

Law And Religion  
Sharia Law and the First Amendment

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### Abstract

America has long been seen as the capital of religious freedom and individual rights. In recent years a debate has arisen over whether an individual can personally adhere to the legal concept of sharia law under the protections of the first amendment. At the center of this debate is precedent that can be drawn from previous interactions between religion and American ideals. Two similar issues that have been settled both judicially and legislatively are the conscientious draft objector and the federal prohibition of polygamy. By studying the roots of Islamic law and then the basis of these two concepts, a synthesized response can be created that equally satisfies the first amendment right to freedom of religion and the safeguarding of American legal precedent.

### Law and Religion

Many Americans hold their citizenship at odds with their religious loyalty. Considering this relationship, the interactions between religion and public law are often a tumultuous and polarized area. In America, the issue of how a society should respect religion compared to law is unique. This discussion has been fought in the courts, schools, and communities throughout America with equally inconclusive results as each side calls on freedom of religion to defend and aggress against the bonding of church and state. Recently however, the aggressing ideas of sharia law have upset this cycle. Claiming protection under the First Amendment, support for detrimental foreign law has gained a foothold in American society and the rights that make this nation free are in danger of being used to bring oppression. The threat of sharia law stands in direct opposition to the values, freedoms, and government that the American Constitution provides and represents a unique dilemma to the interests of life, liberty, and the pursuit of the happiness for the American people.

The incompatibility between sharia law and American law is apparent in several areas. There is a natural animosity between sharia law and the Bill of Rights. The American Bill of Rights is traditionally held in history next to a select few other documents as being the most exemplary document protecting and promoting natural human rights. Although some cultures are able to blend their society with sharia law successfully (Igboin, 2012), this would not be the case with America. Traditionally when immigrants bring the religions or cultures of their homeland to America, over time they will become a homogenous part of diverse American culture. This assimilation is not instantaneous, nor without exception. Many groups interacting with American culture

face opposition by the citizenry, and some of these groups do not overcome the hostility and the result is heterogeneous pockets of foreign cultures within American society. The stand-alone groups represented by this breakdown of assimilation are not those living in ethnic communities, but instead those persecuted by the majority of Americans for their past culture. Islam is a culture struggling to become reconciled as one of America's own. A contributing factor to this is that, as laid out in a strict interpretation of the Quran, proponents of sharia law believe it to be the highest form of law created and because of this assume the mentality of possessing a conquering ideology that cannot be accepted as second or subjugated (Sharia: The Threat to America, 2010). Culturally, just as it was difficult for many of the immigrants to be accepted in America, so it is difficult for the Islamic community to assimilate because of a fear of Islamic beliefs (Yaser, 2012). An adherence to sharia law by Muslims creates a situation in which American society and American law both make sharia-adherent Muslims irreconcilable to the nation. This is a sad conclusion for both groups. As the great melting pot, America has assimilated into society elements of every major culture with the exception that elements of Islamic culture still draw vast and universal opposition. It is no longer uncommon to see Asian, African, European, and most recently Hispanic influences accepted into the popular television, education, news, sports, or politics. Although there is an English language version of the popular Arabic news *Al Jazeera*, it is prevalent only in Arabic communities much like the audience for ethnic Hispanic channels, as both lack the eventual acceptance and use of a recognized foreign station such as the British Broadcasting Channel. Unlike the Arab demographic, it is not uncommon to see Hispanic news anchors or politicians outside of the Hispanic community. An Arabic-American is a vastly more rare sight in

major news or politics. Measuring the public media presence of a culture within society is a valuable tool to understand public perception of that minority group. Though there will always be British villains and Chinese ninjas in American media, they have attained their stereotype similar to the American cowboy or daredevil. These influences are accepted as the nation's own and are fondly recreated in Halloween costumes and media. The exception to this is the Arabic or Middle Eastern world, which before 9/11 was not well integrated (Naber, 2000). Their role in American culture had difficulty evolving beyond the marginalized Rat Patrol and Indiana Jones perception as a lesser assistant in the greater acts of the world. Their perception was changing though, as do all cultures. The influx of talented and skilled Middle Eastern residents fleeing oppression and war during the 1970s brought valuable, and respected, skills to America (Abraham, 1989).

Post 9/11, Islam has faced an uphill battle to become an accepted part of American culture. The widespread reach and sensationalism of media often incites anger and distrust against the entire Muslim community following any Middle Eastern interactions (Shah, 2011). A lot of the discussion of the Middle East reflects this, as it comes not from actual middle easterners inside America, but from the presentation of them by American media and entertainment. The modern generation has increasingly replaced the concept of a prosperous and free Iran, highly skilled Muslim immigrants, or of a civil Middle East with a perception influenced by years of war, experience of local terrorist events, and the media portrayal of international attacks by members of Islam and attacks against prominent Islamic leaders. Therefore although anti-Muslim bias may have begun weakening before 9/11, this perception was changed when "specific events occurred in the West after 9/11 that helped to reconstitute Americans' latent fear of

