

**Transitional Justice, The Seeds of Change: Secular Law or Divine (Islamic)
Law, *Quo Vadis?***

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Summary:

In the aftermath of massive human rights misuses, victims have well established rights to see the culprits penalized, to know the truth, and to receive reparations. Because systemic human rights transgressions touch not just the direct victims, but the entire society, states have obligations to guarantee that the defilements will not recur, and thus, a distinctive duty to reform institutions that were either involved in or incapable of averting the mistreatments. Academic scholars and activists cited that the core elements of a comprehensive TJ strategy include criminal prosecutions and trials, principally those that address perpetrators considered to be the most accountable. Compensations (repressions), through which governments identify and take steps to address the injuries suffered. Such initiatives often have substantial components, as health services/cash payments as well as emblematic features, as public apologies or memorialization (day of remembrance). Furthermore, institutional reform of offensive state institutions such as the military, police enforcements, and judicial bodies (courts), to dismantle appropriately the operational machinery of manipulations and preclude reappearance of grave human rights abuses and impunity along with the Truth Commissions or other techniques to investigate and report on systematic patterns of exploitation, recommend changes and reforms in that field.

It should be noted that footsteps that must be taken in TJ should comprise peace process; renovation of institutions that are favorable to a stable and fair political system, including governance and judicial configurations; the procurement of the economic means required to achieve those ends, as economic stability is instrumental for political constancy, and the reinstatement of civil confidence (trust) in government's institutions, means that the state works for all citizens irrespective of race, gender, nationality, religion, or political allegiance. Legally speaking, it is a combination of International Humanitarian Law ("IHL"), International Human Rights Law ("IHRL"), along with the due process principles in criminal prosecutions. This process proposed justice in all its forms, includes restorative justice, criminal justice, redistributive and social justices. This article will discuss the TJ's roots in religious perspectives generally in section two and if it is compatible with the recent positive international norms along with the TJ model in Islamic law in part three, highlighting Egypt as a case study regarding the death penalty as a tool of TJ. Finally it concludes that the axiomatic view of Islamic TJ policies is in essence fashioned by religious theories, laws, and divine practices and that Islam is more than appropriate to create a comprehensive design for victims' care in transitional periods on both national and universal levels. This is a message that everyone can and must understand¹.

Key words: Transitional Justice, Islamic Law, Human Rights, Humanitarian Law, Religion, Political Scene, Egypt, Death Penalty, Arab Spring, Uprisings, Criminal Procedural Law

¹ The author want to thank his research assistant Heba Makky for doing good research for this article

INTRODUCTION AND OVERVIEW

A God is not ebbing from public life, this has to be one of the furthestmost motivating assertions to come out of Charles Taylor's discourse.² Since religion's civic renaissance is one of the most remaining intercontinental perspectives of our time, then the most energetic and dramatic issues of this reinforcement demand efforts of various countries, especially in the recent Middle East's Arab Spring countries to address genocide, war and military crimes, civil war's atrocities, and the injustices of tyranny and dictatorship.³ As a public precept in Northern Ireland puts it, to "deal with their past," is also known as "Transitional Justice" among legal scholars, political scientists, and human rights activists.⁴ Not only problematical and influential, the religions have even formulated a unique model for dealing with the past (reconciliation), as an approach that fluctuates noticeably from the perceptions of the human rights atmosphere and the international "peace building consensus."⁵ Accordingly, the classical Transitional Justice ("TJ") is not a 'special' sort of justice, but an attitude to accomplishing justice in times of switch from conflict

² See generally Marlies Glasius and Tim Meijers, *Constructions of Legitimacy: The Charles Taylor Trial*, INT'L. J. OF TRANSITIONAL JUSTICE, (Oxford Univ. Press, April 2010) (examining discourses of the criminal prosecution in Taylor's case before the Special Court for Sierra Leone, highlighting the doctrine of legitimacy and utility of international criminal justice, and the legal doctrine of 'expressivism' to theorize the linkage between normative legitimacy, real support, and the international criminal justice's technique as dynamic determined in court).

³ See generally Chandra L. Sriram, TRANSITIONAL JUSTICE IN THE MIDDLE EAST AND NORTH AFRICA, C HURST & CO (PUBLISHERS) LTD (May 26, 2016). Middle Eastern folks have had high hopes not only for democratization but also for transitional justice to track the massive abuses that had taken place in the region, either during the uprisings or for the decades before them, as demonstrators had called not only for the removal of corrupt regimes, but also for the human rights' protection more generally, comprising socio-economic, civil, and political rights. Though these desires, most of the transitions in the MENA region have stalled, along with the transitional justice's possibility.

⁴ Laura Davis, *EU Foreign Policy, Transitional Justice and Mediation: Principle, Policy, Practice*, ROUTLEDGE (2014). See also Council of the European Union (2005). *The European Union Guidelines on Compliance with International Humanitarian Law* (IHL) Document 15246/05 III 5 December 2005, Council of the European Union, Brussels (2012). *EU Strategic Framework and Action Plan on Human Rights and Democracy*, Luxembourg June 25, 2012 11855/12. Luxembourg, Art. 27.

⁵ See SASY MABROUK, FALSIFAT AL'ADELA AL-INTIQALIAH FI AL-ISLAM [THE PHILOSOPHY OF TRANSITIONAL JUSTICE IN ISLAM], AL-FAJR NEWS, Tunisia, Mar.23, 2012, <http://www.tuess.com/alfajrnews/103706>.

and/or state suppression.⁶ By trying to attain accountability and remedying victims, TJ provides acknowledgement of the victims' rights, endorses civic trust, and strengthens the democratic and transparent rule of law.⁷

In the aftermath of massive human rights misuses, victims have well established rights to see the culprits penalized, to know the truth, and to receive reparations.⁸ Because systemic human rights transgressions touch not just the direct victims, but the entire society, states have obligations to guarantee that the defilements will not recur, and thus, a distinctive duty to reform institutions that were either involved in or incapable of averting the mistreatments.⁹

Academic scholars and activists cited that the core elements of a comprehensive TJ strategy include criminal prosecutions and trials, principally those that address perpetrators considered to be the most accountable.¹⁰ Compensations (repressions), through which governments identify and take steps to address the injuries suffered. Such initiatives often have substantial components, as health services/cash payments as well as emblematic features, as public apologies or memorialization (day of remembrance).¹¹ Furthermore, institutional reform of

⁶ *Id.* See also Juan E. Mendez, *Accountability for Past Abuses*, 19 HUMAN RIGHTS QUARTERLY 255 (1997).

⁷ RUTI G. TEITEL, *TRANSITIONAL JUSTICE*, (Oxford Univ. Press 2000). See also Neil Kritz, (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vols. I–III. Washington, D.C.: U.S. INSTITUTE OF PEACE PRESS (1995). In the same vein, how the states transit from violence and wars and autocratic regimes to democracy and peace and to realize human rights. This transition can be done with different mechanisms like judicial and non-judicial processes, truth commissions, and institutional reforms. By the same token, the office of the United Nations High Commissioner has described the TJ as “transitional justice must have the ambition to assist the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to-but also beyond-the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that predated the conflict and caused or contributed to it.”

⁸ Kritz, *supra* note 7.

⁹ Paige Arthur, *How Transitions Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUMAN RIGHTS QUARTERLY 2, (2009), at 321-367 (2009).

¹⁰ Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century beyond Truth versus Justice*, (Cambridge Univ. Press 2006). For further details on the TJ mechanisms, see Eric Sottas, *Transitional Justice and Sanctions*, 90 INT'L REV. OF RED CROSS 870 (2008) (exploring the correlation between these needs and TJ techniques, and critically assess their influence on the forms of justice has taken in post-conflict situations).

¹¹ Sottas, *supra* note 10. The first appearance of TJ idea in context were in the Nuremberg trials in which an international military tribunals established for the purpose of prosecuting officials for so many human rights violations and war crimes. The UN Secretary General stated that TJ include: (“(a) domestic, hybrid, and international prosecutions; (b) truth telling initiatives to determine and document violations that have occurred; (c) promoting reconciliation within divided communities; (d) reparations

offensive state institutions such as the military, police enforcements, and judicial bodies (courts), to dismantle appropriately the operational machinery of manipulations and preclude reappearance of grave human rights abuses and impunity along with the Truth Commissions or other techniques to investigate and report on systematic patterns of exploitation, recommend changes and reforms in that field.¹²

It should be noted that footsteps that must be taken in TJ should comprise peace process; renovation of institutions that are favorable to a stable and fair political system, including governance and judicial configurations; the procurement of the economic means required to achieve those ends, as economic stability is instrumental for political constancy, and the reinstatement of civil confidence (trust) in government's institutions, means that the state works for all citizens irrespective of race, gender, nationality, religion, or political allegiance.¹³ Further, TJ aims to guarantee the accurate implementation of fundamental international law norms through whatever process a government embraced.¹⁴ Legally speaking, it is a combination of International Humanitarian Law ("IHL"), International Human Rights Law ("IHRL"), along with the due process principles in criminal prosecutions.¹⁵ This process proposed justice in all its forms, includes restorative justice, criminal justice, redistributive and social justices. Also, an

to victims including collective and symbolic reparations; (e) constructing legacy and monuments for education of future generations, and (f) institutional reform."'). See generally *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*; REPORT OF THE SECRETARY GENERAL, Aug. 23, 2004.

