is *salah* or prayer in English.<sup>74</sup> All Muslims are required to offer a minimum of five daily prayers spread throughout the day according to the position of the sun.<sup>75</sup> The third pillar is *zakat*, the Arabic word for purification.<sup>76</sup> This is a mandatory tax that Muslims pay which typically goes to charity.<sup>77</sup> The fourth pillar is *sawm*, which is fasting during the month of Ramadan.<sup>78</sup> Ramadan is one of the twelve months of the Islamic lunar calendar where Muslims abstain from food and drink from daybreak until sunset.<sup>79</sup> The fifth pillar is *hajj*, also known as the pilgrimage to Mecca (sometimes spelled Makkah).<sup>80</sup> This is to be completed by anyone who is financially capable and the purpose is to withdraw oneself from daily life and activities in order to focus on worship and purification of the soul.<sup>81</sup>

In addition to the five pillars, Islam also has six articles of faith.<sup>82</sup> The six articles of faith include: (1) the belief in God; (2) the belief in His Angles; (3) the belief in His books; (4) the belief in His Prophets and Messengers; (5) the belief in the Day of Judgment; and finally, (6) the belief in God's Divine Decree. These articles, in addition to the five pillars, technically make one a Muslim.<sup>83</sup>

There is no separation between "church and state" under the Sharia law. Religion and law are intertwined. Although the United States differs from the Sharia in this respect, God still appears in certain aspects of government, such as swearing on the *Bible* in court, the phrase "In God We Trust" is printed on paper money, and the word "God" is uttered during the pledge of allegiance.<sup>84</sup>

70. *Religion: Three Religions, One God*, *supra* note 67.

71. *What Are the Five Pillars of Islam?*, A BRIEF ILLUSTRATED GUIDE TO UNDERSTANDING ISLAM, <http://www.islam-guide.com/ch3-16.htm> (last visited Jan. 14, 2015) [hereinafter *Five Pillars*].

72. *See id.*

73. *See* Dr. Jamal Badawi, *Who is Allah?*, WHY ISLAM, <http://www.whyislam.org/submission/concept-of-god-submission/who-is-allah/> (last visited Jan. 14, 2015) (using "God" and "Allah" interchangeably).

74. *See Five Pillars*, *supra* note 71.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Five Pillars*, *supra* note 71.

81. *Id.*

82. *See Articles of Faith*, WHY ISLAM?, <http://www.whyislam.org/islam/articles-of-faith-2/> (last visited Jan. 14, 2015); *The Six Articles of Faith*, MASJID AL-MUSLIMIIN, [http://www.almasjid.com/content/six\\_articles\\_faith](http://www.almasjid.com/content/six_articles_faith) (last visited Jan. 14, 2015).

83. *The Six Articles of Faith*, *supra* note 82.

84. Jeffrey Owen Jones, *The Man Who Wrote the Pledge of Allegiance*, SMITHSONIAN MAGAZINE (Nov. 2003), <http://www.smithsonianmag.com/history/the-man-who-wrote-the-pledge-of-allegiance-93907224/?no-ist>.

## B. Brief History

In order to better understand Sharia law, it is imperative to analyze it under the context of which it began.<sup>85</sup> Islam “began” in the seventh century in the Middle Eastern part of the world with the advent of a man named Muhammad from the prominent Quraysh tribe.<sup>86</sup> He was born in the year 570 C.E. in Mecca.<sup>87</sup> Muhammad was born into a noble family, but had a tough upbringing due to the death of his parents at an early age.<sup>88</sup> However, the young man was raised by a caretaker and his uncle.<sup>89</sup> According to several sources, Muhammad was known for his character, manners, and above all his honesty.<sup>90</sup> Muhammad often left the city in search of seclusion in order to meditate and reflect.<sup>91</sup> According to Islamic tradition, it was during one of these retreats in a cave outside of Mecca that Muhammad received prophethood at the age of forty through divine intervention.<sup>92</sup> However, Muhammad became much more than just a religious teacher; he became a secular leader and politician as well.<sup>93</sup>

Before the advent of Muhammad, the city of Mecca was primarily populated by pagan Arabs practicing polytheism (the worship of multiple gods), although Christians and Jews inhabited the area as well.<sup>94</sup> During this time, the majority of people in the region could be described as nomadic, yet very tribal, making it very difficult for people to succeed on their own without a clan for protection.<sup>95</sup> The Arabs had a reputation for being fierce warriors and proud people.<sup>96</sup> There was constant warfare between clans, and the state of the people was in disarray.<sup>97</sup> Violence was

85. See Abdulsalam, *supra* note 68 (Muslims believe that Islam began with the very first human being and Prophet, Adam. They also believe that all the Prophets came with the same general message.).

86. See *Timeline of Islam*, PBS, <http://www.pbs.org/wgbh/pages/frontline/teach/muslims/timeline.html> (last visited Jan. 14, 2015) (The term “began” is in parenthesis because Muslims believe that Islam existed long before the advent of Prophet Muhammad and that anyone or anything that submits to God is a Muslim. Furthermore, Muslims believe that all previous Prophets, i.e. Abraham, Moses, Jesus, etc., were Muslims by definition, sharing the same message at different times and through different languages.).

87. See JOHN KELSAY, *Part I: State and Civil Society: One Civil Society and Government in Islam*, in ISLAMIC POLITICAL ETHICS: CIVIL SOCIETY, PLURALISM, AND CONFLICT 6 (Sohail H. Hashmi ed. 2002).

88. See *The Birth of Muhammad and the Early Years of His Life*, AL-ISLAM, <http://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-ashgar-razwy/birth-muhammad-and-early-years-his> (last visited Oct. 17, 2015).

89. *Id.* See also MARTIN LINGS, MUHAMMAD: HIS LIFE BASED ON THE EARLIEST SOURCES 33, (1983).

90. See *Timeline of Islam*, *supra* note 86; see also LINGS, *supra* note 89; THOMAS CARLYLE, ON HEROES, HERO-WORSHIP, AND THE HEROIC IN HISTORY 51 (1841).

91. See LINGS, *supra* note 89.

92. See *Timeline of Islam*, *supra* note 86.

93. See MICHAEL H. HART, THE 100: A RANKING OF THE MOST INFLUENTIAL PERSONS IN HISTORY 9 (2d ed. 1992).

94. See LINGS, *supra* note 89.

95. See Shaykh Muhammad Hisham Kabbani & Shaykh Seraj, *Jihad: A Misunderstood Concept from Islam—Forced Conversion?*, THE ISLAMIC SUPREME COUNCIL OF AMERICA, <http://islamic-supremecouncil.org/understanding-islam/legal-rulings/5-jihad-a-misunderstood-concept-from-islam.html?start=3> (last visited Jan. 14, 2015).

96. See LINGS, *supra* note 89.

97. See DVD: 2002 Muhammad: Legacy of a Prophet (Kikim Media and Unity Productions Foundation 2002); see also LINGS, *supra* note 89.

rampant.<sup>98</sup> Women were regarded as property and ill-treated.<sup>99</sup> Theft was prominent and poverty widespread.<sup>100</sup>

It is believed that Muhammad ultimately brought peace and order to a once chaotic and uncivilized Arabian peninsula through unification,<sup>101</sup> but this did not occur without much struggle and tribulation.<sup>102</sup> When Muhammad first arrived with the message that people should not worship idols and that they should worship the one and only true deity, God (or *Allah* in Arabic), he was met with much hostility and opposition by the pagan idolaters.<sup>103</sup> According to several biographies written about Muhammad, he and his followers endured thirteen years of abuse, exile, and boycotts before he finally received the command from his Lord to fight back.<sup>104</sup> Until this point, Muhammad had remained patient and did not retaliate or fight back.<sup>105</sup> However, there were still restrictions that Muhammad had to abide by.<sup>106</sup> Even when battle became permissible, the Sharia condemned the killing of any monks, women, children, or the elderly.<sup>107</sup>

### C. Sharia Battles

The Prophet Muhammad engaged in several battles in his lifetime.<sup>108</sup> It is recorded that Prophet Muhammad engaged in a total of twenty-seven battles over a ten-year span and that nineteen ended without bloodshed.<sup>109</sup> Two of the most well-known battles are Badr and Uhud.<sup>110</sup> Both of these battles were against the Quraysh—Muhammad’s birth tribe.<sup>111</sup> Historical Islamic sources further note that most of these battles were fought on the defensive and that the Muslims were the aggressors only on a few occasions.<sup>112</sup> “While Islam teaches peaceful spirituality, it does not forbid believers from entering the battlefield, as a matter of self-defense, to fight aggressors, occupiers, and predators.”<sup>113</sup>

98. See Legacy of a Prophet, *supra* note 97; see also LINGS, *supra* note 89.

99. See Legacy of a Prophet, *supra* note 97; see also LINGS, *supra* note 89.

100. See LINGS, *supra* note 89.

101. See Abubakar Kasim, *Muslim Hooligans Know Not the Prophet They Defend*, HUFFINGTON POST (Sep. 14, 2012), [http://www.huffingtonpost.ca/abubakar-kasim/ambassador-libya-\\_b\\_1881873.html](http://www.huffingtonpost.ca/abubakar-kasim/ambassador-libya-_b_1881873.html) (stating “Thomas Carlyle, in *Herods and Herods Worship*, stated: ‘How one man single-handedly, could weld warring tribes and Bedouins into a most powerful and civilized nation in less than two decades?’”).

