

**THREE COMMON YET DANDEROUS MISINTERPRETATIONS OF SHARI'AH:  
A NECESSARY RETURN TO THE SOURCES IN THIS POST 9/11 ERA**

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*"[I]n compliance with Allah's order, we issue the following fatwa to all Muslims: The ruling to kill the Americans and their allies -- civilians and military -- is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim. This is in accordance with the words of Almighty Allah, 'and fight the pagans all together as they fight you all together,' and 'fight them until there is no more tumult or oppression, and there prevail justice and faith in Allah.'"<sup>1</sup>*

**INTRODUCTION**

This chilling introductory quote not only foreshadowed the events of September 11, 2001, it also captured the imagination of millions of Americans who, abounding in fear and misunderstanding, continue to conflate the hateful teachings of the late Osama bin Laden with the words of the Prophet and true *Shari'ah*. In the February 23, 1998 edition of the Arabic, London-based newspaper al-Quds al-Arabi,<sup>2</sup> 40-year-old Saudi exile Osama bin Laden, fugitive Egyptian physician Ayman al Zawahiri, and three others, from their headquarters in Afghanistan, issued a self-proclaimed *fatwa* in the name of the 'World Islamic Front.'<sup>3</sup> Despite the declaration's seeming authority, the 9/11 Commission appropriately and hastily dismissed the

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<sup>1</sup> Osama Bin Laden et al., *Jihad Against Jews and Crusaders*, FEDERATION OF AMERICAN SCIENTISTS (Feb. 23, 1998), at [www.fas.org/irp/world/para/docs/989223-fatwa.htm](http://www.fas.org/irp/world/para/docs/989223-fatwa.htm) (translating the original Arabic version which is available at *World Islamic Front for Jihad Against Jews and Crusaders*, *infra* note 2).

<sup>2</sup> *World Islamic Front for Jihad Against Jews and Crusaders: Initial "Fatwa" Statement*, CORNELL UNIVERSITY LIBRARY (Feb. 23, 1998), at [www.library.cornell.edu/colldev/mideast/fatw2.htm](http://www.library.cornell.edu/colldev/mideast/fatw2.htm).

<sup>3</sup> THOMAS H. KIEN ET AL., NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, at 47 (2004). For the purposes of simplicity and brevity, I will refer to and attribute the World Islamic Front's *fatwa* to Osama bin Laden only, not all five authors.

baseless foundation from which the five terrorists wrote, explaining that "[a] fatwa is normally an interpretation of Islamic law by a respected Islamic authority, but neither bin Laden, Zawahiri, nor the three others who signed this statement were scholars of Islamic law."<sup>4</sup>

Nevertheless, others were not so quick to discount bin Laden's call to militant "jihad." In 1999, Salem al Hazmi was a floundering young man with a minor criminal record that included petty robbery.<sup>5</sup> Born in Mecca and raised in Saudi Arabia, Salem's family later described him as a quarrelsome child who "appeared unconcerned with religion and, contrary to Islamic law, [was] known to drink alcohol."<sup>6</sup> Nevertheless, Salem aroused the attention of Khalid Sheikh Mohammed and Osama bin Laden, due in large part to his older brother Nawaf al Hazmi.<sup>7</sup> Nawaf was an al-Qaeda operative located in Afghanistan who reportedly begged bin Laden to allow Salem to participate in a suicide operation.<sup>8</sup> After selection and intense training, Salem flew from Dubai to New York on June 27, 2001.<sup>9</sup> Over the next two and a half months, Salem and 18 others, most of whom were uneducated and hailed from relative poverty,<sup>10</sup> made final preparations for what would later become one of the deadliest attacks on United States soil.

Finally, on September 11, 2001, Salem, Nawaf, and four others boarded American Flight 77 at Dulles International Airport bound for Los Angeles.<sup>11</sup> Also on the plane that morning was Barbara Olson, wife of the former solicitor general of the United States, whose ensuing phone

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<sup>4</sup> *Id.*

<sup>5</sup> *See id.* at 232-33 ("Salem al Hazmi's father recounted that Salem-who had had problems with alcohol and petty theft-stopped drinking and started attending mosque regularly three months before he disappeared.").

<sup>6</sup> *Id.* at 232.

<sup>7</sup> *See id.* at 232, 524 n.98 ("Nawaf pleaded with Bin Ladin to allow Salem to participate in the 9/11 operation").

<sup>8</sup> *See id.*

<sup>9</sup> *Id.* at 527-28 n.114.

<sup>10</sup> *See id.* at 231 ("The muscle hijackers came from a variety of educational and societal backgrounds. All were between 20 and 28 years old; most were unemployed with no more than a high school education and were unmarried.")

<sup>11</sup> KIEN ET AL., *supra* note 3, at 8.

call to her husband painted a grim picture of the events unfolding on Flight 77.<sup>12</sup> Armed with box cutters, four of the "muscle hijackers," including Salem and his brother, stormed the cockpit and ushered all passengers to the rear of the aircraft.<sup>13</sup> They were then followed by Hani Hanjour, a newly trained pilot, who took control of the plane, initiated their descent from 7,000 feet, and flew the aircraft directly into the side of the Pentagon at approximately 530 miles per hour.<sup>14</sup> The time was 9:37 AM; all on board, including Barbara Olson, died instantly.<sup>15</sup>

Nine years, long after the dust settled in downtown New York, Washington, D.C. and Shanksville, Pennsylvania from the attacks on September 11th, Oklahoma voters "overwhelmingly" passed the Save Our State Amendment, a referendum prohibiting judges from applying *Shari'ah*, as well as other forms of international law, in state courts.<sup>16</sup>

Employing a discourse of fear rather than sound legal reasoning, the amendment's coauthors stated that the purpose of the bill was to prevent the pending "onslaught" of "Shariah Law" in Oklahoma. State Representative Lewis Moore stated, "are we not at war with this ideology? ... Are we not at war with them? Then why would we give in to this?" State Senator Anthony Sykes added, "Sharia law coming to the U.S. is a scary concept.... Hopefully the passage of this constitutional amendment will prevent it in Oklahoma."<sup>17</sup>

The amendment passed with 70 percent voting in favor of the referendum, a shocking result considering only one percent of Oklahoma residents are Muslim and no state court had ever applied *Shari'ah* while adjudicating a case.<sup>18</sup> While the Tenth Circuit Court of Appeals unanimously affirmed an injunction prohibiting the application of the amendment because it violated the Establishment Clause, the mere passage of this referendum was indicative of a

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> *See id.* at 8.

<sup>14</sup> *See id.* at 9-10, 239.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> Yaser Ali, Comment, *Shariah and Citizenship--How Islamophobia is Creating a Second-Class Citizenry in America*, 100 CAL. L. REV. 1027, 1029 (2012).

<sup>17</sup> *Id.* at 1029-30.