Muslims and Islam and likely further intensified anti-Muslim sentiment in the U.S. and Europe” (Haddad & Harb, 2014). Events such as the killing of Al-Qaeda leader Osama bin Laden and statements from the Pope led to sharp increases of up to 20% in American distrust of Muslims (2014). As well, a recent study of the portrayal of Arabs in media showed that they were largely considered “brutal, uncivilized, religious fanatics” (Shaheen, 2003). This negativity toward Arabs shows a prevalent part of prejudice, but is not the defining force holding back the Middle Eastern community from being welcomed into American culture. Indeed, most cultures that enter America must endure scorn and bigotry. Even the aspect of the American war on terrorism and the attacks of 9/11 are not crippling, as the Japanese assimilated with time despite both WWII and the attack on Pearl Harbor. Without further interruption, time will eventually reconcile the recent distrust between America and its Arab immigrants. One force separating Islam and America that will not be mitigated by time however, is the concept of sharia law. This is because the greatest force against Arab and Middle Eastern inclusion is not in their culture or stereotypes, which can and will be overcome, but in their religion, more specifically the law of their religion.

The law of the Middle East is not like the language barrier of Hispanics, it is unrelated to the slavery aspects of the African community, and it does not compare to the societal outcast of the original Korean immigrants. All of these are barriers that either America or the immigrating culture sought to assimilate and are progressively overcoming. Sharia law contrasts this mindset as it inspires Muslim immigrants to overtake the culture instead of being bound to it. Because of this, there is an intrinsic difference between the fabrics of American society and sharia adherent Islam that cannot

be overcome without one side relenting (Kabir, 2011). This refusal to relent and the continual presence of a flourishing and militant Islamic state have crippled the Muslim image in America.

This image is further deepened by the overpowering mentality of sharia law to radicalize or conquer. This can be seen in the countries that have welcomed traditional Islam without reservations such as Australia, the Middle Eastern nations, and Europe (Hefner, 2011). The practice of honor killing in particular is a good indicator of the presence of sharia law (Idriss & Abbass, 2010). The American people have observed honor killing in the American news. They have seen it entered in American courts as a defense and they have seen a Muslim man claim it as a justification for murder (Labi, 2011). This in itself may not seem influential when isolated, but the widespread silence of not only the majority of the Muslim population but also of prominent Muslim leaders show a disconnect between words and actions when it comes to condemning sharia law. The Muslim community has been well established in America for decades already and yet still has not grasped that perception is reality in a democracy. Through the channels of news and the technological age, the American people are aware of the most minute movements and views across the world. Through these channels they continually see a war being fought globally against terrorists claiming Islam as their religion and sharia as their justification. The news sensationalizes graphic violence committed by strict adherents of sharia and the demographic community of Islam globally does little to counteract this image. Even with fair media coverage, there is not a strong condemnation of strict sharia law coming from Islamic leadership. This is bad news for those in the Muslim community attempting to reform the view of Muslims apart from sharia.



Prejudice when confronted with opposition may not die in a single generation, but logically every positive interaction refutes opposing stereotypes. The next generation of Americans is currently being raised in the midst of a series of Middle Eastern wars, creating a prejudice that will have to be overcome by Muslims themselves. Aggravating the perception is the lack of this as the global Muslim community does little to perceptively alienate itself from the terrorism, bigotry, and misogyny that comes from the laws set by sharia.

Sharia in America is not often considered a threat, despite the damage that it has caused overseas. Islamophobia and war mongering are commonly looped with discussions of strict-sharia adherents because the concept is so often associated with radical elements of Islam. The term “radical Islam” is a misnomer, and to be accurate, could be better described as “strict Islam.” When the Quran is read literally it possesses a great amount of laws and punishments as well as a violent approach to many issues. When read in a more figurative sense, Islam becomes a much tamer religion. Just as in Christianity, the contention around figurative and literal interpretation has caused great schisms in Islam. The greatest source of this contention comes from the theory that sharia law is not laid out in full in the Quran. Instead, it is simply alluded to, and the details are supported from other texts. Due to this nature, sharia law is an interpreted law style similar to how an American appellate court interprets statutes:

This distinction assumes that the Holy law, as the aggregate of divinely-ordained rules, is not entirely self-evident from the sacred texts. If it were, the sacred texts would not be the sources of the law, but rather the law itself. (Weiss, 1978)

To determine the actual law of the Quran, many different schools have formed over the history of Islam and each has had a unique interpretation of the Quran and its verses. This diversity in the religion has itself led to diversity in sharia law. As the excerpt above demonstrates, sharia law itself is not a concrete item. It is based on the interpretation of not only the Quran, but also the sayings and actions of Muhammad. These final two pieces are part of a complete discussion of the Quran and are commonly referred to as the *Hadith* and the *Sunna*. With this much input and content to draw from, different sects draw greatly differing opinions about the commands to Muslims and this influences their interpretation of sharia law (Khan, 2013).