102. See HART, *supra* note 93 (discusses various struggles the Prophet Muhammad endured).

103. See LINGS, *supra* note 89.

104. *Id.*

105. *Id.*

106. See Qasim Rashid, *Prophet Muhammad’s Rules of War*, MYJIHAD, <http://myjihad.org/prophet-muhammads-rules-of-war/> (last visited Oct. 17, 2015).

107. Shaykh Abdool Rahman Khan, *Wanton Killing of Innocents in the Name of Islam*, ISLAMIC CIRCLE OF NORTH AMERICA, (Nov. 24, 2014), <http://www.icna.org/wanton-killing-of-innocents-in-the-name-of-islam/>.

108. See Kourosh Ziabari, *Who Killed More: Muhammad or NATO?*, VETERANS TODAY (Dec. 6, 2012), [http://www.veteranstoday.com/2012/12/06/who-killed-more-nato-muhammad/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=who-killed-more-nato-muhammad](http://www.veteranstoday.com/2012/12/06/who-killed-more-nato-muhammad/?utm_source=rss&utm_medium=rss&utm_campaign=who-killed-more-nato-muhammad).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. Liaquat Ali Khan, *God & War: An Islamic View of the Battlefield*, 7 BARRY L. REV. 21, 23 (2006).

In the battle of Badr, the Quraysh (who had persecuted and boycotted Muhammad, forcing him to migrate from Mecca, his birth city, to Medina) initiated this first battle by coming to Medina.<sup>114</sup> This Quranic verse was revealed: “Permission to fight is granted to those against whom war is made, because they have been wronged, and God indeed has the power to help them. They are those who have been driven out of their homes unjustly only because they affirmed: Our Lord is God.”<sup>115</sup> Prior to this, Muhammad had been ordered (by God) to endure thirteen years of patience at the hands of his oppressors prior to the migration to Medina.<sup>116</sup> The Muslims had 313 soldiers while their opponents had 1,000.<sup>117</sup> It is reported that the Muslims were victors in this battle although heavily outnumbered.<sup>118</sup> Amongst the 1,313 soldiers combined, there were only fifty casualties (total from both sides).<sup>119</sup>

In the Battle of Uhud, the Quraysh dispatched an army of 3,000 men, while the Muslim army consisted of 700 men.<sup>120</sup> Additionally, the Muslims lacked supplies such as armor and horses.<sup>121</sup> Although the Muslims were initially defeating the Quraysh, some of the Muslim warriors disobeyed the instructions of Prophet Muhammad, which ultimately led to a victory for the Quraysh.<sup>122</sup> The number of combined casualties was twenty-two.<sup>123</sup> Although partially avenged from Badr, the Quraysh did not perceive this as a complete victory because they had not killed Prophet Muhammad.<sup>124</sup> Of all the twenty-seven battles fought during Prophet Muhammad’s lifetime, the sum of non-Muslims killed was 202.<sup>125</sup>

In comparison, the United States has engaged in warfare since its inception.<sup>126</sup> An unidentified number of wars have been fought with U.S. involvement<sup>127</sup> and the numbers of non-American casualties is unknown but is estimated to be in the

114. Seyyed Hossein Nasr, *Muhammad*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/396226/Muhammad/251798/The-early-battles> (last visited Jan. 11, 2016).

115. *Id.* (quoting QURAN, sura al-Hajj 22:39–40).

116. *Id.*

117. *Id.*

118. *Id.*

119. Seyyed Hossein Nasr, *supra* note 114.

120. Sayyid Ali Ashgar Razwy, *The Battle of Uhud*, in A RESTATEMENT OF THE HISTORY OF ISLAM AND MUSLIMS (2001) available at <http://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-ashgar-razwy/battle-uhud>.

121. *Id.*

122. *Id.*

123. Ziabari, *supra* note 108.

124. Seyyed Hossein Nasr, *supra* note 114.

125. *Id.*

126. See Danios, “We’re at War!”—and we Have Been Since 1776: 214 Years of American War-Making, LOON WATCH (Dec. 20, 2011), <http://www.loonwatch.com/2011/12/we-re-at-war-and-we-have-been-since-1776/>; see also *Civilians Killed and Wounded*, COSTS OF WAR, <http://costsofwar.org/article/civilians-killed-and-wounded> (last visited Feb. 28, 2015); Sherwood Ross, *Why We Seek War: Why Is America in so Many Wars?*, GLOBAL RESEARCH (Feb. 4, 2012), <http://www.globalresearch.ca/why-we-see-war-why-is-america-in-so-many-wars/17373>; John Tirman, *Why Do We Ignore the Civilians Killed in American Wars?*, WASH. POST (Jan. 6, 2012), [http://www.washingtonpost.com/opinions/why-do-we-ignore-the-civilians-killed-in-american-wars/2011/12/05/gIQLCO4eP\\_story.html](http://www.washingtonpost.com/opinions/why-do-we-ignore-the-civilians-killed-in-american-wars/2011/12/05/gIQLCO4eP_story.html).

127. Timothy McGrath, *The US Is Now Involved in 134 Wars*, MINT PRESS NEWS (Sept. 22, 2014), <http://www.mintpressnews.com/us-now-involved-134-wars/196846/>.

millions.<sup>128</sup> A similarity between Sharia law and American law is that military service is required for certain people.<sup>129</sup> The current U.S. standard for being drafted is a healthy man of age eighteen to twenty-five-years must register with selective services.<sup>130</sup> Although the Sharia did not set a standard age, it required men to have reached puberty and to be mature in order to bear arms when necessary.<sup>131</sup>

The conquest of Mecca, which took place in the year 630 C.E., was the final battle during the Prophet's life.<sup>132</sup> However, it had zero casualties due to battle.<sup>133</sup> The Quraysh and their allies had broken the treaty<sup>134</sup> so Muhammad gathered 10,000 men and arrived in Mecca, the location of his birth and the land he was once persecuted out of.<sup>135</sup> "His manner, however, bespoke not of pride or even of exultation but of gratitude and humility – gratitude to God for His mercy in bestowing success upon His humble slave, and humility in the contemplation of the vanity of worldly glory, and the evanescence of all things human."<sup>136</sup> "The city which had treated him so cruelly, driven him and his faithful band for refuge among strangers, the city which had sworn his life and the lives of his devoted adherents, now lay at his mercy."<sup>137</sup> "The Prophet declared a general amnesty in Makkah. The amnesty extended even to the apostates. He forbade his army to plunder the city or to seize anything that belonged to the Quraysh."<sup>138</sup> Although they (Quraysh) had severely transgressed against him, he did not seek revenge during his triumph.<sup>139</sup> Because the Prophet's example is considered part of the Sharia, it is evident from this instance alone that people should live together amicably and gracefully.