<sup>18</sup> *Id.* at 1030.

national trend dubiously labeled as "Islamophobia."<sup>19</sup> Indeed, rather incredulously, nearly two dozen state legislatures proposed similar bills following the Tenth Circuit's affirmation of the injunction.<sup>20</sup>

The three anecdotes illustrated above - Osama bin Laden's self proclaimed fatwa, Salem al Hazmi's radicalization, and Oklahoma's effort to preemptively ban *Shari'ah*- highlight the prevalent misconceptions regarding Islamic law, but more specifically, the correct contextual interpretation of *Shari'ah*. Distinguishable from sound Islamic scholarship, the eccentric bin Laden preyed on political and social turmoil to rationalize and advance a warped interpretation of Islam and *Shari'ah*.<sup>21</sup> On the other end of the spectrum was Al Hazmi, an ordinary, quasi-secular Muslim who, due in part to his financial vulnerability and lack of education, was susceptible to radicalization and a disingenuous interpretation of *Shari'ah*.<sup>22</sup> Finally, in Oklahoma, the Save Our Constitution amendment was indicative of a larger cultural trend motivated by fear and an unwillingness to distinguish between the political opportunists, such as Osama bin Laden who manipulate the *Shari'ah* in the name of Allah, and the majority of Muslims who abide by the core principle of justice promulgated by the Qur'an and Sunnah.<sup>23</sup> While all three parties approach the *Shari'ah* for distinct purposes, all suffer from the same misinterpretation and misunderstanding that promotes violence, fear, and reactionary legislation lacking in intellectual integrity and thorough consideration.

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<sup>19</sup> See generally, e.g. *id.* at 1034 ("The term Islamophobia, defined as an "unfounded hostility towards Islam ... [and therefore] fear or dislike of all or most Muslims," gained notoriety in a 1997 publication by the influential British think tank, Runnymede Trust.").

<sup>20</sup> *Id.* at 1030-31.

<sup>21</sup> KIEN ET AL., *supra* note 3, at 48-52.

<sup>22</sup> *Cf. id.* at 48.

<sup>23</sup> See TAMARA SONN, ISLAM: A BRIEF HISTORY 19 (2d ed. 2010) (quoting *The Qur'an* 5:9) ("Overall, the society envisioned by the Qur'an is characterized by justice: 'O Believers, be steadfast [for] God, giving testimony in justice, and do not let a people's hatred cause you to act without justice. Be just, that is nearer to righteousness.'").

Common misperceptions of the *Shari'ah* have dominated our discourse for far too long. These unsupported interpretations must be addressed for the purposes of academic integrity and more importantly, human equanimity. Part I of this paper will explore and define the term *jihad* by primarily referencing the Qur'an and Sunnah. This section will also demonstrate how political opportunists from various walks of life have seized on misconceptions and fear to manipulate the meaning of *jihad* to advance their own personal agendas. Part II will identify the specific authority cited by Osama bin Laden, along with his colleagues, in their effort to justify *lesser jihad* against the United States and her allies. This section will also demonstrate how bin Laden selectively misinterpreted *Shari'ah* and expose to the reader a more thorough recitation of the law. Finally, Part III will address the underlying fears and misconceptions driving popular sentiment and nonsensical referendums such as Save Our Constitution. This section will provide an alternative, albeit more accurate, view of the Qur'an and Sunnah, specifically highlighting the core principles of peace, human dignity, and justice.

### I. JIHAD AS DEFINED BY THE QUR'AN AND THE SUNNAH

To many of the constituents who voted to pass the Save Our Constitution referendum, in addition to a large portion of American society, the term *jihad* simply denotes holy war. Yet to the majority of Muslims, nothing could be further from the truth. In reality, *jihad* means struggle, or struggle on the path of Allah.<sup>24</sup> The Qur'an refers to this struggle on multiple occasions and it is the essence of a life of piety, serving the will of Allah:

Believers, bow down and prostrate yourselves in prayer and worship your Lord and do good deeds, and you will prosper. And struggle for God as you should struggle.<sup>25</sup>

Did ye think that ye would enter Heaven without Allah testing those of you who fought hard (In His Cause) and remained steadfast?<sup>26</sup>

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<sup>24</sup> *Id.* at 22-23.

<sup>25</sup> *The Qur'an* (Maududi) 22:78-79.

<sup>26</sup> *The Qur'an* (Yusuf Ali) 3:142.

O ye who believe! Do your duty to Allah, seek the means of approach unto Him, and strive with might and main in his cause: that ye may prosper.<sup>27</sup>

O ye who believe! Shall I show you a commerce that will save you from a painful doom? Ye should believe in Allah and His messenger, and should strive for the cause of Allah with your wealth and your lives. That is better for you, if ye did but know.<sup>28</sup>

Only those are Believers who have believed in Allah and His Messenger, and have never since doubted, but have striven with their belongings and their persons in the Cause of Allah: Such are the sincere ones.<sup>29</sup>

And strive in His cause as ye out to strive, (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on you in religion; it is the cult of your father Abraham. It is He Who has named you Muslims, both before and in this (Revelation); that the Messenger may be a witness for you, and ye be witnesses for mankind: So establish regular Prayer, give regular Charity, and hold fast to Allah! He is your Protector - the Best to protect and the Best to help!<sup>30</sup>

This short list of examples are derived from over twenty *ayah* that speak specifically to *jihad* and the Muslim's struggle in his or her own path to Allah. What should be particularly noteworthy to the many citizens of Oklahoma, as well as those who share their ideological persuasion, is the failure to mention fighting in the aggressive sense of the word, or the notion of holy war. To the contrary, the revealed texts espouse the principles of belief, humbleness, good deeds, perseverance, duty, sincerity, prayer, and charity. These *ayah* require Muslims to draw near to Allah. The Qur'an forbids greed and instructs the faithful to use their money and their lives furthering the cause of Allah, even while facing the prospect of imminent danger. While these concepts might surprise many in the West, the political use of *jihad* has not remained static since the Prophet's death.

Jihad became a state doctrine which legitimized preemptive self-defense and justified conquest. It also evolved into a doctrine supporting the use of force in the name of political legitimacy.... Over time, manipulation of jihad's meaning has distorted that

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<sup>27</sup> *The Qur'an* (Yusufali) 5:35

<sup>28</sup> *The Qur'an* (Pickthal) 61:10-11

<sup>29</sup> *The Qur'an* (Yusufali) 49:15

<sup>30</sup> *The Qur'an* (Yusufali) 22:78

aspect of the Shari'ah. This was possible because such manipulators of religious doctrine were allowed to do so by the official clergy and by timid or complacent governments.<sup>31</sup>

This manipulation of the word *jihad*, coupled with a general uninformed, misunderstanding in the West, provides more than ample support for returning to the Qur'an and Sunnah in an effort to genuinely comprehend true *Shari'ah*.