The most important dissenting opinion for the purposes of considering sharia law in American society is that of the interpretation of Islam as a true religion of peace. This interpretation is an approach to Islam that views the book more as a history book relating events. This view applies the commands to kill within a historical boundary limited by the original context of the passage. In Surah 9:5 of the Quran, killing of unbelievers is commanded unless they convert (Quran 9:5, Sahih International). The strict and literal sense of this verse is that a Muslim is required by the Quran to kill non-believers. The historical interpretation dissents, and claims that the verse is speaking of a historical time Muslims killed a certain group of unbelievers that were attacking them. In this approach, the violence is not justified to be carried out today against unbelievers. Consider this line from the Quran as to whether it is only relating a historical event or a religious doctrine:

And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let

them [go] on their way. Indeed, Allah is Forgiving and Merciful (Quran 9:5, Sahih International)

A historical approach to interpreting Islam is a very drastic departure from a strict interpretation. The two viewpoints of the same religion differ so much that indeed that historical approach loses the incompatibility that the strict viewpoint maintains. It is in fact because of this, and other less literal interpretations, that Islam has found a home in many nations without raising concern, and likewise many Muslims across national spectrums are able to coexist peacefully with neighbors. It is a testament to this peaceful strain of Islam that Jews and Christians were able to live in a Middle East dominated by Muslims and maintain a prosperous standard of living underneath a moderate sharia law for nearly thirteen centuries (Abu-Munshar, 2007). Muslims controlled Jerusalem itself until the recent creation of the Israeli state, and the city possessed and safely protected many of the holy places of all three religions for centuries. It is important to understand this side of Islam, because it is a factor in every educated determination of sharia law and the place religious law holds within a society. Despite this, the peaceful sharia as a complete model of laws and lifestyle is not exempt from scrutiny. Although certainly most religions possess a list of moral rules that supersede all else, these rules are not a competing legal and governing system such as that which is contained in sharia law. Sharia law as a lifestyle could be allowed in America when it does not violate our laws. The difficulty with this is that sharia as a system demands to be placed above all other law forms. The only way this could be acceptable is if the provisions of sharia agreed to be subservient, but then there would be no need for sharia if all of the American legal rules applied equally. Furthermore, sharia would become crippled and largely useless by

the time it was reformed enough to be compatible. Varying concepts and ideas can be applied by the Islamic community with the understanding that they are under American legal precedent, but this would not be sharia law. By definition, it would have to be a conglomerate of all ideas not disqualified by the accepted rules. It cannot be allowed to jeopardize the practice of freedom or bend the scales of justice, but it can be individually followed and respected. The Bible contains many passages dealing with how an individual should act in regard to a secular government, as evidenced by Christ's own submission to the Roman governor Pilot (Matthew 27:11, NKJV) or Christ's reference to "Give unto Caesar, that which is Caesars" (Mark 12:17). Yet a strong tenant of Christianity is that God is the King of Kings above all on earth. This is accepted because it is not required of a religion that it bow down and make its beliefs subservient to the Constitution. Instead, it is required that all religions abide by the law of the land. This is why an anarchist group is allowed to meet and exist in America without interruption or harassment. The American ideal is not for complete control over all religion. This is at the core of the debate over whether or not sharia should be allowed in America, for even if it disagrees with commonly accepted practice, to an extent it is still protected by the First amendment and the freedom of religion. This debate is not a new debate; instead it is one that has been argued several times not only legislatively, but also in the United States Supreme Court. Two distinct cases offered are conscientious objectors and polygamy at the turn of the century America. Both of these should be considered because each is an argument from personal belief grounds against an established law offering solid insight into the issue.

The first is the conscientious objector. In America, conscription is used during times of national emergency to raise a military force. The typical parameters for those being drafted fall into very specific categories of health, age, mental capacity, and such basic military considerations. If the prospects are not disqualified by any of the parameters, they are forced to fight in the military at the risk of criminal charges for disobeying. However, conscientious objectors are those who, for personal reasons, do not believe in violence and therefore are typically exempt from the draft (Selective Service System, 2002).

This is relevant to the debate concerning religious laws in America because conscientious objectors are not banned or restricted at all if granted such status. They still have all the protections and sovereignty of a citizen, but are not required to fight. The Amish are an example of this principle. The status of Social Security and Ordnung, or community laws, are two aspects within the Amish community that relate to the Islamic community and its discussion of sharia law. Amish communities are exempt from paying into social security and other established government institutions through compromises established by the community and brought before the government (O'Neill, 1997). This is based solely on their belief that their community must take care of its own, and because of this the government granted an exemption to both taxes if the receiving party could prove that they have alternate means to take care of their citizens (Fuchs, 1990). This exemption applies strictly to inter-community transactions and thus, when Amish individuals work for a non-Amish employer, they are required to pay into the system as a typical citizen would (Fuchs, 1990). This is highly relevant to any discussion of civil sharia law because it shows the precedent that is established. Compare it to sharia

adherent banking, which is a system of banking that follows certain laws that are more specific than the statutory laws of American banking. For example, banks following a strict Islamic teaching are not allowed to invest in what are considered sinful ventures, as in a company that sells pork or contraband material (Adebayo & Hassan, 2013). Furthermore, they are not allowed to collect interest on cash loans. Although Islamic banks circumvent some of these issues through formalities and differing ways of purchase, they still respect the rules laid down in sharia. This means that if an Islamic American were to take out a loan from one of these banking institutions and were to back out of the loan, the institution may claim a reason for repossessing property the same as if it were being used immorally. This is where the contention comes in that also exists in the Amish world. A sharia bank may consider a truck being used to deliver pork products an “unethical” use of the vehicle, allowing reclamation. The truck’s use is clearly not a violation of American financial law, yet Islamic banks claim it as a personal violation of their laws, and would expect it to be accepted. Through contract law, such stipulations can already be applied and enforced in civil court. Thus, the Islamic institutions in sharia never claim that they seek to put non-adherents under their rulings, but may instead claim that all transactions between Muslims are privy to sharia law.