### III. WARFARE

Since the September 11, 2001 terrorist attack, there has been an influx in the usage of the word *jihad* or holy war as it has been translated by western media.<sup>140</sup>

A holy war has been defined as one in which God Himself enters the battlefield to fight and defeat the enemy. It may also be defined

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128. Tirman, *supra* note 126.
129. *Islamic Military Jurisprudence*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Islamic\\_military\\_jurisprudence](https://en.wikipedia.org/wiki/Islamic_military_jurisprudence) (last visited Oct. 18, 2015).
130. See *Who Must Register*, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/fswho.htm> (last visited Feb. 28, 2015).
131. See LINGS, *supra* note 89 (providing examples of young men who participated in battles).
132. See *Muhammad (Muhammad)—Conquest of Mecca*, ALIM, [http://www.alim.org/library/biography/stories/content/SOP/43/30/Muhammad%20\(Muhammad\)/Conquest%20of%20Mecca](http://www.alim.org/library/biography/stories/content/SOP/43/30/Muhammad%20(Muhammad)/Conquest%20of%20Mecca) (last visited Feb. 28, 2015).
133. See *id.* (although some fighting ensued between individuals, it was not war and it was not prescribed by the Prophet Muhammad).
134. Sayyid Ali Ashgar Razwy, *The Conquest of Makkah*, in A RESTATEMENT OF THE HISTORY OF ISLAM AND MUSLIMS (2001), available at <http://www.al-islam.org/restatement-history-islam-and-muslims-sayyid-ali-ashgar-razwy/conquest-makkah>.
135. *Muhammad*, *supra* note 132.
136. Razwy, *supra* note 134.
137. *Muhammad*, *supra* note 132.
138. Razwy, *supra* note 134.
139. *Id.*
140. See Ridouani, *supra* note 26.

as a war in which humans fight with God, on behalf of God, in the name of God, or against the enemies of God.<sup>141</sup>

However, the Arabic term *jihad* means “struggle” or “strive” according to Arabic scholars, referring to all or any struggles one may encounter within their belief; therefore, military action only describes one form of *jihad*.<sup>142</sup> The Arabic term used for war is *al-harb*.<sup>143</sup>

The combative form of *jihad* is not something that can be taken up by any individual on a whim or a desire, and the *Quran* does not give blanket permission to fight.<sup>144</sup> Rather, according to “[t]he principles of Islamic jurisprudence,” militaristic *jihad* must be initiated by the leader of the state and it “must be guided by the interests of the people” collectively.<sup>145</sup> Even then, there are conditions precedent to ordaining military *jihad*.<sup>146</sup>

The position of the law is that [military *jihad* is permissible] only at such a time when it can be reasonably proven that; there are aggressive designs against Islam; and, [there are] concerted efforts to eject Muslims from their legally acquired property; and, that military campaigns are being launched to eradicate them.<sup>147</sup>

When reporting on warfare and violence, the media rarely reports on the positive message and rulings of the Sharia that extol peace.<sup>148</sup> For example, in chapter four, verse ninety, the *Quran* orders: “if they leave you alone, refrain from fighting you, and offer you peace, then God gives you no excuse to fight them.”<sup>149</sup> In another instance, the *Quran* tells Muslims, “If they resort to peace, so shall you, and put your trust in God. He is the hearer, the Omniscient.”<sup>150</sup>

Under the stringent standards imposed by Sharia law, it is textually very difficult to initiate military action.<sup>151</sup> Similarly in America, Congress must first authorize the President to lead the Nation into war.<sup>152</sup> The United States can declare war on other countries through the powers ordained by Article One, section eight of the

141. Khan, *supra* note 113, at 24.

142. See Kabbani & Seraj, *supra* note 95.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Mirza Mesic, *The Perception of Islam and Muslims in the Media and the Responsibility of European Muslims Towards the Media*, <http://www.culturelink.org/conf/dialogue/mesic.pdf> (last visited Jan. 11, 2016).

149. QUARAN An-Nisa 4:90 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

150. QUARAN Al-Anfal 8:61 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

151. Qasim Rashid, *Prophet Muhammad's Rules of War*, MYJIHAD, <http://myjihad.org/prophet-muhammads-rules-of-war/> (last visited Oct. 17, 2015); see also QUARAN Al-Hajj 22:39-40 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

152. U.S. CONST. art. I, § 8.

Constitution.<sup>153</sup> However, there need not be any threat as required by Sharia law; arms can be taken up entirely as a prophylactic measure.<sup>154</sup> For example, in the year 2003, former President George W. Bush launched an attack on Iraq for the alleged manufacturing of weapons in an effort to disarm Iraq and protect any American vulnerability.<sup>155</sup>

In several *ahadith* (authentic narrations traced back to Prophet Muhammad), it was narrated that companions of the Prophet Muhammad would ask him if they were permitted to rebel and fight against unjust rulers in the future.<sup>156</sup> In one instance, Muhammad responded with “[L]isten and obey the ruler, even if he lashed your back and took your money, listen and obey.”<sup>157</sup> In another instance, Muhammad responded with, “No, don’t fight them as long as they do not prevent you from your prayers. And if you see from them something that you dislike, dislike their acts, do not dislike them. And do not take your hand out from obedience to them.”<sup>158</sup> These two *ahadith* demonstrate that Islam primarily invokes patience and tolerance, even in times of oppression.<sup>159</sup> According to the Prophet Muhammad, the best way to deal with an unjust ruler is through *jihad*: “a most excellent Jihad is when one speaks a word of truth in the presence of a tyrannical ruler.”<sup>160</sup> If one does not like the government or ruler and cannot live there peacefully, one should migrate.<sup>161</sup> In another hadith, Muhammad said, “The great[est] jihad (i.e. the struggle against the evil of one’s soul).”<sup>162</sup>

### A. Sanctioned Killing

One of the most infamous quotes attributed to the Muslim people is a verse from the *Quran* that states, “Kill them wherever you find them.”<sup>163</sup> This verse, which “alleged Muslims” have used to substantiate their violence has been published and broadcast throughout various media outlets to demonstrate the aggressiveness and

153. *Id.*

154. *See Iraq War*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/870845/Iraq-War> (last visited Jan. 11, 2016). (“In 2002 the new U.S. president, George W. Bush, argued that the vulnerability of the United States following the September 11 attacks of 2001, combined with Iraq’s alleged continued possession and manufacture of weapons of mass destruction (an accusation that was later proved erroneous) and its support for terrorist groups—which, according to the Bush administration, included al-Qaeda, the perpetrators of the September 11 attacks—made disarming Iraq a renewed priority.”)

155. *Id.*

156. Kabbani & Seraj, *supra* note 95.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *See generally* LINGS, *supra* note 89 (discussing the Prophet Muhammad as an example of someone who migrated due to the inability to cohabitate in Mecca).

162. *Jihad in the Hadith*, PEACE WITH REALISM, <http://www.peacewithrealism.org/jihad/jihad03.htm> (last visited Oct. 17, 2015).

163. QUARAN Al-Baqarah 2:190-192 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013); *see also* Niaz A. Shah, *The Use of Force Under Islamic Law*, 26 EUR. J. INT. LAW (2013); Daniel Burke, *After Paris Attacks, 7 Questions Being Asked About Islam*, CNN (Jan. 13, 2015), <http://www.cnn.com/2015/01/10/living/questions-islam/>.

intolerance of Islam.<sup>164</sup> However, it was usually taken out of context and shown without the verses that come before and after.<sup>165</sup> The general rule is that killing is against Sharia.<sup>166</sup> The *Quran* unambiguously states: “whoever kills a person, except as a punishment for murder or mischief in the land, it is as if he killed all mankind and whoever will save a life it is as if he saved all mankind.”<sup>167</sup> At first glance, it would seem as though the verses contradict one another, which could explain why someone who is not thoroughly educated in Sharia could be confounded. The answer, however, lies in both context and timing.<sup>168</sup>

As noted earlier, murder is generally *haram* (forbidden).<sup>169</sup> Under the Common Law (which states have adopted and implemented in statutes) murder is also a crime.<sup>170</sup> Nevertheless, in an effort to be pragmatic and idealistic, Sharia permits the use of deadly force in various circumstances.<sup>171</sup> Usually the circumstances are defensive, however, the offensive was permitted in very particular cases and it was contingent on specific acts.<sup>172</sup> Further, the verse that states “kill them wherever you find them” begins as follows: “Fight in the cause of Allah *those who fight against you*, but do not exceed the limits. Allah does not like transgressors.”<sup>173</sup> Then it proceeds to say, “kill them wherever you find them” and continues on to say “and drive them out of the places from which they have driven you. Though killing is bad, creating mischief is worse than killing.”<sup>174</sup> The verse finishes by reminding the Muslims “if they (the enemy) desist, let there be no hostility except against the oppressors.”<sup>175</sup>

The ending makes it unequivocal that a dispute reconciled amicably is the best practice. As can be seen, there is much more to this verse than what is usually publicized. When taken in context, it is not an open invitation to kill. Further, many verses such as this one were only applicable to a specific battle and for a specific time.<sup>176</sup> Additionally, “violence to spread the faith . . . is strictly forbidden.”<sup>177</sup> The

164. See, e.g., Frosty Wooldridge, *Part 1: Impregnating America with Muslims—Consequences to Our Society*, RENSE, (Dec. 17, 2014), <http://rense.com/general96/impreg.html>; Elaine Sciolino, *The World; A Country Making History Is Too Busy to Read It*, N.Y. TIMES, (Apr. 23, 2000), <http://www.nytimes.com/2000/04/23/weekinreview/the-world-a-country-making-history-is-too-busy-to-read-it.html>; *Radical Lawyer to Go on Trial*, FOX NEWS, (June 20, 2004), <http://www.foxnews.com/story/2004/06/20/radical-lawyer-to-go-on-trial/>.