While many *ayah* lend support to a concept of *jihad* free from conflict, there is also an undisputable element of aggression associated with *jihad*. Nevertheless, even the following *ayat*, which condones fighting in the way of Allah, subordinates aggression to the principles of peace and discernment. Additionally, subsequent *hadith* of the *Sunnah* grant permission to kill *those who fight* but only after offering an alternative:

O you who believe! when you go to war in Allah's way, make investigation, and do not say to any one who offers you peace: You are not a believer. Do you seek goods of this world's life! But with Allah there are abundant gains; you too were such before, then Allah conferred a benefit on you' therefore make investigation; surely Allah is aware of what you do.<sup>32</sup>

Ibn 'Aun reported: I wrote to Nafi' inquiring from him whether it was necessary to extend (to the disbelievers) an invitation to accept (Islam) before meeting them in fight. He wrote (in reply) to me that it was necessary in the early days of Islam. The Messenger of Allah (may peace be upon him) made a raid upon Banu Mustaliq while there were unaware and their cattle were having a drink at the water. He killed those who fought and imprisoned others. On that very day, he captured Juwairiya bint al-Harith. Nafi' said that this tradition was related to him by Abdullah b. Umar who (himself) was among the raiding troops.<sup>33</sup>

The Qur'an clearly demonstrates a preference towards peace, leading many scholars to distinguish between what is known as greater and lesser *jihad*. Indeed, such delineation derives directly from the following *hadith*, delivered by the Prophet following the Battle of Badr.<sup>34</sup>

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<sup>31</sup> M. Cherif Bassiouni, *Evolving Approaches to Jihad: From Self-Defense to Revolutionary and Regime-Change Political Violence*, 8 Chi. J. Int'l L. 119, 120-21 (2007).

<sup>32</sup> *The Qur'an* (Shakir) 4:94.

<sup>33</sup> *Hadith* (Sahih Muslim) book 19, no. 4292.

<sup>34</sup> See Bassiouni, *supra* note 31, at 124.

We were told by Layth, on the authority of 'Ata,' on the authority of Abu Rabah, on the authority of Jabir, who said, 'The Prophet returned from one of his battles, and thereupon told us, 'You have arrived with an excellent arrival, you have come from the Lesser Jihad to the Greater Jihad - the striving of a servant (of Allah) against his desires.'<sup>35</sup>

While many scholars consider this *hadith* relatively weak because of its disputed chain of transmission, many historical Islamic scholars such as Ibn Taymiyya and Majmou' al-Fatawa frequently referred to these widely recorded words of the Prophet.<sup>36</sup> The purpose here is to simply distinguish between two types of *jihad* - one involving war, the other involving each individual Muslim's spiritual struggle in matters of goodness and piety. The previous example implicating war carefully caveats the *hadith* with the Prophet's instructions on peace. Furthermore, the examples of *lesser jihad* pale in comparison to the numerous *ayah* abounding in details regarding the individual Muslim's personal struggle in the way of Allah.

## II. THE CITED AUTHORITY OF OSAMA BIN LADEN'S FATWA

Leaving aside the threshold question as to whether Osama bin Laden and his coauthors possessed the authority to issue a fatwa, a notion The 9/11 Commission Report discredited rather decisively,<sup>37</sup> we first look to the authority cited within bin Laden's fatwa, the very same authority used to justify total war against the United States.

### A. The Fatwa's Failure to Identify an Alternative to War and Aggression

Bin Laden's 1998 fatwa began with a reference to Allah, his omnipotence, and his disdain for division amongst his people.<sup>38</sup> He then quoted *ayat* 9:5, thereby suggesting the United States was responsible for "factionalism" amongst the Islamic nations:

But when the forbidden months are past, then fight and slay the pagans wherever ye find them, seize them, beleaguer them, and lie in wait for them in every stratagem (of war).<sup>39</sup>

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<sup>35</sup> *Hadith* (Fayd al-Qadir) vol. 4, p. 511.

<sup>36</sup> See Bassiouni, *supra* note 31, at 124 n.17.

<sup>37</sup> See *supra* note 4 and accompanying text.

<sup>38</sup> See Bin Laden et al., *supra* note 1.

<sup>39</sup> *The Qur'an* (Yusufali) 9:5.



Bin Laden failed to include the last half of the *ayat*:

But if they repent, and establish regular prayers and practice regular charity, then open the way for them: for Allah is Oft-forgiving, Most Merciful.<sup>40</sup>

While this omission does not directly add nor detract from the force of bin Laden's case for total war, it highlights the disingenuous nature of his recitation of the *Shari'ah*. The *fatwa* seemingly suggests an ultimatum which Muslims are not to deviate from; however, the *ayat* quoted in full clearly suggests alternatives to war. Osama bin Laden states that Muslims *must* "slay the pagans," whereas the *ayat* quoted in full provides a way to peace. This is a common theme throughout the entire *fatwa*.

#### *B. The Fatwa's Exclusionary Political and Religious Worldview*

Following his opening remarks, bin Laden followed with *hadith* of the Prophet Muhammad. Reliable *hadith* comprise the *Sunnah*. The opposite is also true, unreliable *hadith* are not binding *Shari'ah*. Once again, bin Laden's support for his *fatwa* remained dubious and disingenuous, perverting *hadith* to better buttress his claim:

I have been sent with the sword between my hands to ensure that no one but Allah is worshipped, Allah who put my livelihood under the shadow of my spear and who inflicts humiliation and scorn on those who disobey my orders.<sup>41</sup>

This language is used to incite fear and rally aggression amongst his supporters, such as Salem al Hazmi. This is also the same fear that inflated hysteria inside the Oklahoma voting booths. However, both parties would better serve the interests of academic and legal integrity if they would simply compare bin Laden's previous translation to the following *hadith*:

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<sup>40</sup> *Id.*

<sup>41</sup> The source of this *hadith* is unknown. However, it is worth mentioning that it cannot be found in *Sahih al-Bukhari*, *Sahih Muslim*, or *Sunan Abu-Dawud*, the three most respected collections of *ahadith*. Compare with *Hadith* (Sahih al-Bukhari) vol. 4, 4:196, *infra* note 42, and note bin Laden's failure to reference the Prophet's preference for forgiveness.

Allah's Apostle said, "I have been ordered to fight with the people till they say, 'None has the right to be worshipped but Allah,' and whoever says, 'None has the right to be worshipped but Allah,' his life and property will be saved by me except for Islamic law, and his accounts will be with Allah, (either to punish him or to forgive him.)".<sup>42</sup>

Again, bin Laden made no reference to the clearly articulated opportunity for peace between Muslims and the enemies of Islam. The *fatwa* also omitted any explanation or attempts to differentiate Allah's license to punish and forgive, as distinguishable from all other earthly authority. As an aside, he also conveniently failed to note the preceding *hadith*, one which endorsed warning one's enemies before launching an assault:

The Prophet set out for Khaibar and reached it at night. He used not to attack if reached the people at night, till the day broke. So, when the day dawned, the Jews came out with their bags and spades. When they saw the Prophet; they said, "Muhammad and his army!" The Prophet said, Allahu-Akbar! (Allah is Greater) and Khaibar is ruined, for whenever we approach a nation (i.e. enemy to fight) then it will be a miserable morning for those who have been warned."<sup>43</sup>

This is quite the ironic omission given the surprising nature of the September 11th terrorist acts, which followed only three years after this *fatwa*.