This does not satisfy the entire issue though, because it is not always up to the producer whether the consumer uses their product. This issue applies to the concept of sharia law because under sharia law a Muslim is allowed, and even required, to treat believers and unbelievers differently. Drawing a comparison between Islamic discrimination based on belief and the racist discrimination addressed in the 1960s shows precedence against allowing a group to discriminate for reasons of personal perception,

even by a private entity. In the case of sharia law, many Muslims claim they have a right to privately practice sharia law. However, this claim is against modern precedent.

A good source of this precedent is the Supreme Court decisions made in *Heart of Atlanta Motel v. United States*. In this case, a motel owner denied the services of his motel to a guest based on race. Under the recently passed Civil Rights Act of 1964, the motel owner was forced to desist from using race as a factor when renting out available rooms (*Heart of Atlanta Motel, Inc. v. United States*, 1964). The owner countered this, claiming that the government would be likewise violating his constitutional rights. First, by denying him his Fifth Amendment right and also by equating him to an indentured servant of Congress if they could legislate who stayed in his rooms, a violation of the protections of the Thirteenth Amendment. When the issue came to court, the government countered that the law applied even to private businesses because of the commerce clause (*Heart of Atlanta Motel, Inc. v. United States*, 1964).

Because of the nature of the establishment, this was sufficient for the court to uphold its ruling and force the motel to no longer consider race as a discriminating factor. The era of Civil Rights movement was a groundbreaking legislative and judicial time for case law. In ways never before seen, precedent was laid down that restricted even the most private actions of discrimination based on race.

The issue of racial discrimination soon turned to religious discrimination, and it is important to note that the two differ in one noticeable way. Race is a physical characteristic, whereas sharia, just like political viewpoints or worldviews, finds its basis in closely held beliefs by the parties implicated. This is a key difference because of choice. When race is discussed, it must be handled with great precision as there is no

option for individuals to choose their race and thus the results of their being a certain race are beyond their control. This difference changes the entire way that race and beliefs are compared. People who are cruel rightly earn the distrust and enmity of their fellow citizens. A person who is white or black has no control over the cause of his appearance and therefore is not liable for the effects of their appearance. This is why segregation laws merit such great force in a nation that believes in due process. As a founding basis of America, all men are created equal under the law of God. The civil rights movement noted a discrepancy in that Americans were being punished for a racial difference that they themselves had no power over. There is no *mens rea* in being black or white or Asian. Each race is simply the result of birth and not action. In this way, American culture in the 1960s and modern culture today have cultivated a national opinion that all forms of racism are unfair, and thus against the American way.

This precedent against racism has since been extensively applied to belief. Even in the original wording of the 1960s' Civil Rights Act there is the provision including it, stating that all people are allowed, "full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, without discrimination or segregation on the ground of race, color, religion, or national origin" (Transcript, 1964).

The addition of religion next to race, color, and national origin is an unfair comparison. The equality of all races is a logical goal for legislative action; the equality of all beliefs is not. Unlike a race, a belief can be chosen. Race is the result of genetics, diet, and a thousand other unchangeable factors over the course of generations, none of which increase or decrease the value or rights of the individual. Beliefs however, are not



intrinsic. They come from an individual, can be created to be anything the individual chooses, and can exist as either positive or negative. This places religious and personal belief in a category that does not deserve the protections that race has. It is a produced entity. History has shown that this entity produces different results depending upon its content, and because of this, it is unreasonable to assume that all beliefs will be beneficial or neutral.

Since beliefs are personal choices, it follows that some will be contrary to the success of a nation. This is where sharia law can and should be exempted from the typical First Amendment protections. Sharia law is intrinsically different from American law. A contrast of the two statutory bodies easily shows the discrepancy. The first example presented is an accepted line from the Quran in part 4:89, stating that those who leave Islam or “turn their backs” are to be killed:

They wish that you should disbelieve as they disbelieve, and then you would be equal; therefore take not to yourselves friends of them, until they emigrate in the way of God; then, if they turn their backs, take them, and slay them wherever you find them; take not to yourselves any one of them as friend or helper. (Quran 4:89, Sahih International)