165. See Ziabari, *supra* note 108.

166. Khan, *supra* note 113, at 32.

167. QUARAN AL-Ma'idah 5:32 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

168. See Ziabari, *supra* note 108.

169. See *id.*

170. *Murder*, CORNELL U.L. SCH., <https://www.law.cornell.edu/wex/murder> (last visited Mar. 5, 2015).

171. See Khan, *supra* note 113, at 32–33.

172. See Shah, *supra* note 163, at 343.

173. QUARAN AL-Baqarah 2:190-192 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013) (emphasis added).

174. *Id.*

175. *Id.*

176. See Sheikh Yusuf Estes, *Does Islam Say: “Kill The Infidels”?*, JUST ASK ISLAM, <http://www.justaskislam.com/32/does-islam-say-kill-the-infidels/> (last visited Feb. 28, 2015).

177. Khan, *supra* note 113, at 23.

*Quran* states, “Let there be no compulsion in religion!”<sup>178</sup> In a different verse, the previous statement is reaffirmed with, “But if they turn away, thy duty is only to preach the clear Message.”<sup>179</sup> Another Quranic verse taken out of context<sup>180</sup> says:

But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practise regular charity, then open the way for them: for Allah is Oft-forgiving, Most Merciful.<sup>181</sup>

One who does not understand the context of this verse, or only reads the portion that states “fight and slay the Pagans,” may be under the incorrect impression that it is an open invitation to fight and kill. However, in context, one realizes it is describing a time of war. Furthermore, it may incorrectly seem like the pagans being described in the verse must convert in order to avoid death. But the verse that follows states, “If one amongst the Pagans asks thee for asylum, grant it to him, so that he may hear the word of Allah; and then escort him to where he can be secure. That is because they are men without knowledge.”<sup>182</sup> Even if a pagan did not accept Islam, so long as they vowed to discontinue fighting the Muslims, they should be granted asylum and protection. Additionally, the use of the term “pagan” shows the context and specificity of the verse applying only to the idol worshipping pagans of Mecca who were fighting the Muslims during that time.

Comparatively, murder is against the law in the United States also.<sup>183</sup> Yet many states have self-defense exceptions including “stand your ground” and the “castle doctrine.”<sup>184</sup> Although “stand your ground” has stirred up much controversy and heated debate, “more than half of the states have enacted or considered” some legislation granting the use of justified force since 2005 as a means of self-defense.<sup>185</sup> Both systems of government, the democratic and the Islamic, realize that violence is not ideal, however, at times it is necessary.

178. QUARAN Al-Baqarah 2:256 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

179. QUARAN Al-Nahl 16:82 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

180. Daniel Pipes, *Study the Koran?*, DANIEL PIPES, (Jan. 20, 2004), <http://www.danielpipes.org/1461/study-the-koran>.

181. QUARAN Al-Tawbah 9:5-6 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013); *see also* Pipes, *supra* note 180 (examining contradictions within the text of the Quaran).

182. QUARAN Al-Tawbah 9:6 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

183. 18 U.S.C. § 1111 (2003).

184. *See, e.g.*, Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. MIAMI L. REV. 827, 830-31 (2013); Jessica Travis & Jeffrey James, *Know the Ground You're Standing on: Analyzing Stand Your Ground and Self-Defense in Florida's Legal System*, 20 BARRY L. REV. 91, 98 (2015).

185. Jennifer Randolph, *How to Get Away with Murder: Criminal and Civil Immunity Provisions in "Stand Your Ground" Legislation*, 44 SETON HALL L. REV. 599, 614; *see also* Lawrence J. Semento, *Sorting out the Shootout: Florida Courts Untangle the "Stand Your Ground Law"*, 20 BARRY L. REV. 1, 4 (2015).

#### IV. TORTURE

Torture and mutilation under Sharia are strictly forbidden.<sup>186</sup> Yet the American outlook on Islam and Sharia continue to dwindle, likely due to the heinous acts committed in the name of Islam coupled with the media propaganda.<sup>187</sup> Stories of beheadings and excessive or unnecessary torture have filled the airwaves.<sup>188</sup> Muslim leaders have attempted to condemn these acts but Sharia has nonetheless become synonymous with violence.<sup>189</sup> However, Sharia maintains that the killing of captives is generally prohibited except in specific instances of war criminals that are tried and found guilty of war crimes.<sup>190</sup> Furthermore, captives are to be well-fed and well-clothed.<sup>191</sup>

In pre-enlightenment Arabia, the Arabs would often practice various forms of killing or torture without just cause.<sup>192</sup> For example, if a woman gave birth to an infant girl they would discard the infant at birth due to their fear of poverty because most women would not work, and until married off, the girl would be a financial burden on the family.<sup>193</sup> The *Quran* explicitly made that action *haram* (forbidden) through the revelation of several verses.<sup>194</sup>

In another instance of cruelty, the Arabs of pre-Islamic times would use birds as live target practice and would cut the tails of animals.<sup>195</sup> The Sharia made all forms of mutilation impermissible and the hunting of animals remains permissible for sustenance but not for pleasure or sport.<sup>196</sup> Even the unnecessary cutting of plants is prohibited.<sup>197</sup> In a final example of cruelty, the pagan Arabs used to dismember and

186. See Shaykh Abdool Rahman Khan, *supra* note 107.

187. Dean Obeidallah, *13 Years After 9/11, Anti-Muslim Bigotry Is Worse Than Ever*, DAILY BEAST (Sept. 11, 2014), <http://www.thedailybeast.com/articles/2014/09/11/13-years-after-9-11-anti-muslim-bigotry-is-worse-than-ever.html>.

188. See, e.g., 'Westernised' Girl Killed by Muslim Father, DAILY MAIL, <http://www.dailymail.co.uk/news/article-197856/Westernised-girl-killed-Muslim-father.html> (last visited Feb. 28, 2015); Yaroslav Lukov et al., *As It Happened: Pakistan School Attack*, BBC, <http://www.bbc.com/news/live/world-asia-30491113> (last visited Feb. 28, 2015).

189. See, e.g., Mick Krever, *Sunni Cleric: ISIS Chief al-Baghdadi 'Is Going to Hell'*, CNN (Nov. 17, 2014), <http://amanpour.blogs.cnn.com/2014/11/17/cleric-isis-chief-al-baghdadi-is-going-to-hell/>.

190. See Troy S. Thomas, *Jihad's Captives: Prisoners of War in Islam*, available at [www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA435829](http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA435829); see also AHMED AL-DAWOODY, *THE ISLAMIC LAW OF WAR: JUSTIFICATIONS AND REGULATIONS* (2011).

191. QUARAN Al-Insan 76:8-9 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013) ("And they feed, for the love of Allah, the indigent, the orphan, and the captive— (Saying), 'We feed you For the sake of Allah alone: No reward do we desire from you, nor thanks.'").

192. See generally LINGS, *supra* note 89 (discussing pre-Islamic Arabia when the Arabs practiced various forms of torture and killing).

193. See Ibrahim B. Syed, *Abortion in Islam*, ISLAM AWARENESS, <http://www.islamawareness.net/FamilyPlanning/abortion/abortion3.html> (last visited Mar. 5, 2015); QUARAN Al-An'am 6:151 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

194. QUARAN Al-An'am 6:151 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

195. See Aisha Stacey, *Prophet Muhammad's Kindness to Animals*, THE RELIGION OF ISLAM, (Mar. 22, 2010), <http://www.islamreligion.com/articles/3493/>.