Returning to bin Laden's quest to unify Muslims under one political and religious order, following September 11th, The 9/11 Commission dedicated a significant portion of the final report to bin Laden, his worldview, and the motivation behind his declaration of war. The previously cited *hadith*, "[n]one has the right to be worshipped but Allah,"<sup>44</sup> revealed his desire to restore the Caliphate as an alternative to the oppression and humiliation of Muslims in the post-Caliphate world.<sup>45</sup> Bin Laden sought a unified Muslim order to the exclusion of all other political and religious regimes.<sup>46</sup>

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<sup>42</sup> *Hadith* (Sahih al-Bukhari) vol. 4, book 52, no. 196.

<sup>43</sup> *Hadith* (Sahih al-Bukhari) vol. 4, book 52, no. 195.

<sup>44</sup> *Hadith* (Sahih al-Bukhari) vol. 4, book 52, no. 196.

<sup>45</sup> See KIEN ET AL., *supra* note 3, at 50-51.

<sup>46</sup> *Cf. id.* at 562 n.3.

Despite the fervor of bin Laden and his followers, *Shari'ah* simply does not condone killing to achieve the ends endorsed by this radical minority. As an important caveat, the Qur'an certainly forbids blasphemy amongst Muslims, Jews and Christians alike, a crime punishable by death:

They do blaspheme who say: "Allah is one of three in a Trinity: for there is no god except One Allah. If they desist not from their word (of blasphemy), verily a grievous penalty will befall the blasphemers among them."<sup>47</sup>

The Prophet said, "Who is ready to kill Ka'b bin Al-Ashraf who has really hurt Allah and His Apostle?" Muhammad bin Maslama said, "O Allah's Apostle! Do you like me to kill him?" He replied in the affirmative. So, Muhammad bin Maslama went to him (i.e. Ka'b) and said, "This person (i.e. the Prophet) has put us to task and asked us for charity." Ka'b replied, "By Allah, you will get tired of him." Muhammad said to him, "We have followed him, so we dislike to leave him till we see the end of his affair." Muhammad bin Maslama went on talking to him in this way till he got the chance to kill him."<sup>48</sup>

In spite of these stark warnings against blaspheming the name of Allah and the Prophet, the text of the Qur'an first preaches tolerance and assures those of different faiths that they will not face persecution simply on account of their religious identity:

Those who believe (in the Qur'an), those who follow the Jewish (scriptures), and the Sabians and the Christians,-any who believe in Allah and the Last Day, and work righteousness,-on them shall be no fear, nor shall they grieve.<sup>49</sup>

But because of [the Jews] breach of their covenant, We cursed them, and made their hearts grow hard; they change the words from their (right) places and forget a good part of the message that was sent them, nor wilt thou cease to find them-barring a few-ever bent on (new) deceits; but forgive them, and overlook (their misdeeds): for Allah loveth those who are kind.<sup>50</sup>

Bin Laden failed to distinguish between punishing a non-Muslim for a specific crime, in this case blasphemy, and simply punishing a non-Muslim on account of his or her faith-based identity.

While bin Laden instructs all Muslims to kill, the Qur'an teaches forgiveness, and love, calling

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<sup>47</sup> *The Qur'an* (Yusufali) 5:73.

<sup>48</sup> *Hadith* (al-Bukhari) vol. 4, book 52, no. 270.

<sup>49</sup> *The Qur'an* (Yusufali) 2:62.

<sup>50</sup> *The Qur'an* (Yusufali) 5:13.

on Muslims to absolve those who do not share their faith. Bin Laden also failed to concede that punishing unbelievers is a responsibility reserved for Allah on the day of judgment, not a mandate to be carried out by fallible political leaders such as himself.

Those who believe (in the Qur'an), those who follow the Jewish (scriptures), and the Sabians and the Christians, Magians, and Polytheists,-Allah will judge between them on the Day of Judgment: for Allah is witness of all things.<sup>51</sup>

Let there be no compulsion in religion.<sup>52</sup>

[T]hose who disdain His worship and are arrogant,-He will gather them all together unto Himself to (answer).<sup>53</sup>

The Qur'an does not repudiate the crime of blasphemy; nor does the Sunnah dismiss the grave consequences for impiety towards Allah and the Prophet. Nevertheless, *Shari'ah* is clear on this issue - blasphemy is forbidden regardless of the perpetrator, whether he or she is a Christian, Jew or Muslim. Furthermore, the Qur'an instructs Muslims to exercise forgiveness and love towards Jews whose "hearts grow hard," and to provide safety from fear for those Christians, Jews and Sabians who "work righteousness."<sup>54</sup> These instructions are a far cry from the worldview embraced by Osama bin Laden and his followers radicalized towards a unified political and religious regime which would force all who oppose this perspective to submit or be killed.

### *C. The Fatwa's Weak Case for a War of Self Defense*

Bin Laden's justification for war was self defense. The *fatwa* explained that never before had the Arabian Peninsula been under such attack, comparing it to "people fighting over a plate of food."<sup>55</sup> Proof of this assault, proclaimed bin Laden, was evident by the United States' foreign

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<sup>51</sup> *The Qur'an* (Yusufali) 22:17.

<sup>52</sup> *The Qur'an* (Yusufali) 2:256.

<sup>53</sup> *The Qur'an* (Yusufali) 4:172.

<sup>54</sup> See *supra* notes 49 and accompanying text.