¹² *Id.* Different countries have added other actions. Memorialization, for instance, the numerous efforts to keep the memory of the victims alive through the creation of museums, memorials, and other symbolic creativities as renaming of public spaces has become a significant part of TJ in the globe. See Mohamed 'Arafa, *Insights on Divine (Islamic) Law: Islamophobia versus Terrorism, Death Penalty, and Transitional Justice*, (Feb.19, 2016). CALUMET: INTERCULTURAL L. & HUMANITIES REV. (*Law & Religion*, ISSN 2465-0145 (Online)), at 5-7, at http://www.windogem.it/calumet/upload/pdf2/mat_43.pdf.

¹³ For further details on the processes are believed to constitute the core of TJ among political thinkers and legal scholars, see 'Arafa, *supra* note 12, at 6-8. ("mostly, (a) a transition encompasses a justice process, to bring perpetrators of mass atrocities to justice and to punish them for the crimes committed; (b) a reparation process, to redress victims of atrocities for the harm suffered; (c) a truth and reconciliation process ("Truth Commissions") to fully investigate atrocities so that society discovers what happened during the conflict, who committed the atrocities, and to understand the causes behind the conflict and human rights violations, and (d) the institutional reform aimed to get rid of the incompetent and corrupt chiefs . . .").

¹⁴ Arthur, *supra* note 9.

¹⁵ Roddy Brett, and Lina Malagon, *Overcoming the Original Sin of the "Original Condition:" How Reparations May Contribute to Emancipatory Peacebuilding*, 14 HUMAN RIGHTS REV.3 (2013).

eloquent democratic reform assures the rule of law's application within society and building a civilization with active institutions that ensure that the varieties of violations being dealt with will never occur again.¹⁶ Against this succinct framework, this chapter will discuss the TJ's roots in religious perspectives generally in section two and if it is compatible with the recent positive international norms along with the TJ model in Islamic law in part three, highlighting Egypt as a case study regarding the death penalty as a tool of TJ. Finally it concludes that the axiomatic view of Islamic TJ policies is in essence fashioned by religious theories, laws, and divine practices and that Islam is more than appropriate to create a comprehensive design for victims' care in transitional periods on both national and universal levels. This is a message that everyone can and must understand.

TRANSITIONAL JUSTICE IN RELIGIOUS TRADITIONS: HOW FAR REACHING ARE THEY?

Nevertheless, if some secular views on TJ do not congregate gracefully with the liberal human rights practices, spiritual perceptions reason more typically and reliably from a diverse center of gravity. Recently, human rights is essential to the Catholic Churches teachings, foremost Protestant values, and Judaism, while it relishes more mixed support in Islam, Buddhism, and Hinduism.¹⁷ In the West, Judeo-Christian obligations have debatably served as vigorous human rights' basics and religiously attitudes to TJ frequently validate human rights as an objective, but neither human rights nor sanctions for it sinners is their mutual turning notion.¹⁸ The notion around which sacred opinions most meet, is reconciliation. Certainly, an upsurge of religious

¹⁶ Building Lasting Peace and Balance of Power are important doctrines in which how does the new state or those involved in the new government held responsible those who perpetrated the most destructive ruins mainly if they are part of the new transitional structure and still hold power? Who does the new state hold accountable and what criminal offenses should be punished? See Nenad Dimitrijevic, *Justice beyond Blame: Moral Justification of (the Idea of) a Truth Commission*, 50 CONFLICT RESOLUTION J. 3 (2006).

¹⁷ See generally Donald W. Shriver, *An Ethic for Enemies: Forgiveness in Politics* (Oxford Univ. Press 1995); Mark Amstutz, *The Healing of Nations: The Promise and Limits of Political Forgiveness* (Lanham, MD: Rowman & Littlefield, 2005).

¹⁸ Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Scholars Press 1997); Michael Perry, *The Idea of Human Rights: Four Inquiries*, (Oxford Univ. Press 1998).

influences for reconciliation is one of the unexpected and novel developments of the age of TJ.¹⁹ Muslims, Christians, and Jews advocates of reconciliation's theological concept, meaning the "restoration of right relationships," as the term "transitional justice" is not purely a Western concept or strange to the Arab or Islamic cultures, that comes from other civilized systems, but also the basic components and mechanisms applied and rooted in various—primary and secondary—sources of Islamic law (Qur'an and Sunnah [Prophet Mohammad's teachings], Qiyas and ijma'a [analogical deduction/juristic consensus]), which calls for renounce violence, urges forgiveness, tolerance, reconciliation, and the components of justice's concept conform to the Islamic law's purposes calling for the elimination of corruption and the corrupt régimes.²⁰

Historically in the 11th and 12th centuries, the Holy Roman Royal leader would request and solicit for clemency and forgiveness from the Pope in Italy, and the United Kingdom's King would do public reparation for massacring the Archbishop of Canterbury, then forgiveness had been consigned to the confessional, to prayer, and to personal relations in terms of divine TJ.²¹ Moreover, the contemporary dominance of principles for dealing with past sin that tend to repudiate reconciliation, either legalist philosophies of the compensation (the *Calvinist* "penal substitution" theory, that deals with a *punitive* balancing of scales over the relations' reestablishment, or the, "*exemplarist*" ideas that view Christ's death as an ordinary model of love

¹⁹ Alan Torrance, *The Theological Grounds for Advocating Forgiveness and Reconciliation in the Sociopolitical Realm*, in *THE POLITICS OF PAST EVIL* (Notre Dame Univ. Press, 2006).

²⁰ Irving Greenberg, *Religion as a Force for Reconciliation and Peace: A Jewish Analysis*, in *BEYOND VIOLENCE: RELIGIOUS SOURCES OF SOCIAL TRANSFORMATION IN JUDAISM, CHRISTIANITY, AND ISLAM*, James L. Heft (ed.) (Fordham Univ. Press, 2004). See Daniel Philpott, *What Religion Brings to the Politics of Transitional Justice*, 61 *J. OF INT'L AFFAIRS*, 93, 98 (2007). The reconciliation's notion is applied in Islamic law, for instance, Prophet Mohammad encouraged mercy by asking the victim or the victim's family four times if they are willing to forgive before rationalizing retribution.

²¹ See generally Timothy Gorrige, *God's Just Vengeance: Crime, Violence, and the Rhetoric of Salvation* (Cambridge Univ. Press, 1996).

but not as a genuine restorative conquest over sin and death.²² In this respect, Theologian John De Gruchy touches base on the rise of modern divinities who apprehend atonement to indicate the transformation and reconciliation of political orders.²³ Likewise, German theologian Albrecht Ritschl wanted to leakage the restraining fluctuation between penal switch and exemplarism in his Christian *Doctrine of Justification and Reconciliation*, as he argued for Christ's reconciliation as an operative world's transformation.²⁴

On the other hand, the Jewish traditional norms debated advanced public reconciliation earlier than Christianity. Scholarly writings of the medieval Jewish philosopher Moses Maimonides testify to rich settlement's practices recognized as *teshuva*, (repentance/turning).²⁵ Today, he believes that in the current Middle East, Jews, Christians, and Muslims, cannot afford to pay no attention to the peacebuilding potential of traditional religious concepts.²⁶ The Islamic intellectual activist, Professor Mohammad Abu-Nimer, has pursued to tap theories and values from the *Qur'anic* verses, *Hadiths*, *Fiqh* (Islamic jurisprudence), and subsequent Islamic

²² In this domain, Western Christian politics, specifically in the Catholic Church, has been subjugated by justice principles and natural law ideals, which has little to say about forgiveness, repentance, reparation, and settlement. See John W. De Gruchy, *RECONCILIATION: RESTORING JUSTICE* (Fortress Press 2003), at 67-76.