196. *Id.*

197. *Preservation of Plants and the Integrity of Land*, BEAUTIFUL ISLAM, [http://www.beautifulislam.net/articles/plants\\_land.htm](http://www.beautifulislam.net/articles/plants_land.htm) (last visited Mar. 4, 2015).

disfigure the deceased of other armies; this too became prohibited under Sharia.<sup>198</sup> Many sports enjoyed in America today, such as boxing, mixed martial arts, or even football, would likely violate Sharia rulings on causing harm to others.<sup>199</sup> In addition, striking to the face is prohibited.<sup>200</sup>

Under the Sharia, confessions brought about under fear, duress or torture are considered inadmissible.<sup>201</sup> A captive should not be deprived of food and water.<sup>202</sup> They should not be left out in the cold or heat.<sup>203</sup> They should not be placed in cages nor should covers be placed over their heads.<sup>204</sup> The *Quran* states on this matter: “O you who believe! Stand out firmly for God, be just witnesses, and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety, and fear God. Verily, God is well acquainted with what you do.”<sup>205</sup>

Similarly, the United States also has laws against torture and cruelty to both humans and animals.<sup>206</sup> Yet although there are laws in the books that condemn and penalize such acts, it does not prevent them from happening in the United States and abroad.<sup>207</sup> The recent release of a CIA report<sup>208</sup> discussed various methods of “interrogation” used on prisoners in Guantanamo including rectal feeding, water boarding, and sleep deprivation, yet these methods were trivialized by the very media that condemns violence.<sup>209</sup>

## V. CRIME & PUNISHMENT

Crime is one area that slightly differs between Sharia and American Common Law. Some of the things that are considered crimes under Sharia are not considered

198. See *Rights of Enemies at War*, ISLAM 101, <http://www.islam101.com/rights/hrM4.htm> (last visited Mar. 4, 2015).

199. See Dr. Hatem al-Haj, *The Rulings Pertinent to Boxing & Martial Arts*, THE DEEN SHOW, <http://thedeenshow.com/watch/3358/the-rulings-pertinent-to-martial-arts> (last visited Oct. 17, 2015).

200. *Id.*

201. See Aisha Stacey, *Human Rights in Islam (Part 3 of 3): Slavery and Torture*, THE RELIGION OF ISLAM, (July 13, 2009), [http://www.islamreligion.com/articles/2610/#\\_ftnref9487](http://www.islamreligion.com/articles/2610/#_ftnref9487).

202. *War Ethics in Islam: Prisoners of War*, ISLAMIC RESEARCH FOUNDATION INTERNATIONAL, [http://www.irfi.org/articles3/articles\\_4601\\_4700/war%20ethics%20in%20islamhtml.htm](http://www.irfi.org/articles3/articles_4601_4700/war%20ethics%20in%20islamhtml.htm) (last visited Mar. 4, 2015).

203. Brian Bertosa, *The Treatment of Prisoners of War and Non-Combatants in the Quran*, CANADIAN MILITARY J. 19, 22 (2007) available at <http://www.journal.forces.gc.ca/vo8/no1/bertosa-eng.asp>.

204. Bertosa, *supra* note 203.

205. QUARAN, *Surah Al-Ma'idah* 6:151 (Farida Khanam ed., Maulana Wahiduddin Khan trans., Goodword Books 2009) (photo. reprint 2013).

206. 18 U.S.C. § 2340A (2014); see also Melissa Cronin, *All 50 U.S. States Now Have Felony Charge for Animal Cruelty*, (Mar. 14, 2014), <https://www.thedodo.com/all-50-us-states-now-have-felo-465803412.html>.

207. Alex Mierjeski, *President Obama Just Issued a Pretty Damning Statement About US Torture Report*, ATTN (Dec. 9, 2014), [http://www.attn.com/stories/438/president-obama-just-issued-pretty-damning-statement-about-us-torture-report?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=obamatorture](http://www.attn.com/stories/438/president-obama-just-issued-pretty-damning-statement-about-us-torture-report?utm_source=facebook&utm_medium=social&utm_campaign=obamatorture); Tom Boggioni, *New York Times Calls for Cheney, Bush Officials to Be Investigated and Prosecuted for Torture*, RAW STORY (Dec. 22, 2014 1:39 AM), <http://www.rawstory.com/rs/2014/12/new-york-times-calls-for-cheney-bush-officials-to-be-investigated-and-prosecuted-for-torture/>.

208. Jeremy Ashkenas et al., *7 Key Points from the C.I.A. Torture Report*, N.Y. TIMES (Dec. 9, 2014), [http://www.nytimes.com/interactive/2014/12/09/world/cia-torture-report-key-points.html?\\_r=0](http://www.nytimes.com/interactive/2014/12/09/world/cia-torture-report-key-points.html?_r=0).

209. Boggioni, *supra* note 207; Lis Power, *The Five Worst Examples of Fox News Hosts Trivializing Torture*, MEDIA MATTERS (Dec. 11, 2014, 4:00 PM), <http://mediamatters.org/research/2014/12/11/five-worst-examples-of-fox-news-hosts-trivializ/201852>.

crimes in Western society today.<sup>210</sup> Under Sharia for example, theft, drinking (intoxicants), rape, adultery, murder, and treason are all crimes.<sup>211</sup> Although all of those listed above were once considered crimes under the Common Law, some have now become permissible, such as drinking<sup>212</sup> and adultery.<sup>213</sup> Because Sharia is not just based on secular laws, naturally, it makes sense that the list slightly varies from Common Law crimes.

Yet it is not necessarily the different categorization of crime that distresses people, it is the degree of punishment that is controversial.<sup>214</sup> The objectives of Sharia include protection of society, reform of the individual, and punishment.<sup>215</sup> The five types of punishment include flogging, stoning, amputation, exile, or execution, which is where the controversy usually lies.<sup>216</sup> Just like militaristic *jihad* must be initiated by a leader of the state (as discussed earlier), punishments too cannot be initiated by regular members of society (vigilantism), rather, they must be initiated by Islamic courts or heads of state.<sup>217</sup>

Honor killing is a particular example of *punishment* that is often misguidedly attributed to Islam and Sharia.<sup>218</sup> This notion comes from the fact that many countries, such as Pakistan, partake in such acts, and the country happens to be densely populated by Muslims.<sup>219</sup> One article portrayed this stereotype through the use of the title, “‘Westernised’ girl killed by Muslim father.”<sup>220</sup> Many articles such as this convey the message that honor killing is a ritualistic part of Sharia.<sup>221</sup> However, the presumption that this practice is derived from the Sharia is inaccurate, nor is it permissible under Sharia law.<sup>222</sup>

Adultery on the other hand is a crime under Sharia law, which remains controversial amidst non-Muslims.<sup>223</sup> Yet, as of April 2014, adultery was illegal in

210. Toni Johnson & Mohammed Aly Sergie, *Islam: Governing Under Sharia*, COUNS. ON FOREIGN REL., <http://www.cfr.org/religion/islam-governing-under-sharia/p8034> (last visited Mar. 4, 2015).

211. *Id.*

212. Michael Lerner, *Unintended Consequences*, PBS, <http://www.pbs.org/kenburns/prohibition/unintended-consequences/> (last visited Mar. 4, 2015).

213. *See infra*, note 223.

214. *See* Alastair Jamieson, *Saudi Court Orders Man to Be Paralyzed as an Islamic Punishment*, NBC NEWS, (Apr. 4, 2013, 9:50 AM), [http://worldnews.nbcnews.com/\\_news/2013/04/04/17601030-saudi-court-orders-man-to-be-paralyzed-as-an-islamic-punishment?lite](http://worldnews.nbcnews.com/_news/2013/04/04/17601030-saudi-court-orders-man-to-be-paralyzed-as-an-islamic-punishment?lite); *see also* Johnson & Sergie, *supra* note 210.

215. *Crime and Punishment in Islam (Part 1 of 5): Introduction*, THE RELIGION OF ISLAM (Mar. 8, 2006), <http://www.islamreligion.com/articles/253/viewall/>.

216. Johnson & Sergie, *supra* note 210.

217. *See Capital Punishment in Islam*, ABOUT RELIGION, [http://islam.about.com/cs/law/a/c\\_punishment.htm](http://islam.about.com/cs/law/a/c_punishment.htm); *see also* <http://www.islamreligion.com/articles/253/viewall/> (last visited Mar. 4, 2015).

218. Terrence McCoy, *In Pakistan, 1,000 Women Die in ‘Honor Killings’ Annually, Why Is This Happening?*, WASHINGTON POST, (May 28, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/05/28/in-pakistan-honor-killings-claim-1000-womens-lives-annually-why-is-this-still-happening/>; Michael Winter, *Pregnant Pakistani Woman Stoned to Death by Her Family*, USA TODAY (May 30, 2014), <http://www.usatoday.com/story/news/world/2014/05/27/pregnant-pakistani-woman-stoned-to-death/9628161/>.

219. *See* McCoy, *supra* note 218; *see* Winter, *supra* note 218.

220. ‘Westernised’ Girl Killed by Muslim Father, *supra* note 188.

221. Pamela Geller, *The Islamization of America in 2013*, BREITBART (Jan. 29, 2014), <http://www.breitbart.com/national-security/2014/01/09/the-islamization-of-america-in-2013/>.