<sup>55</sup> Bin Laden et al., *supra* note 1.

policy of continued "aggression against the Iraqi people using the Peninsula as a staging post."<sup>56</sup> He also cited the Iraqi embargo and the "endeavor to fragment all the states of the region such as Iraq, Saudi Arabia, Egypt, and Sudan ... to guarantee Israel's survival."<sup>57</sup> Bin Laden claimed this was "a clear declaration of war on Allah, his messenger, and Muslims."<sup>58</sup> Using these three anecdotes as a premise, bin Laden quoted a third source of authority-consensus amongst the ulema, or *ijmaa* in Arabic:

[U]lema have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys the Muslim countries. This was revealed by Imam bin-Qadamah in "Al-Mughni," Imam al-Kisa'i in "Al-Bada'i" al-Qurtubi in his interpretation, and the shaykh of al-Islam in his books, where he said: "As for the fighting to repulse [an enemy], it is aimed at defending sanctity and religion, and it is a duty as agreed [by the ulema]. Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life."<sup>59</sup>

As a threshold matter, while *ijmaa* remains binding within Islamic law as a matter of consensus and deep methodological, legal reasoning, *usul al-fiqh*, this form of human reasoning, *'aql*, is distinguishable from *Shari'ah*. Mohammad Hashim Kamali explains:

Since *Shari'ah* is contained in divine revelation, namely, the Qur'an and the teachings of the Prophet Muhammad, or his Sunnah, it has a closer affinity with the dogma of Islam, whereas *fiqh* is a rational endeavor and a product largely of speculative reasoning which does not command the same authority as that of the *Shari'ah*.<sup>60</sup>

Not only is *ijmaa* distinguishable from *Shari'ah*, *ijmaa* is subordinate to the Qur'an and the Sunnah:

Obey God and obey the Messenger and those who are in charge of affairs among you. Should you happen to dispute over something, then refer it to God and to the Messenger.<sup>61</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*, see also e.g., IMAM BIN-QADAMAH, AL-MUGHNI.

<sup>60</sup> MOHAMMAD HASHIM KAMALI, SHARI'AH LAW: AN INTRODUCTION 40-41 (2008).

<sup>61</sup> *The Qur'an* (Surah an-Nisa) 9:36.

According to bin Laden, the rationalization for war was self defense, made evident by the previous quote. Therefore, according to the *fatwa*, not only was war with the United States justified, it carried a legal duty, or *zakat* in Arabic, for all Muslims to participate.<sup>62</sup>

The Qur'an clearly condones fighting in self defense;<sup>63</sup> in fact, the revealed word of Allah instructs Muslims to repel acts of aggression towards his people:

To those against whom war is made, permission is given (to fight), because they are wronged;- and verily, Allah is most powerful for their aid.<sup>64</sup>

And slay them wherever ye catch them, and turn them out from where they have Turned you out; for tumult and oppression are worse than slaughter; but fight them not at the Sacred Mosque, unless they (first) fight you there; but if they fight you, slay them. Such is the reward of those who suppress faith.<sup>65</sup>

Yet, when the assault ceases, Allah forgives those who fought against Muslims:

But if they cease, Allah is Oft-forgiving, Most Merciful.<sup>66</sup>

Taking this concept a step further, Allah instructs Muslims to lay down their weapons and forbids the continuation of hostilities if their enemy offers peace:

And fight them until there is no more Tumult or oppress, and there prevail justice and faith in Allah; but if they cease, Let there be no hostility except to those who practice oppression.<sup>67</sup>

But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah; for he is One that heareth and knoweth (all things).<sup>68</sup>

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<sup>62</sup> See Bin Ladin et al., *supra* note 1.

<sup>63</sup> *Shari'ah* also distinguishes between wars of self defense and wars of aggression. See Cherif, *supra* note 31, at 130-31. While the *Qur'an* specifically authorizes wars of self defense, scholars debate the appropriateness of wars of aggression. Cf. *id.* This paper does not address the latter for the primary reason that Osama bin Laden premised his *fatwa* on the principles of self defense. Furthermore, such a discussion would prove incomplete without delving into the doctrine of abrogation, or *naskh*, an important doctrine but one that is too lengthy for the present endeavor. See generally KAMALI, *supra* note 60, at 26 (explaining how *naskh* works to change and modify legal rules).

<sup>64</sup> *The Qur'an* (Ysufali) 22:39.

<sup>65</sup> *The Qur'an* (Ysufali) 2:191.

<sup>66</sup> *The Qur'an* (Ysufali) 2:192.

<sup>67</sup> *The Qur'an* (Ysufali) 2:193.

<sup>68</sup> *The Qur'an* (Ysufali) 8:61.

The issue with this portion of bin Laden's *fatwa* is not overtly legal, but is more akin to a factual dispute. *Shari'ah* requires Muslims to fight in self defense. Furthermore, the Qur'an requires fellow Muslims to join in alliances with one another when fellow Muslims are oppressed and driven from their homes:

Those who believed, and adopted exile, and fought for the Faith, with their property and their persons, in the cause of Allah, as well as those who gave (them) asylum and aid, - there are (all) friends and protectors, one of another. As to those who believed but came not into exile, ye owe no duty of protection to them until they come into exile; but if they seek your aid in the matter of religion then it is your duty to help (them) except against a people with whom ye have a treaty of mutual alliance. And (remember) Allah seeth all that ye do.<sup>69</sup>

Osama bin Laden relies heavily on the United States' hostile foreign policy towards Saddam Hussein's Iraq. However, the relationship between bin Laden and Hussein was tenuous at best. According to a report by The 9/11 Commission, "bin Laden 'explored possible cooperation with Iraq' while in Sudan through 1996, but that 'Iraq apparently never responded' to a bin Laden request for help in 1994.... 'Two senior bin Laden associates have adamantly denied that any ties existed between al Qaeda and Iraq.'"<sup>70</sup> This relationship is important given the reading of the previous *ayat*. Bin Laden does not suggest that Iraqis are in exile, nor does The 9/11 Commission suggest either bin Laden or Hussein approached one another to seek "aid in the matter of religion." To conclude this point, bin Laden makes a weak case for extending the duty to fight Americans to all Muslims.

As stated previously, the Qur'an also levies an equivalent duty to put down arms when peace is a viable option. Bin Laden clearly did not believe in tranquility between the United States and the Muslim community. Citing the United States' continued aggression towards Iraq and alliance with Saudi Arabia, the United Nations' embargos on Iraq, and America's friendly

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<sup>69</sup> *The Qur'an* (Yusufali) 8:72.

<sup>70</sup> Walter Pincus & Dana Milbank, *Al Qaeda-Hussein Link Is Dismissed*, WASHINGTON POST, Jun. 17, 2004, at A01.

foreign policy with Israel, bin Laden made an allusive argument that Muslims were under attack and that defensive war was necessary. However, looking to the *Sunnah*, one begins to question whether American foreign policy truly rose to the level of aggression justifying *lesser jihad*:

Permission is granted to those who fight because they have been wronged. And Allah is truly able to help them; / those who were expelled from their homes without right, only because they said: "Our Lord is Allah." Were it not for Allah's causing some people to drive back others, destruction would have befallen the monasteries, and churches, and synagogues, and mosques in which Allah's Name is mentioned greatly. Assuredly God will help those who help Him. Allah is truly Strong, Mighty-those who, if We empower them in the land, maintain the prayer, and pay the alms, and enjoin decency and forbid indecency. And with Allah rests the outcome of all matters.<sup>71</sup>

Bin Laden certainly believed the Muslim community as a whole had "been wronged." The same might be said for many other sympathizers who recognize a fractured relationship between the Muslim world and the West but who do not necessarily condone violence. But, as Grand Imam Mahmoud Shaltut points out, this *ayat* should not be read out of context.<sup>72</sup> During the early years of the Prophet, the Muslims in Mecca faced atrocious maltreatment.<sup>73</sup> They were not free to worship, they were frequently persecuted for their faith, and their property and personal safety were constantly subject to terrorism.<sup>74</sup> Eventually these Muslims were forced from their homes. Despite this ongoing oppression, the Prophet urged restraint and forbid acts of reprisal and violent efforts to resist their enemies.<sup>75</sup> Finally, when the Muslims of Mecca were at the brink of despair and doubt, Allah granted permission to fight in self defense, delivered through the previous *ayat*.<sup>76</sup>

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<sup>71</sup> *The Qur'an* (al-Hajj) 22:39-41.