²³ *Id.* Stephen J. Pope, *The Convergence of Forgiveness and Justice: Lessons From El-Salvador*, THEOLOGICAL STUDIES 64 (2003); William Bole, Drew Christiansen, and Robert T. Hennemeyer, *Forgiveness in International Politics: An Alternative Road to Peace (United States Conference of Catholic Bishops)*, Washington, D.C. 2004).

²⁴ See Karl Barth, *Community, State, and Church: Three Essays* (Eugene, Oregon: Wipf & Stock Publishers 2004), 168-82. For instance, in South Africa, reconciliation was masked out by other themes in Christian moral values after the Apartheid regime fell, the National Commission for Truth and Reconciliation, made reconciliation its fundamental element. Subsequently and within the political discourse, reconciliation has become required for truth commissions in Nigeria, Peru, Sierra Leone, Chad, Liberia, and Morocco.

²⁵ See Rabbi Gopin, *Judaism and Peacebuilding in the Context of the Middle Eastern Conflict*, in FAITH-BASED DIPLOMACY: Trumping Realpolitik & Douglas Johnston (eds.) (Oxford Univ. Press 2003), at 91-101; Rabbi Gopin, *Appendix: Peacemaking Qualities of Judaism as Revealed in Sacred Scripture*, in DIPLOMACY 2003), at 102-23. Rabbi M. Gopin, as an activist in the Middle East for peace recently supposed the marshal *teshuva* scheme, along with other concepts from Jewish scripture as *aveilus* (the mourning of loved ones via burial and commemoration followed by curing and recovery), tolerance towards the enemy, social justice, integrity, shame, and dignity for peacebuilding and reconciliation in the politics of modern (transitional) states.

²⁶ See Geoff Sifrin, Franz Auerbach, & Steven Friedman, *The Truth Commission: Jewish Perspectives on Justice and Forgiveness in South Africa*, 51 JEWISH AFFAIRS 3 (1996). See generally Marc Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford 2003) (discussing the integration of the religious communities of the region into peace-building efforts, offering an explanation for future negotiations using special techniques designed to weaken the appeal of religious radicals by incorporating divine norms into the procedures of official and unofficial diplomacy, as a correlation of secular and religious methods of peacemaking will create an effective and model for conflict resolution).

traditional *Ijma'a* (consensus) for reconciliation and peacebuilding in current states.²⁷ He discloses that pre-modern Arab-Islam comprises rich community notions of *sulh* (settlement) and *musalaha* (reconciliation), comparable to Judaism's *teshuva*.²⁸

In recent Islamic politics, both the Middle East struggle and arguments over reconciliation in TJ measures in Muslim majority nations as Tunisia, Egypt, Libya, Yemen, [and may be Syria] give urgency to the development of an Islamic conception of compromise.²⁹ It is obvious that the spiritual arguments for settlement in the Abrahamic values are normally rooted in the character, commitments, and God's actions as these are reported in Holy books, not predominantly in natural law or other philosophical reasoning approaches.³⁰ The Arabic term '*adl* (fair), is most frequently interpreted into justice in the *Qur'anic* provisions, similarly means systematic right link.³¹ From these theological views, reconciliation, as a sort of right relationship to a state of right correlation, can correspondingly mean restoration of justice to a state of justice.³² Thus, reconciliation *per se* is conception of justice, as Volf argues towards the end of Segregation and Embrace that embrace is "part and parcel of the very definition of justice."³³

²⁷ ABDEL FATTAH MURAD, ASUS AL'ADALAH AL-INTIQALIAH AL-GINAI'AH WA AL-MADANIAH FI AL-QUR'AN WA AL-SUNNAH [PHILOSOPHY OF THE TRANSITIONAL JUSTICE IN THE *QUR'AN AND SUNNAH*], MASRAS, Mar.3, 2013, at <http://www.masress.com/october/135802> & <http://www.masress.com/october/136244> (last visited Apr. 15, 2016).

²⁸ On this point, see George Irani and Nathan Funk, *Rituals of Reconciliation: Arab-Islamic Perspectives*, 20 ARAB STUDIES QUARTERLY 4 (1998). See Sohail Hashmi, *Islamic Ethics in International Society*, in INTERNATIONAL SOCIETY: DIVERSE ETHICAL PERSPECTIVES (Princeton Univ. Press 1998), at 221-7; James Piscatori, *Islam in a World of Nation-States* (Cambridge Univ. Press 1986). Carol LaHurd, *So That the Sinner Will Repent: Forgiveness in Islam and Christianity*, DIALOG 35, no. 4 (1996).

²⁹ Veerle Opgenhaffen & Mark Freeman, *Transitional Justice in Morocco: A Progress Report*, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (2005), at 7-23, http://www.uni-leipzig.de/~sozio/mitarbeiter/m8/content/dokumente/616/Opgenhaffen_Transitional_Justice_in_Marocco.pdf ("Morocco's "years of lead" were characterized by a variety of abuses. Thousands of individuals were victims of violations that ranged from arbitrary detention and torture to extrajudicial execution and forced disappearances. Survivors of torture in Moroccan prisons have written autobiographical accounts of captivity in dark and cramped cells deep within secret detention facilities . . . To date, the Moroccan experience in the realm of transitional justice is best viewed as part of a long-term process of reckoning with a violent and, until recently, hidden past.").

³⁰ Gopin, *supra* note 25.

³¹ See MAJID KHADDURI, *THE ISLAMIC CONCEPTION OF JUSTICE* (Johns Hopkins Univ. Press 1984), at 3-12.

³² *Id.*

³³ Miroslav Volf, *Forgiveness, Reconciliation, and Justice: A Theological Contribution to a More Peaceful Social Environment*, 29 MILLENNIUM 3 (2000), at 861-77.

By the same token, how does a theology of compromise confront ethical conundrums that arise in the political realm? Significantly, what is needed is an ethical belief of reconciliation, as on the top of moralists' agenda ought to be the stiffness between pardon and punishment.³⁴ Most of the theologians who promote forgiveness take care not to negate punishment (retribution). One of the basic symbols of modern liberal democracy in Islamic TJ policy is the *Shura* system (consultation), which most of the sacred viewpoints approve as an objective of transitions, is boundaries on politics and folk's freedom, families, and civil society's respectability.³⁵

TRANSITIONAL JUSTICE UNDER THE UMBRELLA OF ISLAMIC (*SHARIE'A*) LAW: A TRAP, COMPATIBILITY OR NOT?

Following the Arab Spring uprisings, the Tunisian and Egyptian governments tried to implement numerous TJ mechanisms, as truth commissions, reparation plans and prosecutions (trials), which pursued to redress the massive human rights ruins committed during that period. Though, Islam is the predominant religion in both nations, a plethora of research on TJ and post conflict restoration as specialists have mainly ignored the issue within the *Sharie'a* context. It should be noted that Islam plays a crucial role in law and politics in the Middle East and represents the main source of law in various constitutions. Thus, this section will create an Islamic legal basis for TJ strategies by discussing prosecution, reparations, and reconciliation measures under *Sharie'a*, as the Prophet Mohammad said in that area "[i]f a relative of anyone is killed, or if he suffers *khabl* (wound), he may select one of three things: he may retaliate, or forgive, or receive compensation. But if he wishes a fourth, hold his hands."³⁶ Hence, the objectives of an Islamic TJ institutions should be realized along with the similarities and alterations in Islam and in the classical attitude plus its mechanisms.

³⁴ *Id.*

³⁵ Murad, *supra* note 27.

³⁶ ABU-DAWUD, 39:4481.

Retributive Justice in the Sharie'a Legal Theory: Qisas or Hudud or Ta'azir?

Generally speaking, in the *Qur'an*, justice plays a vital theme as numerous Muslim *fuqaha'a* (jurists) linked it as one of Islam's main intentions, as an obligation and that injustice is *haram* (forbidden).³⁷ In this regard, God stipulated that: "We have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice."³⁸ In terms of criminal justice, Islamic *fiqh* divides crimes and punishments into three main categories: *Qisas*, *Hudud*, and *Ta'zir*.³⁹ *Qur'an* proposes *qisas* (retaliation), for blood crimes as murder, among others and rationalized to the community and citizens' improvement.⁴⁰ Further *ta'zir* covers minor wrongdoings—not mentioned in the primary sources of the law—offenses for which retribution is improper or impossible, and there is no fixed punishment for it unlike *hudud* or *qisas*, and thus, *ta'zir* penalty is administered at the *qadi*'s (judge's) discretion.⁴¹ In Islamic TJ context, the most significant committed crimes during armed conflict encompass purposeful and unintentional killings, torture or people's malicious injury, rape, sexual slavery, and forced disappearances.⁴²

³⁷ See generally M. Cherif Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace*, (Cambridge Univ. Press 2013) (examining *Sunni* Muslim scholars and religious doctrine to current issues surrounding armed conflict, elaborating that Islamic law norms are not only consistent with contemporary international human rights law and international humanitarian law norms, but are appropriate for use in Muslim societies. It rebuts *Islamophobes* in the West that criticize Islam on the basis of some Muslim's irresponsible practices, and wishes to reduce tensions between Western and Islamic approaches by enhancing mutual understanding of the subjects within the well-accepted Islamic law principles in their application to recent conflicts and violence by Muslims whether against Muslims or non-Muslims).