222. Winter, *supra* note 218.

223. *In Which States Is Cheating on Your Spouse Illegal?*, DETRIOT FREE PRESS (Apr. 17, 2014, 3:48 PM), <http://archive.freep.com/article/20140417/FEATURES01/304170139/adultery-illegal-21-states>.

twenty-one states in America.<sup>224</sup> Some states consider it a misdemeanor, while in other states it is a felony.<sup>225</sup> The punishment today can range from trivial fines to life sentences.<sup>226</sup> However, not long ago, adultery was punishable by hanging, such as in the instance of Mary Latham and James Britton who were hung in Massachusetts in 1644.<sup>227</sup> Under Sharia, fornication is punishable by lashes, while adultery is punishable by stoning.<sup>228</sup> The sanctity of marriage is not taken lightly under Sharia, and even divorce, although permissible, is extremely frowned upon as marriage is viewed as a lifelong commitment.<sup>229</sup>

In another instance of media sensationalizing the Sharia, the media turns to the punishment for theft under Sharia law.<sup>230</sup> On several occasions, the media has argued that the punishment for theft under Sharia is cruel and harsh.<sup>231</sup> The media, however, neglected to give the whole story. If the writers and broadcasters were more diligent, they would quickly discover that the cutting of a thief's hand should not be implemented in every situation.<sup>232</sup> If one steals out of necessity (sustenance), they are exempt from punishment.<sup>233</sup> Also, minors and mentally handicapped persons are excused due to their underdeveloped (or improperly functioning) brains.<sup>234</sup> Finally, one who steals has an opportunity to repent and may avoid punishment altogether.<sup>235</sup> The *Quran* says: "But if the thief repents after his crime, and amends his conduct, Allah turneth to him in forgiveness; for Allah is Oft-forgiving, Most Merciful."<sup>236</sup> The intent of the Sharia is not cutting hands for theft; rather the intent is to prevent

224. *Id.*

225. Ethan Bronner, *Adultery, an Ancient Crime That Remains on Many Books*, N.Y. TIMES (Nov. 14, 2012), [http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html?\\_r=0](http://www.nytimes.com/2012/11/15/us/adultery-an-ancient-crime-still-on-many-books.html?_r=0).

226. Jonathan Turley, *Adultery, in Many States, Is Still a Crime*, USA TODAY (Apr. 25, 2010, 3:29 PM), [http://usatoday30.usatoday.com/news/opinion/forum/2010-04-26-column26\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/opinion/forum/2010-04-26-column26_ST_N.htm).

227. *Id.*

228. Elizabeth Peiffer, *The Death Penalty in Traditional Islamic Law and as Interpreted in Saudi Arabia and Nigeria*, 11 WM. & MARY J. OF WOMEN & L. 507, 510 (2005).

229. See *Divorce, An Understanding From Quran*, MASJID TUCSON, <http://www.masjiduntucson.org/submission/perspectives/more/family/divorce/divorceinquran.html> (last visited Mar. 5, 2015).

230. Sara Malm, *#Horror: the Moment Muslim Syrian Extremists Cut off a Man's Hand as Punishment for Stealing - and Posted Pics Live on Twitter*, DAILY MAIL (Feb. 28, 2014, 3:40 PM), <http://www.dailymail.co.uk/news/article-2570535/Syrian-extremists-cut-mans-hand-punishment-stealing-post-pictures-Twitter.html#ixzz3SIjQZqUZ>; *Somali Islamists Cut off Hands, Feet of Thieves*, NBC NEWS (June 25, 2009, 12:52 PM), [http://www.nbcnews.com/id/31492608/ns/world\\_news-africa/t/somali-islamists-cut-hands-feet-thieves/#.VOdXw2d0xMs](http://www.nbcnews.com/id/31492608/ns/world_news-africa/t/somali-islamists-cut-hands-feet-thieves/#.VOdXw2d0xMs); Lydia Polgreen, *Timbuktu Endured Terror Under Harsh Shariah Law*, N.Y. TIMES (Jan. 31, 2013), <http://www.nytimes.com/2013/02/01/world/africa/timbuktu-endured-terror-under-harsh-shariah-law.html>.

231. Malm, *supra* note 230; *Somali Islamists Cut off Hands, Feet of Thieves*, *supra* note 230; Polgreen, *supra* note 230.

232. Malm, *supra* note 230; *Somali Islamists Cut off Hands, Feet of Thieves*, *supra* note 230; Polgreen, *supra* note 230.

233. Dr. Iftikhar Ayaz, *The Philosophy of Punishments in Islam*, THE REVIEW OF RELIGIONS (Oct. 2009), <http://www.reviewofreligions.org/87/the-philosophy-of-punishments-in-islam/>.

234. *Id.*

235. Shaykh Muhammad Hisham Kabbani, *Understanding Islamic Law*, THE ISLAMIC SUPREME COUNS. OF AM., <http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html> (last visited Feb. 21, 2015); Sacirbey, *supra* note 26.

236. QURAN, sura Al-Mā'idah 5:39.

the commission of crime,<sup>237</sup> however, the media has generally failed to expound on this topic.

As for other crimes such as treason or murder, individuals can be charged under either Sharia<sup>238</sup> or Common Law<sup>239</sup> because treason and murder are considered crimes under both forms of law.<sup>240</sup> Various American states apply the death penalty differently to individuals who commit murder, while treason is punishable under federal law.<sup>241</sup> Throughout the years, the states have enforced capital punishment through the use of gas chambers, firing squads, electrocution, hanging, and lethal injection.<sup>242</sup> In the case of crimes committed against another individual, the Sharia believes in an eye for an eye.<sup>243</sup> So in the case of murder, the death penalty is usually left up to the family members of the murdered once the accused has been found guilty.<sup>244</sup> Similarly, many judges take into account the family's wishes when imposing a sentence.<sup>245</sup> However, Sharia also provides the family with an alternative, blood money.<sup>246</sup> The family of the deceased can seek retribution through financial compensation from the killer or his family.<sup>247</sup> The family of the murdered can also choose to forgive as the *Quran* says, "But if you pardon and exonerate and forgive, Allah is Ever-Forgiving, Most Merciful."<sup>248</sup> In a different verse, the *Quran* states, "They should rather pardon and overlook. Would you not love Allah to forgive you? Allah is Ever-Forgiving, Most Merciful."<sup>249</sup> It is clear from the Sharia that although execution is permissible for a convicted murderer, forgiveness is the best of options.<sup>250</sup>

#### A. Burden of Proof

Some media outlets propagate that Sharia abuses the use of the death penalty,<sup>251</sup> and while this may be true in some countries, this is not what the Sharia advocates because the burden of proof is extremely high under Sharia law.<sup>252</sup> Punishments are

237. Kabbani, *supra* note 235.  
 238. *Capital Punishment in Islam*, *supra* note 217.  
 239. 41 *Federal Capital Offenses*, PROCON, <http://deathpenalty.procon.org/view.resource.php?resourceID=004927> (last visited Mar. 5, 2015).  
 240. *Id.*; see also *Capital Punishment in Islam*, *supra* note 217.  
 241. *Methods of Execution*, DEATH PENALTY INFO. CENTER, <http://www.deathpenaltyinfo.org/methods-execution> (last visited Mar. 5, 2015); 18 U.S.C. § 2381 (2012).  
 242. *Methods of Execution*, *supra* note 241.  
 243. *Capital Punishment in Islam*, *supra* note 217.  
 244. *Id.*  
 245. *Id.*  
 246. *Id.*  
 247. *Id.*  
 248. See generally QURAN, sura At-Taghabun 64:14; see also QURAN, sura Al-Ar'af 7:199; see also QURAN, sura Ash-Shura 42:40.  
 249. See generally QURAN, sura An-Nur 24:22.  
 250. *Capital Punishment in Islam*, *supra* note 217.  
 251. See Nick Wing, *Allen West: Muslims Are All 'Honor Killings, Beheadings, Suicide Bombings'*, HUFFINGTON POST (June 11, 2013, 1:51 PM), [http://www.huffingtonpost.com/2013/06/11/allen-west-muslims\\_n\\_3422471.html](http://www.huffingtonpost.com/2013/06/11/allen-west-muslims_n_3422471.html).  
 252. Peiffer, *supra* note 228.

intended to be more of a deterrent for crime rather than an ends to a mean.<sup>253</sup> For example, in order to prove adultery in Sharia court, one of two things must take place. In the first scenario, an assailant must come forth and confess to the crime and be a witness against himself in order to be found guilty.<sup>254</sup> This is highly discouraged and a judge will inform the assailant that he should not confess and they should go home and seek forgiveness from their Lord.<sup>255</sup> Some scholars have said that the confession must be “repeated four times in definite and unambiguous words” on four distinct occasions.<sup>256</sup> Additionally, an assailant may recant their confession any time prior to the implementation of punishment in order to avoid any punishment.<sup>257</sup> Also, the mental health of a person confessing should be questioned and examined by the judge or ruler overseeing the matter.<sup>258</sup>