<sup>72</sup> See Grand Imam Mahmoud Shaltut, *The Qur'an and Combat*, in *WAR AND PEACE IN ISLAM: THE USES AND ABUSES OF JIHAD* 1, 9 (HRH Prince Ghazi bin Muhammad et al. eds., 2013).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*



These facts are particularly important and persuasive because they are completely distinguishable from bin Laden's purported justification for issuing his *fatwa*. First, bin Laden offered no proof that without initiating hostilities, monasteries, churches, synagogues, and mosques would be destroyed. Second, the *fatwa* merely hints at the notion that the United States expelled Muslims from their homes, claiming occupation over the Arabian Peninsula for the purpose of waging war on Iraq. Third, bin Laden failed to reference the great hardships endured by the Muslims of Mecca before Allah relayed to the Prophet that fighting in self defense would be justified. Put simply, according to *Shari'ah* and the Qur'an, a Muslim may not seek retribution and resort to violence to avenge a simple wrong. Rather, he or she must struggle in the ways of Allah and seek peace wherever practicable.

#### *D. The Fatwa's Unjustified Mandate to Kill Civilians*

Extending the concepts of self defense and the duty of all Muslims to participate a step further, bin Laden maintained that every capable Muslim should kill Americans and their allies wherever possible, to include killing both civilians and military personnel indiscriminately.<sup>77</sup>

"The ruling to kill the Americans and their allies -- civilian and military -- is an individual duty for every Muslim who can do it."<sup>78</sup> All of this, claimed bin Laden, was in accordance with the Qur'an, citing the following *ayah*:

[A]nd fight the pagans all together as they fight you all together.<sup>79</sup>

[F]ight them on until there is no more tumult or oppression, and there prevail justice and faith in Allah.<sup>80</sup>

And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? -- women and children, whose cry is: :Our Lord, rescue us from this town, whose people are oppressors; and raise for us from thee one who will help!<sup>81</sup>

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<sup>77</sup> *See id.*

<sup>78</sup> *Id.*

<sup>79</sup> *The Qur'an* (Yusufali) 8:39.

<sup>80</sup> *The Qur'an* (Yusufali) 8:39.

To bin Laden's credit, he does caveat his *fatwa* by exempting those who cannot participate in his *lesser jihad*, though he does not articulate as to what those exemptions might be. Turning to the Qur'an, *Shari'ah* exempts those who are *unable* to fight:

No blame is there on the blind, nor is there blame on the lame, nor on one ill (if he joins not the war): But he that obeys Allah and his Messenger, -(Allah) will admit him to Gardens beneath which rivers flow; and he who turns back, (allah) will punish him with a grievous Penalty.<sup>82</sup>

While the text explicitly exempts the blind, lame, and ill from combat, and admonishes those who refuse to fight having already committed themselves, the text does not require every physically capable Muslim to fight. To the contrary, *ayah* found elsewhere suggests the opposite:

And the believers should not all go out to fight. Of every troop of them, a party only should go forth, that they (who are left behind) may gain sound religion, and that they may warn their folk when they return to them, so that they may beware.<sup>83</sup>

As the previous *ayat* suggests, the Qur'an does not anticipate, nor authorize every Muslim to take part in battle. Some are instructed to stay behind and care for the spiritual needs of the community. The *Sunnah* reveals that women may care for the wounded:

We were in the company of the Prophet providing the wounded with water and treating them and bringing the killed to Medina (from the battle field).<sup>84</sup>

These texts exemplify the many roles Muslims may assume during days of conflict which do not directly involve fighting. This contradicts bin Laden's *fatwa*, which requires participation by all those physically capable and is thus inconsistent with *Shari'ah*.

As mentioned previously, the *fatwa* also instructs Muslims to kill American civilians anywhere possible. In other words, bin Laden believed every Muslim had a duty to kill United States citizens and her allies both on and off the battlefield. Ironically, this makes sense given the

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<sup>81</sup> *The Qur'an* (Yusufali) 4:75.

<sup>82</sup> *The Qur'an* (Yusufali) 48:17.

<sup>83</sup> *The Qur'an* (Pickthal) 9:122.

<sup>84</sup> *Hadith* (al-Bukhari) vol. 4, book 52, no. 133.

inconvenient fact that there was no battlefield in 1998. Also inconvenient for the legal soundness of Osama bin Laden's *fatwa* is the *Shari'ah's* ban on killing noncombatants:

'Abd Allah bin (mas'ud) said "A woman was found slain in one of the battles of the Apostle of Allaah. The Apostle of Allah forbade to kill women and children."<sup>85</sup>

When we were with the Messenger of Allah on an expedition, he saw some people collected together over something and sent a man and said: See, what are these people collected around? He then came and said: They are round a woman who has been killed. He said: This is not one with whom fighting should have taken place. Khalid ibn al-Walid was in charge of the van; so he sent a man and said: Tell Khalid not to kill a woman or a hired servant.<sup>86</sup>

These sources explicitly forbid killing women, children and servants. Furthermore, the *hadith* establishes the underlying principle that because women and servants were not ones "with whom fighting should have taken place Muslims should spare their lives. This same book of *hadith* extends this prohibition to "decrepit old men,"<sup>87</sup> but also instructs Muslims to kill old men who are polytheistic.<sup>88</sup> If there is a distinguishing line between decrepit and polytheistic old men, where that line exists is a topic beyond the scope of this inquiry. An explanation may exist outside *Shari'ah* but within the *fiqh*. Regardless, the important takeaway is that *Shari'ah* clearly does not condone the wartime killing of innocent women, children, and some elderly men, a truth that absolutely contravenes Osama bin Laden's *fatwa*.

#### *E. The Fatwa's Narrow Interpretation of Jihad*

Finally, bin Laden appealed to "Muslim ulema, leaders, youths, and soldiers to launch the raid on Satan's U.S. troops and the devil's supporters allying with them."<sup>89</sup> He then concluded with the following three *ayah*:

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<sup>85</sup> *Hadith* (Sunah Abu Dawud) book 14, no. 2662.

<sup>86</sup> *Hadith* (Sunah Abu Dawud) book 14, no. 2663.