³⁸ *Qur'an*, 57:25. God recited: "O you who have believed, be persistently standing firm for *Allah*, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness." *Qur'an*, 5:8. In this domain, it is narrated via 'Aisha, that Mohammad said: "The blood of a Muslim man who testifies that there is no god but *Allah* and that Mohammad is *Allah's* Apostle should not lawfully be shed . . . except only for one of three reasons . . . ; or one who commits murder for which he is killed. *Id.*, ABU-DAWUD, 38:4339.

³⁹ MOHAMMAD KAMALI, *SHARIAH LAW: AN INTRODUCTION* 188 (2008). *Hudud* crimes (prescribed) offences, cover the offences of theft, slander and defamation, drinking alcohol, highway robbery, rebellion against legitimate authority, adultery, and apostasy and the last two crimes are questionable within their penalties. For further discussion, see *id.*, at 44. See also Mohamed 'Arafa, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?* 18 GOLDEN GATE ANNUAL SURVEY INT'L. & COMP. L. J. 158,189-195 (2012).

⁴⁰ God says "And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous." *Qur'an*, 2:179.

⁴¹ See M. CHERIF BASSIOUNI, *THE ISLAMIC CRIMINAL JUSTICE SYSTEM* 56 (1982).

⁴² *Id.*, at 122-237, 231-262, & 92-100.

Qisas Offenses (Homicide and Wounding):

Qisas (equivalence/equality) related to a criminal act punishable by the same or a significantly similar act in retribution (retaliation) for the harm (injury) inflicted.⁴³ These misconducts include an aggression on the most imperative personal rights, as right to life and the right to corporal integrity.⁴⁴ In specific circumstances, a victim or his legal representatives may mandate other sorts of *diyyaa* (compensation) in lieu of corporal punishment based on the principle of “*Talion*.”⁴⁵ As another option, the victim [or] legal guardians may entirely forgive and pardon the wrongdoer.⁴⁶ *Qisas* felonies are divided into two classes. One involves the premeditated homicide.⁴⁷ The second encompasses the deliberate infliction of bodily harm resulting in everlasting or grave injury.⁴⁸ This embraces disfigurement, beating, wounding, and other practices of physical mutilation.⁴⁹ Accordingly, the formulation of this penalty is based on providing a well-balanced application of justice and equality.⁵⁰

Punishment for *Qisas* criminalities cannot be functional when the offender is related to the victim, for instance, if the crook is the victim’s son.⁵¹ Further, an offender found guilty of causing accidental murder or bodily injury is also liable for *Diyya*, but not subject to physical retribution by equivalence.⁵² Only victims (their representatives) retain the right to prosecute the criminal; so

⁴³ *Id.*, at 41. [*Qisas Crimes*] in BASSIOUNI, at 203. In other words, it implicates the compensation of a wrongdoing by equalizing the harm.

⁴⁴ *Id.*

⁴⁵ See NASSER AL-KHOLAIFY, MITIGATING AND AGGRAVATING CIRCUMSTANCES FOR PENALTY OF TA’AZIR IN ISLAMIC JURISPRUDENCE (1992), at 49.

⁴⁶ “But if one is granted any remission by one’s brother, then pursuing the matter for the realization of the blood money shall be done with fairness and the murderer shall pay him the blood money in a handsome manner.” *Qur’an*, 2:179, available at <http://perma.cc/429F-3VQJ>.

⁴⁷ AL-KHOLAFIY, *supra* note 45, at 53.

⁴⁸ *Id.*

⁴⁹ MOHAMED S. EL’AWA, PUNISHMENT IN ISLAMIC LAW — A COMPARATIVE STUDY (2000).

⁵⁰ *Id.*

⁵¹ “And therein We prescribed for them: A life for a life, and an eye for an eye, and a nose for a nose, and an ear for an ear, and a tooth for a tooth, and for other injuries equitable retaliation.” *Qur’an*, 5:46, <http://perma.cc/5ZN7-RLRM>.

⁵² AL-KHOLAFIY, *supra* note 45, at 57.

public authorities have no supremacy to interpose, unlike the Western legal approach.⁵³ This accomplishes the objective of recognizing both general and specific deterrence as well as restitution to the victim to end up the conflict between the criminal and the injured party.⁵⁴ The notion is that revenge consists of having the criminal suffer of the same form of death or the equivalent damage which he caused to the victim.⁵⁵ For legal reparation, the victim's family may enquire for payment within the period of time when the exercise of reprisal is still acceptable, though any reward must meet the prerequisite of the perpetrator's consent.⁵⁶ Though murder is not a *haad* (fixed) criminality, Islamic law acknowledge its commission as *haram* (outlawed).⁵⁷ Under Islamic TJ policy, it is a grave sin for a Muslim to take the life of another person Muslim or non-Muslim, thus, it is not permissible under *Sharie'a* to carry out the death penalty either against a Muslim or a non-Muslim, except the strict evidentiary rules (*beyond reasonable doubt*) had been fulfilled.⁵⁸ Therefore, Islam forbids blood vendettas leading to mass retaliation against an entire community for the murder of a single man, only deliberate murders are punishable under it.⁵⁹ In this domain, God states:

And never is it for a believer to kill a [...] And whoever kills . . . by mistake, then the freeing of a believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you . . . then a compensation payment presented to his

⁵³ 'ABDULAKADER 'AWDAH, AL-TASRI' AL-JINAI' AL-ISLAMI [ISLAMIC PENAL LAW] 165 (2nd ed. 1969) (on file with author).

⁵⁴ Ahmad Fathi Sorour, *Les Orientations Actuelles de la Politique Crimenelle* [THE ACTUAL DEVELOPMENTS IN THE CRIMINAL POLICY], *Des Pays Arabes* [THE ARAB COUNTRIES], 2 *Archives de Politique Criminelle* [CRIMINAL POLITICS L. REV.] (1977).

⁵⁵ Sharaf Al-Din, *Le Talion en Droit Egyptien et Musulman* [EQUIVALENCE IN EGYPTIAN CRIMINAL AND ISLAMIC LAWS], *Revue de Science Criminelle* [CRIMINAL SCIENCE L. REV.] 393, 401 (1954). AHAMD BAHNASSI, *LE TALION EN DROIT MUSULMAN* [EQUIVALENCE IN ISLAMIC LAW] (1964).

⁵⁶ AL-KHOLAFIY, *supra* note 45, at 55.

⁵⁷ Additionally, ("The Prophet was asked about the great sins He said, 'They are to joining others in worship with *Allah*, to be undutiful to one's parents, to kill a person (which *Allah* has forbidden to kill), and to give false witness.'). See SAHIH BUKHARI, 3:48:821 & SAHIH MUSLIM, 016:4152.

⁵⁸ It has been reported that Mohammad said: "It is not permissible to take the life of a Muslim who bears testimony to the fact that there is no God but *Allah*, . . ."

⁵⁹ *Qur'an*, 2:178, 5:45, & 4:92.

family and . . . And whoever doesn't find . . . , then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from *Allah* . . .⁶⁰

Based on this text, unintentional killing of civilians during unrest civil war is not punishable by corporal punishment, as the State might set up a reparation programs to recompense the victims' families, if the culprits were state actors.⁶¹ Nevertheless, autonomous committers (not state's officials), as rebel troops, protesters, among others would have to compensate the victim's family.⁶² This amount would be evaluated based on the currencies' changes, taking into account the *al-maslash al'amah* (community's public good).⁶³ In the same vein, eyewitnesses are not required for intentional killings, but Mohammad required around fifty oaths—swearing that one's testimony is accurate—for launching murder's accountability and blood money.⁶⁴ As, sins and wrongful convictions under *Sharie'a* norms disheartens criminal trials in cases where there is the minor doubt as to the defendant's guilt.⁶⁵

Haad Crimes, Harabah, Maslaha: Forcible Rape, Sexual Bondage, and Public Interest:

Hudud are sins penalized by fixed legal penalties and are those bring destruction to the indispensable community's interests; they infer a severe aggression on society's peace harmony and virtue.⁶⁶ Consequently, criminal sentences for these acts is the most stringent and critical in Islamic criminal law and TJ policies.⁶⁷ In terms of *hudud's* severity, Islamic TJ requires the delinquent to be of legal capacity, performing of his own free will, and most significantly to be

⁶⁰ *Id.*

⁶¹ Siti Ismail, *The Modern Interpretation of the Diyat Formula for the Quantum of Damages: The Case of Homicide and Personal Injuries*, 26 ARAB LAW QUARTERLY 361, 361-79 (2012).