American law lays out the availability for capital punishment in 18 U.S. Code § 3591 (Sentence of Death), none of which allows for the drastic overreach of using a penalty in such a light matter. The news is readily filled with storied violence against individuals converting or leaving. Despite the ridiculousness of the charge to a thinker of a western legal mindset, this sentence is very common in nations that use sharia law dominantly. Nations such as Syria, Iran, and Afghanistan possess horrific human rights records as a

testament to sharia law. In nations such as Indonesia, the United Nations has declared a human rights watch, as the predominately Muslim area imposes stricter and stricter facets of sharia law (Indonesia, 2010). This violation of basic human rights is a departure from the previous discussion of conscientious objectors. With conscientious objectors, as well as Amish communities, there is a precedent that personal religious beliefs should be considered and given credit when they can be accommodated. It would never stand that the Amish be granted the ability to justifiably declare war or kill as long as their personal code allowed it. But yet they are granted an omission from killing. When it is harmless, a personal belief can justify a change to previous closely held legal tradition. Sharia law shares this need that a personal belief and civil issues such as financing and family law be considered personal matters. However sharia law goes deeper because it includes certain matters under the category of personal family law that are considered criminal in American law, not just objectionable. An example of this would be the allowance of certain sharia scholars that polygamy is acceptable (Fouda, 2010). Under the precedent established by the Amish and conscientious objectors it seems that an exemption should be granted. However, the case of polygamy is not a unique instance to Islam and has already been settled in American courts (*Reynolds v. United States*, 1879). The comparison of sharia to the already established polygamy standings shares a great many commonalities and alludes to ability of the Federal government not only to grant exemptions to actions due to beliefs, but also to allow beliefs without having to allow actions. The original polygamy debate was based on the Mormon belief that a man could take more than one wife. The Federal Government, as well as most of the American population, maintained this was unethical. This opinion eventually led to the legislative

prohibition of polygamy through the Morill Anti-Bigamy Act (G.S., 1863). The act soon became controversial, with the Mormon Church countering that it had the right under the First Amendment's protection of religion to practice polygamy as a personal belief consented to by free adults. This act and the following challenge by the church is a great and pivotal moment to study how strongly the Federal Government is able to enforce personal beliefs. There was nothing threatening at the time about one man marrying two women. The nation had no shortage of women and it did not impact commerce or national security. The issue was purely belief. The Federal Government thought it wrong and the Mormon Church claimed it to be protected. This is the very standpoint that much of the debate around sharia law focuses. Consider the sharia practice of viewing women less reliable in court or in need of an escort when they leave the house, both of which are considered misogynistic by American standards. Yet, both of them occur between consenting adults and thus fall under the same category as polygamy. The issue was settled in a Supreme Court appeal of the anti-polygamy law. The case of *Reynolds v. United States* upheld the statutes, saying, "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinion, they may with practices" (1879). Applying this decision to sharia means that the legislative system could strike every practice of sharia that it found disagreeable. After this power was brought to bear against the Mormon Church, leadership condemned the doctrine of polygamy. Islam is a religion that might be influenced by this, but sharia law is a lifestyle and deeply embedded in the lives of its adherents. Although there are certainly cases of more liberal Muslims living in America, the support for this mentality cannot be extrapolated to include all Muslims. The religion contains many points that reach beyond

the simple disagreement over consenting individuals. Sharia is binding over children and therefore contains punishments and rulings that bind and restrict over those who are not willingly under the powers thereof. The practical application of sharia to America would result in the cessation of America as we know it. America already possesses a dual court system containing a federal and state court. Sharia law as traditionally applied is not a third layer underneath the first two courts, but instead a single layer absolving the first two courts. This violates the limits of polygamy statutes and civil law, as there is no precedence for a consuming religious law that claims superiority.

Traditionally in America, there is a symbiotic relationship between the Constitution and religions. America gains moral strength through certain religions, and these religions gain a political shelter, as demonstrated by the resolution of the polygamy disputes with Mormonism as well as the conscientious objector dispute with the Amish community. Islam, however, produces something different. The idea of sharia law is that there is a series of actions and legal boundaries used to act in a good manner. These actions and legal boundaries are the law portion of sharia, and part of them necessarily include keeping the laws determined. The idea of a fruit tree is often used to discuss the theory of the difference in sharia. The Quran, Hadith, and Sunna all create the roots of an ethical system. From these roots, personal determinations by individuals dictate what grows upon the roots and eventually what fruit the roots produce (Weiss, 1978). As noted above, there are some that remove the concept of violence and great oppression from their system of belief in Islam. This group consists of the traditional American worker and is welcome in America, as they have been welcomed into nearly all lands. But because of sharia's position as a lifestyle and not just a religion, there are

adherents to a violent interpretation of the Quran. It is this element that necessitates an understanding of the situation and the probable results of the combination of a violent Islam and America.

The best place to begin is by ascertaining the current state of sharia law in America. To begin to understand both radical and peaceful Islam, it is best to first observe how both have already interacted with the varying components of American society. Sharia has been unable to gain a statutory foothold, but is available to be practiced privately in Islamic communities by willing parties with the understanding that the American judicial system does not back any of sharia's claims. This containment of Islam is due in large part to three reasons: the American physical, cultural, and legal defenses against sharia.