<sup>87</sup> *Hadith* (Sunah Abu Dawud) book 14, no. 2608.

<sup>88</sup> *Hadith* (Sunah Abu Dawud) book 14, no. 2664.

<sup>89</sup> Bin Ladin et al., *supra* note 1.

Oh ye who believe, give your response to Allah and His Apostle, when He calleth you to that which will give you life. And know that Allah cometh between a man and his heart, and that it is He to whom ye shall (all) be gathered.<sup>90</sup>

O ye who believe, what is the matter with you, that when ye are asked to go forth in the cause of Allah, ye cling so heavily to the earth! Do ye prefer the life of this world to the hereafter? But little is the comfort of this life, as compared with the hereafter. Unless ye go forth, He will punish you with grievous penalty, and put others in your place; but Him ye would not harm in the least. For Allah hath power over all things.<sup>91</sup>

So lose not heart, nor fall into despair. For ye must gain mastery if ye are true in faith.<sup>92</sup>

The previous *ayah* were meant to inspire bin Laden's followers as well as the Muslim community as a whole to take up arms, abandon the comforts of this life, and fight in the name of Allah without discouragement. For bin Laden, this was the true and only "struggle." This was bin Laden's *jihad*.

Recalling what we already know regarding the distinction between *greater* and *lesser jihad*, we are reminded that *greater jihad* encompasses the individual Muslim's personal struggle in the way of Allah who espouses the principles of belief, humbleness, good deeds, perseverance, duty, sincerity, prayer, charity and above all, justice.<sup>93</sup> Even within the context of *lesser jihad*, both the Qur'an and the Prophet extol peace, patience, and restraint.<sup>94</sup> bin Laden's final words of encouragement, quoted directly from the Qur'an, are ill-placed and communicated out of context. They serve as a disingenuous rally cry from a radical leader who ignored the *greater jihad*, arguably the most important tenant of Islam, for the *lesser jihad*. In doing so, bin Laden also failed to acknowledge many of the foundational principles of the Qur'an and Sunnah - peace, charity, and justice.

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<sup>90</sup> *The Qur'an* (Yusufali) 8:24.

<sup>91</sup> *The Qur'an* (Yusufali) 9:38.

<sup>92</sup> *The Qur'an* (Yusufali) 3:139.

<sup>93</sup> See *supra* notes 32-35 and accompanying text.

<sup>94</sup> See *id.*

### III. PEACE, SACRED LIFE, FORGIVENESS & JUSTICE - THE ALTERNATIVES TO WAR

Thus far this paper has almost exclusively focused on Osama bin Laden's *fatwa* as a vehicle for understanding *Shari'ah* just war theory and how radicalized leaders misuse and distort historical texts to justify their violent, political objectives. However, bin Laden is but one contributing factor to the problems regarding the preconceived notions of *Shari'ah* in the United States. Bin Laden has been dead for nearly three years and 16 years have passed since he issued the *fatwa*. Nevertheless, misconceptions remain prevalent in American society. The last portion of this paper will explore three principles - peace, the sacredness of human life, forgiveness, and justice - all of which permeate the Qur'an and *Sunnah* and challenge the preconceived notions by many in the West, including those who voted in favor of Oklahoma's Save Our Constitution referendum.

#### *A. Peace*

The word peace in Arabic is *salam*.<sup>95</sup> The traditional greeting in Arabic "*as-salamu alaykum*," followed by "*wa alakumu s-salem*," means "peace be upon you," and "and unto you peace" respectively.<sup>96</sup> The very meaning of "Islam" derives from the root word "*salema*" which means peace, purity, submission and obedience.<sup>97</sup> As mentioned previously, the Qur'an places utmost priority on the principles of peace, subordinating the desires to fight and seek retribution in the interests of tranquility:

Therefore if they withdraw from you but fight you, and (instead) send you (Guarantees of) peace, then Allah Hath opened no way for you (to war against them).<sup>98</sup>

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<sup>95</sup> Hera Hashmi, Comment, *Too Much to Bare? A Comparative Analysis of the Headscarf in France, Turkey, and the United States*, 10 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 409, 411 (2010) (citing ABUL A'LA MAWDUDI, TOWARDS UNDERSTANDING ISLAM 1 (1997)).

<sup>96</sup> See Karima Bennoune, Note, *As-Salamu 'Alakum? Humanitarian Law in Islamic Jurisprudence*, 15 Mich. J. Int'l L. 605, 605 & n.1 (1994).

<sup>97</sup> See Hashmi, *supra* note 95, at 411.

<sup>98</sup> *The Qur'an* (Surah an-Nisa) 4.9.

Beyond the Qur'an, the principle of peace is a reoccurring theme throughout the *ahadith* of the Prophet. In fact, the entire 49th book of al Bukhari's collection of *ahadith* is dedicated to the topic of peacemaking.

That she heard Allah's Apostle saying, "He who makes peace between the people by inventing good information or saying good things, is not a liar."<sup>99</sup>

Once the people of Quba fought with each other till they threw stones on each other. When Allah's Apostle was informed about it, he said, "Let us go to bring about a reconciliation between them."<sup>100</sup>

When Allah's Apostle concluded a peace treaty with the people of Hudaibiya, Ali bin Abu Talib wrote the document and he mentioned in it, "Muhammad, Allah's Apostle." The pagans said, "Don't write: 'Muhammad, Allah's Apostle', for if you were an apostle we would not fight with you." Allah's Apostle asked Ali to rub it out, but Ali said, "I will not be the person to rub it out." Allah's Apostle rubbed it out and made peace with them on the condition that the Prophet and his companions would enter Mecca and stay there for three days, and that they would enter with their weapons in cases.<sup>101</sup>

The first *hadith* encourages peacemaking through negotiations with one's enemies. The Prophet encouraged Muslims to use language and convey information in a manner likely to foster tranquility between two opponents. Even if the words or message were not necessarily true, the Prophet exonerated the speaker from any wrongdoing or accusations of lying because his motive was to satisfy a greater principle - peacemaking. The second *hadith* simply demonstrates the value of reconciliation in *Shari'ah* and the life of the Prophet. Finally, the third *hadith* exemplifies concessions the Prophet was willing to make in the interest of peace. There are two important points worth noting about these concessions. First, these peace talks occurred between Muslims and pagans. The very root of the Save Our Constitution referendum is a mistaken belief that Western culture and the Islamic faith are incompatible, that the two cannot coexist in harmony with one another. The very name of the bill begs the question - save our constitution

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<sup>99</sup> *Hadith* (al-Bukhari) vol. 3, book 49, no. 857.

<sup>100</sup> *Hadith* (al-Bukhari) vol. 3, book 49, no. 858.