⁶² *Id.* KAREN ARMSTRONG, ISLAM: A SHORT HISTORY 19 (2007).

⁶³ Ismail, *supra* note 61.

⁶⁴ SAHIH MUSLIM, 016:4119.

⁶⁵ God cites: "He who killed a human being without the later being guilty of killing another or of spreading disorder in the land should be looked upon as if he had killed all of mankind." *Qur'an*, 5:32.

⁶⁶ Taylor Kamel, *The Principle of Legality and its Application in Islamic Criminal Justice*, in (Bassiouni ed., 1982), *supra* note 41, at 149, 163-64.

⁶⁷ *See generally* MUHAMMAD ABU ZAHRAH, CRIME AND PUNISHMENT IN ISLAMIC CRIMINAL JURISPRUDENCE (1974).

proven guilty of the crime beyond a reasonable doubt after a fair trial, as “doubt” is of crucial importance in the Islamic criminal penalties’ application.⁶⁸ Rape and sexual assault are the most provocative and extensively debated crimes in Islam, even there is a widespread consensus among legal/religious scholars that adultery and fornication among two consenting adults is punishable under it, even theologians divided as to the appropriate punishment for rape and sexual slavery under Islamic criminal justice.⁶⁹ The nature of TJ procedures executed by a State in accordance within the Islamic norms will depend on its interpretive perspective the jurisprudential schools of thought.

According to the *Hanafi* School, *zina* (adultery) is “unlawful vaginal intercourse with a living woman who is not a right-hand possession, not in the *quasi*-ownership of the man or not freely married or *quasi*-married . . .”⁷⁰ The *Malki*, *Shafi’i*, and *Hanbali* schools define it as “the unlawful and mutually consensual vaginal or anal intercourse between a man who is sane and who reached the puberty and a woman who is not in his title (by marriage).”⁷¹ Hence, this description could cover rape’s male victims. On the other hand, *zina bi al-ikrah* (rape) is different than fornication as it “is a physical assault that causes bodily harm and sometimes

⁶⁸ (“Accordingly, specific *Hudud* offenses, their punishment, and mitigating and aggravating circumstances were fixed and detailed in provisions of the *Qur’an and Sunnah* . . .”). See Mohamed ‘Arafa and Jonathan Burns, *Judicial Corporal Punishment in the United States? Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration*, 25 INDIANA INT’L. & COMP. L. REV. 3 (2015), at 390.

⁶⁹ *Id.* The crime have to be proven by confession or the testimony of four eyewitnesses seeing the whole act of sexual intercourse to apply the punishment, otherwise, it should not apply in any event based on doubt.

⁷⁰ See generally Abdullahi An-Na’im, *Islam, Islamic Law, and the Dilemma of Cultural Legitimacy for Universal Human Rights in Asian Perspectives on Human Rights*, C. Welch and V. Leary (eds.), (Westview Press 1990). He argues that (“Human rights need to be perceived as culturally legitimate in order for them to be given more than lip service...But in Islamic cultures a deep division exists between those who are Muslim and those who are not, as well as between men and women. As long as these divisions exist, appeals to universal human rights will continue to clash with deeply held cultural and religious views . . .”).

⁷¹ SAHIH MUSLIM, 17:419. *Qur’an*, 24:13, 24:23, & 24:4.

death.”⁷² Likewise, it is a violation of God’s and human rights, however, only the perpetrator of rape receives the *haad* punishment, not the victim.⁷³

The contemporary Islamic attitude has categorized rape as *hirabah* (unlawful warfare) as a *hudud* crime. Under this view, the *qadi* (judge) will convict the perpetrator as an outlaw and one who impends public’s peace and security.⁷⁴ On the contrary to *zina*, there are numerous penalties accessible for rape as a *hirabah haad*, includes death penalty, crucifixion, or exile (local banishment) based on the country’s judicial system, either the jury/*qadi* will determine whether to implement or banish the rape’s perpetrators under Islamic norms.⁷⁵ Since the *qur’anic* verse doesn’t stipulate the punishment for those who repent, condemning will be at the judge’s discretion, as offenders’ mercy who turn themselves will be available.⁷⁶ Muslim scholars label rape as *hirabah* or *fasad* (corruption and mischief acts) to cover any violent act that rationalize chaos or turmoil, comprising property and honor (dignity)’s commandeering.⁷⁷ Some Islamic Muslim intellectuals favor to legally prosecute rape as a mischief as it doesn’t entail high proof standards

⁷² MASHOOD BADERIN, *INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW* (Oxford Univ. Press 2003).

⁷³ Azman Noor, *Rape: A Problem of Crime Classification in Islamic Law*, 24 *ARAB LAW QUARTERLY* 4 (2010), at 417–438. In this sense, punishment for slanderous accusation is recited by God: “Why did they [who slandered] not produce for it four witnesses? . . ., who are the liars.” and “Indeed, those who [falsely] accuse chaste, unaware and believing women are cursed in this world and the *Hereafter*; and they will have a great punishment.” Also, “And those who accuse chaste women and then do not produce four witnesses . . . and do not accept from them testimony ever after. . .” Jurists have interpreted it to apply to both males and females regarding chastisements.

⁷⁴ *Id.* Regarding its punishments, God says:

Indeed, the penalty for those who wage war against *Allah* and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the *Hereafter* is a great punishment, [e]xcept for those who return [repenting] before you apprehend them . . . *Qur’an*, at 5:33-34.

⁷⁵ Noor, *supra* note 73.

⁷⁶ *Id.* Robert Carle, *Revealing and Concealing: Islamist Discourse on Human Rights*, 6 *HUMAN RIGHTS REV.* 3, 122-137 (2005) (“The relationship between religion and democratic pluralism in the Muslim world has been problematic. In [this] world, both governments and popular movements are using religious documents (*Qur’an* and *hadith*) to inspire political and social change...the fusion of religion and politics that characterizes revivalist Islam has impeded the development of both democracy and religious pluralism. An area of particular concern . . . of Muslim countries to implement international standards of human rights . . . the two most influential international Islamic statements on Human Rights (the Universal Islamic Declaration on Human Rights and the Cairo Declaration on Human Rights) attempt to reconcile Islamic law and modern norms of human rights.”).

⁷⁷ *Malikis* define *hirabah* as “an act of aggression that infringes on another’s honor and the enforceable property’s taking.” Rape is similar to taking property by using force, as the victim’s sexual orientation (in some situations, virginity) is forcefully taken. Both crimes have *mens rea* and *actus reus* of physical assault, torture, usurping, and intent, as they both cause disorder and society’s troubles.

as adultery, even courts admit eyewitness's testimony to prove it, as the victim may prove it by presenting expert witnesses or circumstantial evidences and the plaintiff may afford DNA and scientific forensic evidences.⁷⁸

Islamic Curative and Restorative Justice: Truth Commissions, Repression Plans, and Settlement: New Tools for Reform

While the *Qur'an* commends the law of retribution for murder and killing acts, but it also highly orders and recommends forgiveness.⁷⁹ The main tools of the Islamic restorative justice are *Sulh* (reconciliation) and *taqasy al-haqa'q* (truth investigations).⁸⁰ Islamic literatures designate reconciliation as flowing from God's mercy (willingness to forgive the repentant), even tolerance is conditional upon the perpetrator's repentance.⁸¹ In this regard, Mohammad encouraged mercy by asking the victim or the victim's family four times if they are willing to forgive before allowing retribution.⁸² It has been heard regarding peacemaking that Mohammad said, "He who makes peace between the people by inventing good information or saying good things, is not a liar."⁸³

Additionally, in cases of homicide, the prey's family is fortified to accept the blood money over retaliation according to the Prophet teachings, however, the offender may even be pardoned

⁷⁸ But courts don't require the testimony of four male eyewitnesses as they would for the adultery act. The burden of proof for enforceable rape's victims mostly based on the perpetrator's intent but also demands the lack of consent for prosecution, otherwise both parties are guilty of adultery. Courts don't count the victim or perpetrator's marital status when determining the penalty. See Daniel Philpott, *Religion, Reconciliation, and Transitional Justice: The State of the Field*, SOCIAL SCIENCE RESEARCH COUNCIL, (SSRC, N.Y. 2007).