In the second scenario, four reliable and pious male witnesses must come forth and testify that they witnessed the crime (in grave detail).<sup>259</sup> The four eyewitnesses must have identical testimony.<sup>260</sup> If any of the witnesses differ on any of the facts, they become susceptible to punishment themselves and their testimony becomes invalid for the case at hand and in any future proceeding.<sup>261</sup> The purpose of this is to deter witnesses from coming forth and possibly accusing a person of a crime he did not commit, thereby tarnishing the reputation and honor of that innocent person.<sup>262</sup> The position of Sharia is plainly articulated by English jurist William Blackstone: “Better that ten guilty persons escape, than one innocent suffer.”<sup>263</sup> To that same effect, the Prophet Muhammad has said: “Ward off punishment as much as you can. If you find any way out for a Muslim then set him free. If the *Imam* [ruler or judge] makes a mistake in granting forgiveness, it is better for him than that he should commit a mistake in imposing punishment.”<sup>264</sup>

An example of how the system is supposed to function under the Sharia is visible in a highly quoted authentic hadith.<sup>265</sup> A lady came to the Prophet Muhammad and told him that she had committed adultery.<sup>266</sup> The Prophet noticed she was pregnant and told her to go give birth to her baby.<sup>267</sup> She obeyed and came back months later with her baby and told the Prophet that she had given birth.<sup>268</sup> He told her to go back

253. Ibrahim B. Syed, *Zina and Rajm*, ISLAMIC RES. FOUND. INT’L, [http://www.irfi.org/articles/articles\\_51\\_100/zina\\_and\\_rajm.htm](http://www.irfi.org/articles/articles_51_100/zina_and_rajm.htm) (last visited Mar. 5, 2015).

254. *Id.*

255. *Id.*

256. Robert Postawko, *Towards an Islamic Critique of Capital Punishment*, 1 UCLA J. ISLAMIC & NEAR E.L. 269, 289 (2002).

257. Peiffer, *supra* note 228.

258. *The Books Pertaining to Punishments Prescribed by Islam*, SUNNAH, <http://sunnah.com/search?q=pregnant+from+zina> (last visited Oct. 30, 2015).

259. Peiffer, *supra* note 228.

260. *Id.*

261. *Id.*

262. *See Id.*

263. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 352 (1979).

264. Syed, *supra* note 253.

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

and nurse her infant.<sup>269</sup> So she left and after some time had passed she returned.<sup>270</sup> He told her to go raise her child so she left.<sup>271</sup> She came back again when her child was able to eat on its own.<sup>272</sup> The punishment was finally carried out.<sup>273</sup> In this example, the lady was given several years and many opportunities to recant her confession but she kept returning and insisted on punishment. Although both the Sharia and the American legal system have high burdens of proof standards for criminal suspects they differ in this respect.

At times, both systems of law—the Sharia and the Common Law—have been used improperly; that is not to say the laws themselves are necessarily flawed, rather, at times they are abused or overlooked. Under the United States legal system, the police, prosecutors, and judges are employed and paid by the government and the system lends itself to an adversarial style.<sup>274</sup> Police will often use illegal methods to obtain evidence and confessions including coercion and deceit.<sup>275</sup> Prosecutors and judges often times have goals of their own (example, to be tough on crime) and their own beliefs about how the legal system should function and will therefore take what they believe to be justice into their own hands.<sup>276</sup> Moreover, the United States is often criticized for holding the highest incarceration rate in the world<sup>277</sup> and taking fifth place when it comes to executions.<sup>278</sup>

Similarly, the Sharia is not properly imposed in Muslim countries today; tyrannical leaders recline on thrones in their palatial abodes while the ruled are punished for stealing due to severe poverty.<sup>279</sup> In other instances, women are not

269. *Id.*

270. *The Book of Legal Punishments*, SUNNAH, <http://sunnah.com/muslim/29/35> (last visited Mar. 5, 2015).

271. *Id.*

272. *Id.*

273. *Id.*

274. See Conor Friedersdorf, *8 Ways to Stop Overzealous Prosecutors from Destroying Lives*, THE ATLANTIC (Jan. 21, 2013), <http://www.theatlantic.com/politics/archive/2013/01/8-ways-to-stop-overzealous-prosecutors-from-destroying-lives/267360/>; see Leon Neyfakh, *How to Stop Overzealous Prosecutors*, SLATE (Feb. 25, 2015, 8:44 PM), [http://www.slate.com/articles/news\\_and\\_politics/crime/2015/02/overzealous\\_prosecutors\\_hold\\_them\\_accountable\\_by\\_defunding\\_state\\_prisons.html](http://www.slate.com/articles/news_and_politics/crime/2015/02/overzealous_prosecutors_hold_them_accountable_by_defunding_state_prisons.html); see *Video Exonerates Man Set up by Louisiana Cops and Prosecutors*, YAHOO NEWS (Mar. 1, 2015, 3:26 PM), <http://news.yahoo.com/video-exonerates-man-set-louisiana-cops-prosecutors-video-202632601.html>.

275. See Laura Hoffman Roppe, *True Blue? Whether Police Should Be Allowed to Use Trickery and Deception to Extract Confessions*, 31 SAN DIEGO L. REV. 729 (1994).

276. See *How to Force Prosecutors to Play Fair*, N.Y. TIMES (Feb. 16, 2015), [http://www.nytimes.com/2015/02/16/opinion/how-to-force-prosecutors-to-play-fair.html?\\_r=1&referrer=](http://www.nytimes.com/2015/02/16/opinion/how-to-force-prosecutors-to-play-fair.html?_r=1&referrer=)

277. Tyjen Tsai & Paola Scommegna, *U.S. Has World's Highest Incarceration Rate*, POPULATION REFERENCE BUREAU, <http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx>; Michael Kelley & Christina Sterbenz, *This World Map Shows the Enormity of America's Prison Problem*, BUSINESS INSIDER, (Jan. 24 2014), <http://www.businessinsider.com/world-map-of-incarceration-rates-2014-1>.

278. Simon Rogers & Mona Chalabi, *Death Penalty Statistics, Country by Country*, THE GUARDIAN, (Dec. 13 2013, 7:00 AM) <http://www.theguardian.com/news/datablog/2011/mar/29/death-penalty-countries-world>; Ludovica Iaccino, *Top Five Countries with the Highest Rates of Execution*, IBTIMES, (Feb. 18, 2014) <http://www.ibtimes.co.uk/top-five-countries-highest-rates-executions-1436979>.

279. See Ali Kuzudisli, *Fight Against Poverty from the Islamic Point of View: The Wealth Distribution and Share*, ACADEMIA, [http://www.academia.edu/6955750/Fight\\_Against\\_Poverty\\_from\\_Islamic\\_Point\\_of\\_View\\_The\\_Wealth\\_Distribution\\_and\\_Share](http://www.academia.edu/6955750/Fight_Against_Poverty_from_Islamic_Point_of_View_The_Wealth_Distribution_and_Share) (last visited Mar. 11, 2015); see Ryan Lackey, *Why Have the Islamic Countries Failed to Develop Even with Resources like Oil, While Countries with No Resources like Switzerland Have Flourished?*, FORBES, (Jan. 8, 2013, 1:35 PM), <http://www.forbes.com/sites/quora/2013/01/08/why-have-the->

treated the same as men in the eyes of the law.<sup>280</sup> Additionally, various extremist groups who have skewed perceptions of reality and flawed justifications will implement Sharia discriminately in furtherance of their radical agendas.<sup>281</sup>

## VI. CONCLUSION

During the early morning of February 10, 2015, three people living in North Carolina were murdered—execution style.<sup>282</sup> The first was twenty-three-year-old, Deah Shaddy Barakat, a second-year dental student at the University of North Carolina.<sup>283</sup> The second was his newly wed twenty-one-year-old wife, Yusor Mohammad Abu-Salha, who also had aspirations of becoming a dentist.<sup>284</sup> The last victim was Yusor's sister, nineteen-year-old Razan Mohammad Abu-Salha, who attended North Carolina State University.<sup>285</sup>

The difference between this incident and the incidents that receive attention is that this incident did not have a “Muslim villain.” Instead, the Muslims here were the victims.<sup>286</sup> CNN, Fox News, and MSNBC did not cover the story until twelve hours after the incident and after the social media uproar about how the media had neglected the hate crime.<sup>287</sup> When media outlets finally reported, they simply aired the story without any postulations as to the motive of the crime, while others referred to it as merely a dispute over a parking space.<sup>288</sup> But when the roles were reversed, and the killer was Alton Nolen (mentioned earlier in this article), the media did not hesitate to speculate as to why Nolen, the so-called Muslim, killed his co-workers; it was instantly presumed to be terrorism.