The physical defense is the most notable because of the location of America and the two oceans bordering it, there is not as great an influx of immigrants entering America with Islamic thought. Moreover, the displacement from the historical Christian-Muslim wars of the Middle Ages and the influx of Islam into Europe, following the collapse of the Roman Empire, all create mitigating factors in Islamic thinking. This physical defense, which has protected American interests though the recent wars in the Middle East, is rapidly combining elements of both societies. It is because of these wars that several hundred thousand American troops and support staff have been trained in and experienced the Middle Eastern world. This is reminiscent of another great awakening that America had to the Islamic culture: one that occurred during the earliest phases of American history with the First Barbary War and the invasion of the "shores of Tripoli" by Marines sent to fight piracy. This is largely considered the first war on terror

(Wheelan, 2003). The distance across the ocean and the slower travel and communication made this war mostly irrelevant in a lasting physical sense. Historically though, it marked a coming of age for America where the dominant European powers and the Arab world saw the first indications of what would become the American foreign policy relating to piracy and terrorism lasting through the Bush Administrations. Besides setting precedent for handling global terrorism in the name of sharia, the Barbary Wars also had a cultural impact upon national pride, the standing of the marines as a military force, and the view of Muslims relating to terrorism.

This leads into the next barrier, the cultural barrier of America. As mentioned above, America is culturally mistrusting of Islam (Ahmad, 2011). An indicator of this is the homegrown terrorist. Radical Jihadists have been known to campaign and recruit among the American prison population (King, 2011). This method is not as effective in America as in other nations because even the more desperate of Americans intrinsically resist not only the culture but also the ideas of oppression that come from a strict observance of sharia law (Saleem & Vincent, 2009). These cultural limiters upon the spread of sharia thought and Jihad are minor compared to the influence that the single item of Christianity has brought. The prevalence of Christian thought throughout American history and society can be considered the single greatest barrier to a strict adherence of sharia being respected or considered. The longevity with which Christianity stayed relevant in American society allowed it to remain a dominant force beyond the time that the European church was able to stay active. This is important because Biblical laws were inherent in the earliest groups coming to settle America who were seeking religious and political freedom (Greene, 1874). As Christianity has weakened, so have

the ideals that were built upon it. These ideals have traditionally permitted many beliefs and ideologies to exist in America, as demonstrated by the protection of Jewish and Amish community legal standards. This acceptance has not been generously granted for Islamic thought and sharia law because of the passionate way with which the American society attacks any perceived threat of personal freedom. This is a predisposition in American culture that has proven a formidable defense against not only the implementation of sharia law by private communities, but also in many areas even the acceptance of the individuals who support sharia law. This brings the discussion of sharia law to a personal and biased level for many and creates a natural distaste in some for equality or even fairness in evaluating the peaceful elements of Islam. Although a bias may or may not be justified, it is unfair and unethical when it is still present as an active factor in the discussion of peaceful Islamic thinking in American public forums (Elver, 2012).

Besides geography and culture, there is a third impediment against sharia being introduced into American society. This layer is the legal aspect. Generations of free American lawmakers have created a system that is—at its core—suspicious of aspects attempting or appearing to weaken the government of the lawfully given legal authority it possesses. This has led to a considerable accumulation of American legal precedents by deists and Christians promoting Biblical freedom of the person through case law as well as common understanding (Common Law and Christianity, 2009). The presumptions placed upon a defendant in a court of law, the effort put forth to ensure due process, and the general attitude of the American court system have all been firmly aligned to create in the minds of Americans a strong preference for good law. The American people have

treasured their abundance of legal freedoms with a zeal that has created a mentality of maintaining their legal status quo instead of changing. It can be assumed that most who study the United States Constitution and the system that it has laid out will understand that the system is not perfect and that it allows mechanisms of change to account for this. However, there is great reluctance toward changing the system to the extent that would be necessary to allow another legal theory space to grow. The openness of the First Amendment may have been what allowed sharia to gain entrance into America, but the Constitution and Bill of Rights as a whole function as a force to resist sharia practices from making any headway.

With this in mind, these defenses are not perfect and have already been weakened and in some cases even breached by sharia law. Islamic voting power and sharia adherence on a personal level is already established enough that America cannot ignore it any longer. The steady string of actions such as the acceptance and promotion of sharia within American borders (Black, 2008), sharia adherent financing in the business world (Kunhibava, 2011), honor killing investigations (Forced Marriage / Honor Violence in the News, 2012), and global jihad, whether secretive or open (Tibi, 2008), by those adhering to Islam shows the challenges that are already being brought up.

Sharia law would require a great amount of reformation before it would be a viable counterpart of American society. There is too much danger in allowing a group of people to follow a system of laws that claims to be above the law of the land. The idea of courts that handle issues between willing Muslim parties in a sharia fashion is acceptable only as long as the scope of the courts addresses minor discrepancies. But sharia was never intended to be a lesser rule of law and the structure would have to be changed



nearly beyond recognition. Unlike Amish or Mormon exceptions within the law, Islam would advocate for full implementation of sharia law in America. It is not simply that all Islamic groups are not peaceful or figurative in their interpretation of the Quran; it is that great portions of the global religion of Islam adhere to a lifestyle in sharia that is opposed to American ideals and rights. No one denies peaceful Muslims the right to mitigate small civil matters according to their own choice of mediating rules or customs; instead the challenge to America is that of the other elements of sharia law and Islamic society.