⁷⁹ God stipulates "O you who have believed, prescribed for you is legal retribution for those murdered . . . But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct . . ." and "And We ordained for them therein a life for a life . . . But whoever gives [up his right as] charity, it is an expiation for him...then it is those who are the wrongdoers." *Qur'an*, 2:178 & 5:45.

⁸⁰ Philpott, *supra* note 20, at 93-98.

⁸¹ *Id.*

⁸² It has been narrated that "I was with the Prophet when a man who was a murderer and had a strap round his neck was brought to him. He then called the legal guardian of the victim and asked him: Do you forgive him? He said: No. He asked: Will you accept the blood-money? He said: No. He asked: Will you kill him? He said: Yes. He said take him. When he turned his back, he said: Do you forgive him? . . . After repeating all this [four times], he said: If you forgive him, he will bear the burden of his own sin and the victim's. He then forgave him" and "The disputants should refrain from taking retaliation. The one who is nearer should forgive first and then the one who is next to him, even if (the one who forgives) were a woman." ABU-DAWUD, 39:4484, 39:4523. AL-BUKHARI, 3:53:2.

⁸³ *Id.*, 3:49:857 & 3:48:822. See, e.g., *Qur'an*, 49:9.

without paying blood money should the victim's family relinquish retaliation and grant clemency.⁸⁴ As the victim and family undermine public concerns and state purposes under Islamic norms, particularly for unintentional killings.⁸⁵ It is obvious from the texts, that the victim's family must ask for a reasonable *diyya* and it is to be compensated with handsome gratitude."⁸⁶ Last but not least, forced disappearances and kidnappings have recently plagued the Arab Spring countries.⁸⁷ Prophet Mohammad would often pay *diyya* for intended killings where the perpetrator was unknown.⁸⁸ Thus, one could argue that in Middle Eastern countries, a consecutive régime would be in charge of paying the *diyya* in forced disappearances settings committed by the former government, though they had no hand in the crime.⁸⁹

The Death Penalty in Egypt as a Case Study for Transitional Justice: What's Wrong?

Human rights and human dignity notions are currently unanimously recognized as the supreme ideologies and as absolute standards in any politically organized society.⁹⁰ Death penalty directly denies this argument and is based on a justice's delusion.⁹¹ Based on the free will notion identifying criminal liability, the offender should be punished as he/she spontaneously

⁸⁴ *Id.*

⁸⁵ " . . . [I]f anyone is killed accidentally, his blood-wit should be one hundred camels: thirty she-camels which had entered their second year . . . thirty . . . third year...and ten male camels which had entered their third year."

⁸⁶ AL-BUKHARI, 9:83:20 & *Qur'an*, 2:178. Generally, reparations amount (blood money), was set at a hundred camels for a life at the Prophet's time, however, this amount has changed over time based on each state *diyyat*'s assessment system (gold dirhams, silver dinars, cash, etc...) and the judge shouldn't took the victim's sex into account. ABU-DAWUD, 39:4527. *See, e.g.*, ISLAMIC PENAL CODE OF THE ISLAMIC REPUBLIC OF IRAN [BOOKS I & II], IRAN HUMAN RIGHTS DOCUMENTATION CENTER, <http://iranhrdc.org/english/human-rights-documents/iranian-codes/100000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html> (last retrieved Apr. 15, 2016).

⁸⁷ The universal agreement for all persons protection from enforced disappearance defines forced disappearances as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State . . . followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person . . ." *See International Convention for the Protection of All Persons from Enforced Disappearance*, UNITED NATIONS HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>, at art. 2.

⁸⁸ SAHIH MUSLIM, 016:4123.

⁸⁹ George Irani, *Islamic Mediation Techniques for Middle East Conflicts*, 3 MIDDLE EAST REV. OF INT'L. AFFAIRS (1999) (reviewing traditional Islamic measures for resolving conflicts and supporting conciliation as an applicable tool to the current regional disputes in the Middle Eastern region).

⁹⁰ For further details concerning the death penalty arguments, *see* AHMAD 'AWAD BELAL, MABAD'E KANUN AL-'UQUBAT AL-MASRY: AL-KESM AL-'AMM [PRINCIPLES OF EGYPTIAN CRIMINAL LAW, THE GENERAL PART, BOOK I: THE THEORY OF CRIMINAL OFFENCES](Arabic/English Source/2004).

⁹¹ *Id.*

committed a wrongful doing disruptive of legal order, and thus, why kids, or mental-retarded folks cannot be held accountable and escape impunity for their performances in a criminal justice system.⁹² In contrast, corporal punishment means that at the conviction's moment, the criminal is held liable and being guilty, and thus, considered as having performed freely and consciously, and being denied this freedom as this penalty is irrevocable.⁹³ In the same vein, the irreversibility claim has a questionable concern regarding the judicial precautions and guarantees of due process, which probably blunders justice, as it can result in the execution of innocent people.⁹⁴ On human rights safeguards and justice, the existence of these assurances is the unique feature of a dependable judicial system and a credible justice pattern; particularly, these comprise legal norms arising from the right to a fair trial (e.g. evidence's denial in case of torture or inhuman treatments, as confession under coercion).⁹⁵

On the other hand, the "death row phenomenon" refers to the circumstances of custody of a person convicted to capital sentence while pending its execution.⁹⁶ By the same token, this penalty historically, connected to relic of an old system based on revenge and retaliation that she/he who has taken a life should suffer from the same destiny.⁹⁷ Justice has augmented above this outdated concept of punishment by adopting a principle of a *symbolic proportional* sentence

⁹² See generally Roger Hood, *The Death Penalty: A Worldwide Perspective* (Oxford Univ. Press, 3rd ed., 2002).

⁹³ *Id.*, at 214. The irreversibility of this sanction contradicts the notion that offenders can be reintegrated in societies. As a result, death penalty's irrevocability simply looks in consistent with dignity and freedom notions.

⁹⁴ In a well-developed and civilized societies, accepting the option of condemning innocent individuals to death flies misuse principles of inalienable human dignity, and of the plain concept of justice.

⁹⁵ In this regard, when aggravated criminal acts have been committed, criminal justice, is concerned and right to life should not rely on accidental values or fortune; as individual's life shouldn't depend on unsystematic components as, jury (judges) selection, media pressure, the defense attorney's proficiency, etc...

⁹⁶ Nina Totenberg, *Why Has The Death Penalty Grown Increasingly Rare?* Dec. 7, 2015, <http://www.npr.org/2015/12/07/457403638/why-has-the-death-penalty-grown-increasingly-rare> ("Many still think that the death penalty can be fairly and equitably imposed, among them, . . . the swing against the death penalty is not just because of the . . . death row inmates who have been exonerated or the advent of DNA evidence. It's the nature of the cases that have disintegrated on further examination."). These conditions principally related to their very long duration, the uncertainty of the execution's moment, and the deprivation of contacts from the outside environment (family members and legal counsel) that means cruel treatment.

⁹⁷ *Id.* If is that the case, that would mean stealing from the stealer, raping the rapist and so on.

(“proportionality test”) to the harm committed, as fines, imprisonment, which conserves the dignity of both the victim and culprit.⁹⁸ This is significant to affirm the victim’s right to justice and compensation as central in a balanced and reasonable criminal justice system, taking into account the criminal liability’s jurisdiction, subjective and objective culpability, and the victim’s suffering to substitute the need for retribution via judicial truth.⁹⁹

Among the most mutual arguments in favor of death penalty, its practicality (effectiveness), as it purportedly protects society from its most treacherous elements, and perform as a deterrent key for future criminals.¹⁰⁰ This is not accurate or valid, as has been proven over and over again. Societies which enact corporal penalties frequently no less secured from criminal offenses than communities which do not, but other punishments are available in order to keep society, as confinement along with the voidance of the suicide performances that might happen by death row prisoners under the physical elimination pressure.¹⁰¹ Concerning the deterrence outcome, mainly the public one for criminality, this has recurrently been proved incorrect, as most recent academic studies show that this penalty never contributes to lowering the delinquency rate wherever.¹⁰²

⁹⁸ Belal, *supra* note 90.