There is certainly a disparity in the media and it has affected society's perception of their Muslim-American neighbors, which could be a factor contributing to the burning of mosques,<sup>289</sup> the disruption of peaceful Muslim rallies,<sup>290</sup> and also the cold-blooded murder of innocent Muslim citizens (such as the instance of the three North

islamic-countries-failed-to-develop-even-with-resources-like-oil-while-countries-with-no-resources-like-switzerland-have-flourished/.

280. See McCoy, *supra* note 218; see also Winter, *supra* note 218.

281. See Winter, *supra* note 218.

282. Nadia El-Zein Tonova & Khaled A. Beydoun, *Why Muslim Lives Don't Matter*, ALJAZEERA (Feb. 12, 2015), <http://www.aljazeera.com/indepth/opinion/2015/02/muslim-lives-don-matter-150212052018920.html>.

283. *Man Arrested After Fatally Shooting Three Muslim Students at the University of North Carolina*, RAW STORY (Feb. 11, 2015), <http://www.rawstory.com/rs/2015/02/muslimlivesmatter-man-arrested-after-fatally-shooting-three-muslim-students-at-the-university-of-north-carolina/>.

284. *Id.*

285. *Id.*

286. Tonova & Beydoun, *supra* note 282.

287. *Id.*

288. Arturo Garcia, *Russell Brand Rips Coverage of Chapel Hill Shootings: 'We Can't All Send Hashtags About Parking Spaces'*, RAW STORY, (Feb. 16, 2015, 7:21 PM), <http://www.rawstory.com/rs/2015/02/russell-brand-rips-coverage-of-chapel-hill-shootings-we-cant-all-send-hashtags-about-parking-spaces/>.

289. Wilson Dizard, *Arson Eyed in Houston-Area Mosque Fire*, ALJAZEERA (Feb. 13, 2015, 3:19 PM), <http://america.aljazeera.com/articles/2015/2/13/arson-eyed-in-houston-area-mosque-torching.html>; Hayes Brown, *Hecklers Cheer Burning of Tennessee Mosque at Muslim Outreach Forum*, THINK PROGRESS (June 13, 2013, 2:50 PM), <http://thinkprogress.org/security/2013/06/13/2150841/hecklers-cheer-burning-of-tennessee-mosque/>.

290. Chrysler Summer, *Christian Group in Texas Shows What Hatred Looks Like*, OPPOSING VIEWS (Feb. 2, 2015), <http://www.opposingviews.com/i/columns/christian-group-texas-shows-what-hatred-looks>.

Carolina students). To be entirely fair, the media is not solely responsible for the stereotypes that have amounted to a presumption that Muslims are only newsworthy when they are holding the gun. Equally culpable are the extremists, militant groups, and countries that claim to be governed by Sharia who have perverted the Sharia to justify their wicked agendas. This does not however, diminish the media's ethical duty to provide factually accurate reporting.<sup>291</sup>

Although Muslims believe in the destruction of past civilizations done by Allah as described in the Old Testament<sup>292</sup> and the *Quran*<sup>293</sup> (such as the drowning of Pharaoh and his army when pursuing Moses through the sea), the Sharia does not authorize humans (Muslims or non-Muslims) to kill in the name of Allah.<sup>294</sup> In fact, the Sharia explicitly forbids it. It is evident from the Sharia that violence is reserved strictly for specific instances.<sup>295</sup> Killing is *not* the general rule, rather it is the exception.<sup>296</sup> According to the laws of Islam, fighting is only permissible under specific circumstances.<sup>297</sup> Yet media outlets continue to generalize and paint an entire group of people with the same brush. As world religions expert, David Rodier, said, "If people are intent on using religion to motivate terror or violence, they'll find an excuse there no matter what the actual text says."<sup>298</sup>

Overall, it is believed that Muhammad brought much more than just law and order to the Arab people. Much like the prospect of hope, freedom, and prosperity America provided to new settlers escaping the reign of the British Crown, Muhammad brought unity, brotherhood, and peace to a once divided, tribal, and hostile society through the implementation of Sharia.

Although the media highly publicizes the horrible acts perpetrated around the world by overzealous individuals who claim to be Muslims, that is not what the Sharia commands.<sup>299</sup> Sharia law is not the anomaly the media makes it out to be. The Sharia commands justice as does the Common Law. They both attempt to uphold justice according to a slightly different set of standards; however, many of the things that the Sharia considers illegal were, or still are, illegal in the United States. Each of the two has a system to enforce the law and standards of proof to be met.

The general message of Sharia is one of peace and deterrence. Therefore, anything done in the name of Islam that is contrary to the Sharia cannot be defined as Islamic. The *Quran* teaches: "And the servants of the Most Merciful [i.e. God] are those who walk upon the earth easily [with humility], and when the ignorant address

291. *Man Arrested After Fatally Shooting Three Muslim Students at the University of North Carolina*, *supra* note 283.

292. *See generally* Genesis 19:23 (discussing the destruction of Sodom and Gomorrah).

293. *See generally* QURAN 7:80, 11:77, 15:59, 21:71, 26:161, 27:55, 29:26, 37:133, 54:33 (discussing the destruction of Sodom and Gomorrah).

294. *See generally id.*

295. *See generally id.*

296. *See generally id.*

297. *See generally id.*

298. Peter Standring, *Koran a Book of Peace, Not War, Scholars Say*, NAT'L GEOGRAPHIC (Sep. 25, 2001), [http://news.nationalgeographic.com/news/2001/09/0925\\_TVkoran.html](http://news.nationalgeographic.com/news/2001/09/0925_TVkoran.html).

299. *Id.*

them [harshly], they say words of peace.”<sup>300</sup> Many non-Muslims have written about the topic of Islam and its worldview and shared their opinions regarding Muhammad, Islam, the Sharia, and their thoughts on violence. Mahatma Gandhi said:

I wanted to know the best of the life of one who holds today undisputed sway over the hearts of millions of mankind. And I found enough in the volumes to account for it. I became more than ever convinced that it was not the sword that won a place for Islam in those days in the scheme of life. It was the rigid simplicity, the utter self-effacement of the Prophet, the scrupulous regard for pledges, his intense devotion to his friends and followers, his intrepidity, his fearlessness, his absolute trust in God and his own mission. These and not the sword carried everything before them and surmounted every obstacle.<sup>301</sup>

Philosopher and historian, Thomas Carlyle, said, “The lies which well-meaning zeal has heaped round this man [Muhammad] are disgraceful to ourselves only.”<sup>302</sup> Finally, in a portion of the Prophet Muhammad’s farewell sermon, he left the people of Arabia with a simple message that resonates with Muslims around the globe: “So regard the life and property as a sacred trust. Return the goods entrusted to you to their rightful owners. Hurt no one so that no one may hurt you. Remember that you will indeed meet your Lord and that He will indeed reckon your deeds.”<sup>303</sup>

Some readers may leave with the takeaway that Sharia is still too harsh even after learning the context of the punishments along with the various exceptions. Others, however, may feel that Sharia seeks justice and attempts to deter people from committing crimes in the first place. Either way, all the facts and the context are important in reaching a conclusion. The media has failed in this respect. The best way to combat ignorance is through perpetual knowledge.

300. QURAN, sura Al-Furqan 25:63; *see also* QURAN, sura Al-Isra 17:37 (“And walk not on the earth with conceit and arrogance. Verily, you can neither tear nor penetrate the earth, nor can you attain a stature like the mountains in height.”).

301. MAHATMA GANDHI, *THE COLLECTED WORKS OF MAHATMA GANDHI* (volume 29) 132–33 (1924), available at <http://www.gandhiserve.org/cwmg/VOL029.PDF>.

302. THOMAS CARLYLE, *ON HEROES, HERO-WORSHIP, AND THE HEROIC IN HISTORY* 42–43 (ed. 1841), available at <https://archive.org/stream/thomascarlyleson00carl#page/42/mode/2up>.

303. Amatullah Abdullah, *Prophet Muhammad’s Last Sermon: A Final Admonition*, *THE RELIGION OF ISLAM* (Mar. 5, 2007), <http://www.islamreligion.com/articles/523/>.