America does not welcome, and should be guarded against, imitations of law and courts that claim the ability to try an individual for statutes that do not exist. No group, no matter how willing, would be allowed to put a member of their group to death. It supersedes the minor issues of private courts and is instead a criminal matter. In the same way no group should be allowed to operate with anything other than suggestive power outside of the established American court system. Although seemingly obvious, some proponents of sharia law believe that they should be able to live in America under the freedoms possessed by a society and yet restrict the freedoms of those beneath them. To illustrate this, consider the sharia aspect of conversion. If a young son around ten years old decides to convert to a different religion outside of Islam, the strict sense of sharia would sentence him to death (Shah, 2005).

However this family is peaceful and concedes to American statutory law their claim on the boy's life, instead banishing him. There is here no need to legislate against sharia as whole, because the banishment of a ten year old would be covered under most state child abandonment laws. These individual state and federal laws act as the limiter on new thoughts and methods of law entering America and allow for a reasonable

response by Americans against sharia. It doesn't break any laws and does no one harm because of the power that the statutory laws exercise over all citizens. This is important to understand because many in America who lightly view this topic misunderstand the position that sharia law can have. The Quran has no more influence in this nation than any other private charter of a group. The Boy Scouts of America have a charter and a list of rules that it expects members to follow much as homeowners associations and bank loans do. If a member violates the code, he or she is responsible for the consequences agreed to. Sharia law as it currently exists can be seen as just a much more influential version of these private charters. It in no way is able to determine criminal guilt or pronounce criminal sentence, these are reserved powers of the state. If sharia were less than what it claims to be, it might be acceptable to America. A plan for good living is completely legal, but sharia cannot be simplified that much.

With this in mind, there are grounds to discuss the attempt by some elements of Islam to move sharia law from the area of a private contract to the area of a public law. Several countries such as Iran can be considered an Islamic caliphate, or a state ruled by an interpretation of sharia law. In America, the Islamic communities are free just as any other citizen to act under the force of state and federal laws. There is still contention though, as it is claimed that not all Muslims in America accept this role and some seek to exert power over government systems to implement their personal view of sharia law. More aptly known as biological jihad, this idea involves the proliferation of Islamic religion and sharia law through increasing the population base of Muslims in a nation (Abdelkader, 2011). The high birth rate of Muslim families has gained Islam prominence in many countries in Europe and can be seen through the large population increases

projected for countries with dominant and growing Muslim populations (Pew Research Center, 2011). Non-violent jihad through population growth works well as an offensive tool for sharia interests because it aligns with the cultural ideas of large families and respect gained from birthing many sons that is granted to Muslim women. Because of these factors, it is not uncommon for the average number of children in a Muslim family to be anywhere from eight children up to twelve depending on geographic location (Pew Research Center, 2011). This form of jihad presents great opportunity to those wishing to increase the influence of sharia law because it draws unilateral support from all sects and cultures of Islam. This moderate and non-violent approach also creates a unique problem to those combating the spread of sharia law because there is nothing ethically, legally, or oppressively wrong about a demographic gaining influence through population growth. The only downside to this system for Muslims is that it is time intensive, but even this factor is little considering that Muslim birth rates have already created seventy-two countries with over a million Muslims present, a number that could grow to seventy-nine by 2030 (Pew Research Center). An effective response to such a global, and yet local, passive invasion is difficult to calculate. More importantly, it needs to be considered if passive jihad is in itself, illegal. The most relevant statutory law concerning the overthrow of the government is 18 U.S. Code § 2385. This code sections lists that “whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States” can be “fined under this title or imprisoned not more than twenty years, or both (Advocating Overthrow of Government). This statute very clearly criminalizes the pursuit of the establishment of a sharia Caliphate inside of America. Indeed, under this

statue religious leaders and community members attempting to rally followers to vote for the purpose of legislatively amending the Constitution or legally creating pro-sharia law could be prosecuted.

It is unsupported to rashly consider any percentage of radical Muslim families overthrowing the government instead of simply an ethnic group that is finding a way to voice their concerns through being elected and voting. This is no different from how most Christians, economic activists, minority leaders, and reformers see themselves and as such it is important to discern between the terminologies and ideas at play here. There is a marked difference between influencing law and replacing it. This statute does not prevent an Islamic majority from advocating the changing of law because the changing of laws by a majority should not be restricted. Even the idea that someday Muslims may be the dominant demographic of America is not grounds to legislate against Islamic growth. The intent to replace American statutory law with a sharia system is something that cannot be fully accomplished through the legal system and because of this there is no provision that statutorily incriminates those seeking to influence their government. That is the very purpose of the American representative system. If Muslims one day become the majority, minorities in America will be protected by the same amendments and policy that protects minorities now. This is why the safeguards in place for the American people were created to ensure that government overreach couldn't violate personal freedoms. A positive result of this course of action is that by not illegalizing the actual religion, all other religions in America remain protected from being included in the national response as targets. This is a balance that must be closely monitored to ensure that an attempt at controlling one belief of a religious group does not turn into a prosecution of all religions