⁹⁹ Ash Murthy, *Sentencing the Death Sentence to Death*, THE HUFFINGTON POST, Dec. 31, 2014, http://www.huffingtonpost.com/ash-murthy/sentencing-the-death-sent_b_6079968.html (last visited Apr. 15, 2016). (“Proponents of death penalty believe that the “eye for an eye” approach deters crime, and is the only way to provide justice to those affected by heinous crimes. They are wrong on both counts. Firstly, there is no conclusive evidence that the death penalty deters crime.”).

¹⁰⁰ Belal, *supra* note 90, at 234.

¹⁰¹ Howard Falco, *The Insanity of the Death Penalty*, HUFFINGTON POST CRIME, Sep. 6, 2014, http://www.huffingtonpost.com/howard-falco/the-insanity-of-the-death_b_5564612.html (last retrieved Apr. 15, 2016) (“In case you haven’t noticed it’s 2014 and the death penalty is still alive and well in 32 states of the great United States of America. This is the self-proclaimed land of the free, home of the brave and staunch fighter for human rights all over the world. So far this year 23 people have been executed in the name of “justice.””).

¹⁰² An offender doesn’t commit a criminal act by calculating the conceivable punishment, if he think that he will get a life sentence or not. Moreover, as Criminologist Beccaria realized in the 18th century, when he said “it seems absurd that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder.”

Within the evolution of international law norms (human rights law and humanitarian law) towards the corporal punishment's eradication.¹⁰³ Likewise, the UN General Assembly adopted a resolution on corporal punishment affirming that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment."¹⁰⁴ Under the Islamic criminal justice system, "killing a human being is equivalent to attacking humanity as a whole," and if anyone who has been "unfairly murdered, is permitted to the protection of his and his children's rights."¹⁰⁵ To tackle the question of the death penalty in Egypt, one important feature of this country need to be taken into consideration, which is the importance of Islamic law. The Egyptian Constitution, recites that "... the principles of Islamic law is the main source of legislation."¹⁰⁶ According to this constitutional norm's interpretation, Professor 'Arafa recited:

"the law of God requires that premeditated and serious offenders be put to death which means the *lex talionis* (equality principle) through sustaining the victims' feelings and then social peace and criminal justice will conserve. Orthodox Islamic scholars argued that Islamic standards are incontrovertible, based on the Supreme Constitutional Courts' decision on the interpretation of the *Sharie'a* values...the court believes that the *Sharie'a* law include "relative" philosophies and "updated or modern" canons which are capable of being accustomed within the social future development through *ijtihad* (individual reasoning) and *Qiyass* (precedential

¹⁰³ For instance, the Rome Statute of the International Criminal Court ("ICC") and the UN Security Council resolutions launching the International Criminal Tribunals for the Former Yugoslavia and for Rwanda do not listed for the death penalty in the range of sanctions, even those jurisdictions have been created to adjudicate most heinous crimes. Specific universal and national instruments have been implemented for the abolition of death penalty, as the UN second optional protocol to the ICCPR, the Protocol to the American Convention on Human Rights (Organization of American States), the Protocol 6 and the new Protocol 13 to the European Convention on Human Rights (Council of Europe). In 1998, one of the EU goals is "to work towards the universal abolition of the death penalty as a strongly held policy view agreed by all EU member states." The recently adopted EU Charter of Fundamental Rights also stipulates that "no one shall be condemned to the death penalty, or executed." Internationally speaking, even if the ICCPR explicitly states death penalty as an exception to the right to life and surrounds it by a sequence of precise legal guarantees, it has been highly recalled for its abolition . . ."

¹⁰⁴ See ECOSOC Resolution 1984/50 of 25 May 1984, Resolutions 2002/77, 2001/68, 2000/65 and 1999/61, & UNGA Resolution 32/61, 8 Dec. 1977, para 1. See INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, (opened for signature Dec. 19, 1966, 999 U.N.T.S., 171 and entered into force Mar. 23, 1976), <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁰⁵ This enforces to punish the unjust culprit, otherwise chaos will reign and folks will kill each other. It is for social justice based on the community's public interests to penalize anyone who has unjustly killed his neighbor, as by killing him also so that equality and the human being are protected. This is to safeguard the public order, social, morals, and security values, through protecting the rights of the victim (killed person).

¹⁰⁶ THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, [EG], Jan. 18, 2014, art. 214, <http://www.sis.gov.eg/Newvvr/Dustor-en001.pdf>.

analogy) and without any paradox to the main *maqasid* (objectives/bulk) of the Islamic *fiqh* (jurisprudence)...”¹⁰⁷

In this regard, the most conventional (classical) religious thinkers go as far as to proclaim the restoration of this penalty for all crimes (e.g., apostasy, adultery) acknowledged in the *Qur’an*—as a primary source—and the moderate Muslim specialists requested for the *diyyah* (compensation) restoration that delinquents can be (pardoned) whereby criminals can be exonerated or guiltless by their victim’s family by giving them compensation.¹⁰⁸ God’s law entails that premeditated offenders be put to death based on equality principle (the *lex talionis*).¹⁰⁹ The Egyptian Constitutional charter refers to Islamic law in general terms, which means the interpretation’s flexibility within modern and secular concepts at the Supreme Court highlighted which give judges’ elasticity endeavoring to constrain the application of the death penalty to those crimes that touch society as a whole or that are at adjustment with its basics.¹¹⁰

Occasionally, the problem arising under the emergency status, the death penalty’s inquiry hence rises in circumstances which fluctuate necessarily depending on whether it is given by common law courts or by special (or military) courts subject to excessive rules, which mostly no due process guarantees.¹¹¹ According to Egypt’s Constitution along with the Egyptian criminal justice

¹⁰⁷ ‘Arafa, *supra* note 12, at 9.

¹⁰⁸ *Id.* Macrina Cooper-White, *Here’s The Scary Truth About Science & The Death Penalty*, HUFFINGTON POST SCIENCE, Mar. 13, 2014, http://www.huffingtonpost.com/2014/03/13/botched-executions-science-capital-punishment_n_4618065.html (last visited Apr. 15, 2016).

¹⁰⁹ *Id.* Under Islamic law, the death penalty only applies to someone who has killed Muslim or non-Muslims unfairly and with deliberation along with confession. If the punishment’s conditions fulfilled, this penalty shall apply beyond reasonable doubt and then justice prevail.

¹¹⁰ Bassiouni, *supra* note 49.

¹¹¹ See Mohamed ‘Arafa, *Egypt between Fear and Reform in its Second Revolution: The Failure to Protect the Fundamental Human Rights Over and Over Again*, 7 PHOENIX L. REV. 1 (2013), at 162-164. (“Military court trials of civilians under the Mubarak administration were restricted to very high-profile political cases. Accordingly, judicial verdicts cannot be subject to change by authorities other than superior courts. The UN Basic Principles states, “[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.” The wide jurisdiction of the military courts allows them to focus on cases involving prosecution of military staff and allows the impunity that such personnel enjoy from sanctions for grave human rights transgressions. The legal doctrine has progressed in the jurisprudence of international human rights organizations such that the jurisdiction of military tribunals over civilian citizens breaches the due process assurances . . .”). It should be noted that it is problematic to determine the exact statistics to distinct between death punishments and executions, which often take place a long time after the sentence’s announced by the court’s

system, any citizen arrested, detained or whose freedom is reserved shall be treated in a manner associated with the conservation of his dignity, as no physical or moral harm is to be imposed upon him and he may not be confined or imprisoned except in places defined by laws governing prisons.¹¹² The State shall grant a fair compensation to the victim of such an assault and shall be subject to law as for rule of law, as the independence and immunity of the judicature are two basic guarantees to safeguard rights and liberties.¹¹³ Additionally, the penalty shall be personal and there shall be no crime or penalty except by virtue of law, and no penalty shall be inflicted except by a judicial sentence and shall be inflicted only for acts committed subsequent to the promulgation of the law prescribing them based on both the principle of non-retroactivity of criminal laws and the principle of legality of crimes and punishments.¹¹⁴

Furthermore, any defendant is innocent until he is proved guilty before a legal court, in which he is granted the right to defend himself.¹¹⁵ It should be noted that States Parties to international values may in no circumstances invoke their universal obligations as a defense for performing in a destruction of humanitarian law or preemptory norms of international law.¹¹⁶ Death penalty can be decided only for the gravest misconducts, in accordance with the law, as this punishment can

decision. *See, e.g.,* LAW NO. 162 of 1958 (*Emergency Law*), *Al-Jarida Al-Rasmiyya* (Egypt), available at <http://www.emerglobal.com/lex/law-1958-162>.