<sup>101</sup> *Hadith* (al-Bukhari) vol. 3, book 49, no. 862.

from what? The assumption is the *Shari'ah* will somehow destroy the laws of Oklahoma. This notion utterly ignores the *Shari'ah's* predisposition towards peace. The second important point from this third *hadith* is the very nature of Muhammad 's concession. He erased his title, "Muhammad, Allah's Apostle," from the agreement, a gesture of humbleness for the purpose of peace. These are just some of the misunderstood concepts from the collective fallacies regarding Islam and *Shari'ah* prevalent in Western society today.

### *B. Sacredness of Human Life*

Another misconception driving popular belief in places such as Oklahoma is the idea that Islam is a violent religion and that *Shari'ah* condones killing those who do not share similar religious beliefs. Unfortunately, these unfounded conclusions discount the immense value of human life embraced by the Qur'an:

Nor take life - which Allah has made sacred - except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive): but let him not exceed bounds in the matter of taking life; for he helped (by the Law).<sup>102</sup>

And those who cry not unto any other god along with Allah, nor take the life which Allah hath forbidden save in (course of) justice, nor commit adultery - and whose doeth this shall pay the penalty.<sup>103</sup>

The Qur'an very clearly stipulates that one may take the life of another only in the interests of justice. In the event that a Muslim unjustly kills another, the victim's heirs may seek retribution.

O ye who believe: the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.<sup>104</sup>

This *ayat* mirrors "an eye for an eye" and grants authority to the heirs of wrongfully killed victims to either seek punishment, to include death, or to forgive, which appears to be the

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<sup>102</sup> *The Qur'an* (Yusufali) 17:33.

<sup>103</sup> *The Qur'an* (Pickthal) 25:68.

<sup>104</sup> *The Qur'an* (Yusufali) 2:178.

preferred course of action. To summarize *Shari'ah* with regards to killing and the sacredness of human life, a Muslim must first have just cause to kill another. Second, in the event that just cause is not present, the perpetrator faces stiff penalties and possibly death. Third, *Shari'ah* consistently encourages forgiveness and patience:

And if ye punish, then punish with the like of that wherewith ye were afflicted. But if ye endure patiently, verily it is better for the patient.<sup>105</sup>

To further make this point, the Qur'an refers to Allah in name as the "Forgiving" and the "Loving."<sup>106</sup>

As outlined previously, Osama bin Laden's *fatwa* lacked justification within the context of *Shari'ah* regarding to both specified laws and overarching principles. Therefore, not conflating the crimes of a minority of radicals upon the broad legal system of *Shari'ah* is of upmost importance while considering the Save Our Constitution referendum. Ironically, if bin Laden or Salem al Hazmi were alive today and facing prosecution under *Shari'ah* in an Oklahoma court, they would find no refuge according to the previous *ayah*. Furthermore, even if bin Laden did offer reasonable grounds to wage war, the Qur'an encourages forgiveness, love and patience. These elusive truths apparently escaped the collective consciousness of those who voted for the Save Our Constitution referendum, as well as the vast number of Americans who share their popular sentiment. Unfortunately, we, as a society, are quick to impute bin Laden's handpicked and manipulated interpretations of *Shari'ah* upon the entire body of law, without first reconciling the fundamental principles of forgiveness, love and patience.

### *C. Justice*

Above all else, the *Shari'ah* requires justice. This fundamental concept is not limited to the individual nor is it simply comprised of formal and regulatory schemes. Rather, justice is the

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<sup>105</sup> *The Qur'an* (Pickthal)16:126.

<sup>106</sup> *The Qur'an* (Pickthal) 85:14.



centerpiece of the Islamic faith and *Shari'ah* mandates that Muslim communities establish this principle throughout society. Therefore, in both *greater* and *lesser jihad*, justice is the final objective for Muslims as they struggle in the way of Allah. This involves establishing an equilibrium between rights and obligations, eliminating excess, and dispersing benefits and advantages evenly amongst society.

Surely God enjoins the doing of justice and the doing of good (to others).<sup>107</sup>

We sent aforetime our messenger with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice.<sup>108</sup>

The second *ayat* referenced above reveals that justice is the very objective and defining characteristic of the Qur'an. Therefore, justice must also be the fundamental foundation upon which the *Shari'ah* is established. The implication of this truth is troubling for those who sympathized with bin Laden and his *fatwa*, but should serve as an encouragement and common ground for those in Western society who remain uninformed and skeptical.

Justice requires piety and, in turn, requires Muslims to divorce themselves from acting out of spite and hatred. Under *Shari'ah*, the justification for armed conflict should never rest on the malice towards one's enemies. As the following *ayat* explains, this philosophy will only derail you along your struggle in the way of Allah - your quest for piety:

And let not hatred of any people seduce you that ye deal not justly.<sup>109</sup>

Act equitably, that is nearer to piety.<sup>110</sup>

Recalling some of the reoccurring *ayah* from throughout this paper, we now conclude that justice entails doing good to others, striving for piety, exercising patience and forgiveness, and fixating one's life on Allah. If armed conflict does not achieve these ends, then it is unjust.

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<sup>107</sup> *The Qur'an* (Shakir) 16:90.

<sup>108</sup> *The Qur'an* (Yusufali) 57:25.

<sup>109</sup> *The Qur'an* (Pickthal) 5.8.

<sup>110</sup> *The Qur'an* (Shakir) 5.8.

God forbids you not to do good and be just to those who have not fought you over your faith nor have evicted you from your homes. God loves those who strive for justice.<sup>111</sup>

Nor take life - which Allah has made sacred - except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive); but let him not exceed bounds in the matter of taking life; for he is helped (by the Law).<sup>112</sup>

These final *ayah* solidify the fundamental point of this exposition. The Qur'an endows a limited license to kill and fight in self defense. However, such actions are strictly forbidden if not done for the purpose of justice. Finally, even when authorized, *Shari'ah* subordinates the right to kill in favor of patience, forgiveness, and social justice.

### CONCLUSION

This paper began with three anecdotes. Taken together, they told the story of various distortions and misinterpretations of *Shari'ah* for distinct personal, pecuniary, and political purposes. While all three were different, they shared an equal misconception with respect to the true nature of Islam and *Shari'ah*. Yet, Osama bin Laden is now dead and nothing can take back the horrible crimes of September 11<sup>th</sup>. Where we as a society progress from here depends on us and it begins, not with rash judgments, but with intellectual questions that return to the source of legal concepts we have yet to comprehend. From this tragedy a new understanding must prevail. The acts of a few must not be imputed upon the whole. With this commitment comes the realization that Osama bin Laden and his followers were criminals, not only under the laws of Oklahoma and the United States, but under *Shari'ah* as well. And with this realization we are finally able to distinguish between bin Laden's hateful *fatwa* and apply the foundational principles of *Shari'ah* - peace, the sacredness of human life, and justice - in our own society.

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<sup>111</sup> Kamali, *supra* note 60, at 32 (citing *The Qur'an* 60:8).

<sup>112</sup> *The Qur'an* (Ysufali) 17:33.