in America, a very real concern (Vischer, 2012). This is why although hate groups are allowed in America, their religious ideals that oppress others are clearly recognized and flagged as such. Allowing groups like the Nazi party, the Klu Klux Klan, and the Communist Workers party to exist under the protection of freedom of speech even though they possess ideas that are not welcomed by the majority of Americans is an example of how minority status does not contribute to the disapproval of a group. This is the judge of the value of America, the existence of the non-oppressed minority. This is not to say that ideas do not have consequences. Instead intellectual consequences are the mitigating force keeping a poor idea available, but unpopular. This should be the treatment of America towards Islam. The religion does not need to be banished entirely as it does legally find protection under the freedom of religion.

This does not leave the republic defenseless against those hiding an agenda behind legitimate and good-willed Muslim believers. Instead it leaves options open that synthesize both the necessity of preserving America's atmosphere of freedom and the will to ensure that malicious abuses of those freedoms do not occur. American legislature can deny sharia law not only legitimacy but also acceptance through the simple processes of education and discussion. Education is a powerful tool when used against prejudice. The prevalence and success of school desegregation is a testament to the ability of education to overcome boundaries of prejudice and present ideas in a black and white fashion. Just as civil rights education was used to overcome the prejudice between races, so can educating America's youth overcome the danger in biological jihad. By educating a group discussion is enabled. It is illegal and unethical to mandate a set education standard for all youths, but it is not illegal to consider an education in the subject a

necessity for graduation. This would have to be a state-by-state initiative with the goal not of swaying all youth away from sharia, but instead of swaying all youth into a discussion of sharia. A grand achievement of American freedom is not that it is a land where all ideas are equal, but instead that it is a land where all people are equal. This is inherent in all the founding documents and if opened up through discussion will become a strong logical defense against abusing forces such as sharia law. By enabling Muslims and non-Muslims alike to speak from a studied platform on the issue of sharia law, there can be little doubt that the outcome will be a rational and slow response at the ground level of society. This rational response would be instead of a forced reaction at the government level as has occurred in other areas struggling with balancing sharia customs and opposing national interests. The course of uneducated and rapid responses to cultural differences is dangerous. Violent resistance on the part of the group that feels ignored or alienated typifies such action and can be seen in the retaliation and fear tactics used by Islamic traditionalists in France over their banning of the Burqa (Kern, 2013).

By applying a national mentality of study, a serious discussion could occur about the issue. This Muslim to non-believer discussion would greatly limit the power and rationale used to justify sharia, as well as forcing Muslims to consider their own beliefs about the issue before a radical element persuades them. However, ensuring peace and prosperity to future generations of America will only come by weathering such discussion now. Anything less than a public response to sharia law will be insufficient to stop an ideological threat that is cemented so firmly in its adherents (Black, 2008).

This is the response to sharia law. America has always strived to be a nation of immigrants. It has struggled to adopt the cultures of the world that travel to it in search of

freedom and the American dream. The religions, races, and ideas that have been transplanted to its shores are global and can be rightly assumed to include a representative for each part of global humanity. The Muslim immigrant deserves the same rights granted all other citizens. Through the discussion of conscientious objector exemptions it is shown that there can be exemptions made for religious beliefs. Opposing this, American courts have also shown through the polygamy rulings that there are certain actions that cannot be accommodated. The Muslim is therefore welcome to America. They do not even need to be a moderate Muslim. They can bring their ideas of law and religion in whatever context they choose, but they must abide by the American court system and structure. This means that American statutory law will restrain their actions. Sharia law contains many provisions that are criminal and if carried through will naturally merit a judicial response from the criminal justice system. There is no exemption for the practices of honor killings and violent jihad and there never can be. There may be exemption formed for other practices, but until those exemptions are formed the community should not expect its form of law to be recognized in court. It must know the difference in legality, in precedence, and in place. It is a civil agreement between two individuals. Not backed by the force of government for any more than tort law.

Some Muslims have already accepted the position of sharia in the United States of America and support it. Others adamantly deny that sharia will ever be subordinate to another law. In order for those of these groups who wish to be accepted into American culture to become a part of society they will need to prove their humanity to many Americans. Only through purposeful and intentional actions can the portions of the

Islamic population who are true Americans overcome the presupposition and stereotype being unjustly given to them by the more strict elements of their religion. This will require a serious look at all aspects and interpretations of sharia law by both the current culture and the immigrating Muslims. Taken strictly and without exemptions sharia law and the American Constitution stand at great and irreconcilable odds with each other. But through clear communication of their beliefs and support, individual Muslims have the capability to prove themselves apart from their perceived image and to maintain the parts of their culture that will fit under the shelter of religious freedom. If willing to cooperate this way, there is no reason that the Arabian and Middle Eastern culture of Islam cannot be added into the American patchwork as another chord to strengthen the country.



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