¹¹² *EGYPT CONSTITUTION*, *supra* note 106, at arts. 94 & 95.

¹¹³ *Id.*, at art. 96. If a confession is proved to have been made by a person under any of the abovementioned forms of duress or coercion, it shall be considered invalid and futile. Any assault on individual freedom or on the inviolability of the private life of citizens and any other public rights and freedoms guaranteed by the Constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription (statute of limitations).

¹¹⁴ *Id.*, at arts. 97, 98, & 99. One of the vital clauses of the international covenants is there is no derogation, includes right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the principle of legality in the field of criminal law should be noted. *See, e.g.,* ICCPR, at arts. 6, 7, & 15.

¹¹⁵ *Id.* Every person accused of a crime must be provided with counsel for his defense and any person arrested or detained shall be informed forthwith of the reasons for his arrest or his detention. He shall have the right to communicate with whoever he sees fit and inform them of what has taken place and to ask for help in the way regulated by law. He must be notified, as soon as possible, with the charges directed against him. Any person may lodge a complaint to the courts against any measure taken to restrict his personal freedom. The law shall regulate the right of complaint as well.

¹¹⁶ *See General Comment No.29: States of Emergency* (Art.4), United Nations, ICCPR, 2001. *General Comment no.13*, article 14 (twenty first session, 1984), *Compilation of General Comments and General Recommendations Adopted by Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 (1994).

only be functional by virtue of a final verdict regarding a criminal act punishable by death at the time of its commission.¹¹⁷

Regarding the administration of justice, especially TJ, criminal acts of death penalty are tried by the criminal circuits of the Appellate Courts.¹¹⁸ According to the Egyptian criminal justice system, death penalties can only be pronounced *unanimously* by the judges and the commitment to pass the case file to the *Mufti* of the Republic (religious leader) for his attitude, before stating a death sentence decision, to assure the compatibility of this sentence with the Islamic norms on the right to life, as after ten (10) days if the decision is not received by the *Mufti*, the Court is entitled to pronounce its decision.¹¹⁹ It should be noted that appeal on questions of law and retrial

¹¹⁷ It should be noted that Minors under 18 years old are not punishable by death (Article 112 of the Law No. 12 of 1996 promulgating the Children's/Juvenile Act); The execution of a pregnant woman who is sentenced to death (...) can only take place two months after the birth, and executions cannot take place on (...) public holidays or religious holidays in accordance with the religion of the accused. See Law No. 150 of 1950 (Egyptian Criminal Procedural Law, *as amended by Law No. 95 of 2003 and Law No. 145 of 2006*), *Al-Jarida Al-Rasmiyya*, September 1950, at arts. 475 & 476 (Egypt). In this regard, the Egyptian Penal Code stipulates the death penalty for the following criminal acts:

- a. attack on the external and internal security of the State;
- b. crimes and offences coming under the "Counter-terrorism" legislation (Law No. 97 of 1992). It should be noted that this law defines terrorism as "any recourse to force, violence, threats or intimidation falling within the context of a criminal plan by an individual or a group aimed at disrupting public order or endangering public security and safety, if this results in injuring or terrorizing individuals or endangering their lives, their liberty or their security or causing damage to the environment, to means of transport or communication, to public or private property or buildings, or involving their appropriation or occupation, or preventing or hindering the authorities, places of worship or educational establishments from carrying out their functions, or hindering the application of the Constitution, the laws or regulations." (art. 86). This statute, which is very imprecise and have a broad and vague wording, and which can therefore interpreted as liberticidal, serves to upsurge the number of crimes punishable by death.
- c. premeditated murder and accomplices are liable to the same punishment;
- d. abduction and rape of a person of the female sex;
- e. perjury leading to the sentencing and execution of a person charged with an offence;
- f. violations of the law on drugs (in accordance with Law No. 182 of 1960 *as amended by Law No.122 of 1989*). Article 33 of this law stipulates "the death penalty for the import of drugs without prior authorization. Growing, producing, selling, keeping, and transporting, all come under the crime of drug trafficking and are punishable by death. Any person who fits out and uses premises for drug-taking incurs the same penalty;" &
- g. crimes relating to keeping weapons and ammunition (Law No. 394 of 1954). The law reads "Keeping weapons, ammunition or explosives without prior authorization is punishable by forced labor for a fixed period or for life. The penalty incurred is capital punishment if the arms are being kept in order to attack the public order and security or to undermine the establishment, the principles of the Constitution, or the fundamental system of the institutions, national unity, or the social peace."

See, e.g., Law No. 58 of 1937 (Criminal Code of 1937, *reformed in 1952*), *Al-Jarida Al-Rasmiyya*, August 1937, arts. 77-80, 83, 86-102, 230-135, 290, & 295 (Egypt).

¹¹⁸ Arafa, *supra* note 9, at 10.

¹¹⁹ See *EGYPT CRIMINAL CODE*, at art. 381. It should be noted that *Mufti's* opinion is consultative and not mandatory, as only his task is exclusively to make sure if the punishment is in compatible with the main principles of Islamic law or not. In Egyptian criminal law, execution can be suspended by retrial's request, as the right to request a retrial belongs to the prosecution or the defendant. ("In this respect, the Appellate Court should be done: [I]n three months of its being lodged and the court must give its

are the only remedies for appeal against death sentences. In this sense, the Attorney General must refer any case file for death penalty to the *mahkamet alnaqd* (Supreme Court/Court of Cassation) as a memorandum, detailing his opinion of the case and within sixty (60) days following the death's ruling which must have been given in the presence of the accused, as this binding appeal is one of the United Nations Safeguards ensuring protection of the rights of those facing the death penalty.¹²⁰ If the appeal have been denied, the Justice Minister directly and systematically refers the case file to the President to grant pardon (amnesty), as this decision is operative within fourteen (14) days.¹²¹ In terms of transitional justice, numerous clauses within the Egyptian Prisons law include rules which disgrace and injure the prisoners' dignity need to be abolished to be in conformity with the universal norms in which Egypt committed.¹²²

decision within a maximum of two months after the appeal has been heard. In all cases, the appeal process postpones the execution. If the appeal is accepted, the court may decide to set aside the verdict appealed or submitted to it for its opinion by the prosecution and to send the case back to the court of first instance for a retrial and if the appeal rejected, the ruling becomes final and the death penalty activate.”). Moreover, Egyptian law stipulates that the *Mufti's* exclusive opinion is sought, irrespective of the religious belief of the individual sentenced to death. The defendant must be represented by an attorney confirmed in the first instance court or the appellate one. This lawyer is selected by the accused or the family. Failing to do so will make the court to appoint a defense counsel who must assist the accused, especially in felonies. See ‘Arafa, *supra* note 9.

¹²⁰ See, e.g., Article 46 of LAW NO. 57 of 1959 & LAW NO. 106 of 1962. See also, *EGYPT CRIMINAL LAW*, at art. 469. Execution can be postponed by a request for a retrial in which folks and what cases can be considered eligible for retrial is strictly limited. The right to ask a retrial belongs exclusively to the prosecution, the defendant, legal representative, (and the family). The application for a retrial is only admissible in the following cases: “(a) in case of a sentence for murder and when it turns out that the victim is still alive; . . . (e) when, after sentencing, a fact is produced or clarified, or when evidence not known at the time of the hearing is produced and is of such nature as to establish the innocence of the accused . . .” See, e.g., *ECOSOC Resolution 1984/50*, *supra* note 104.

¹²¹ *EGYPT CODE OF CRIMINAL PROCEDURE*, at art. 470. The absence of a response from the President in 14 days is automatically means a denial to grant amnesty and the penalty shall apply. Also, according to the law, the President can replace the death penalty by life imprisonment or for a fixed term period. Any person condemned to death is hanged. Executions cannot be held on national or religious holidays of the accused and it takes place under the orders of the public prosecutor and the offender's family has the right to visit him on the executions' day. Legally speaking, the execution takes place within 15 days of the date the sentence becomes final. Also, these prisoners are kept in solitary custody and wear a red uniform to distinct them from the others. See, e.g., *EGYPT PENAL CODE*, at arts. 13, 473, & 472. Further, family members are summoned to have their relative's body after the death penalty has been applied and to prepare for a funeral service.

¹²² One should bear in mind that Egypt is a party to the United Nations Anti-Torture Convention, and has adopted national implementing legislation since 1985, making it a criminal offense under Egyptian law for anyone to engage in torture. See *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en.

TOWARDS THE FUTURE OF TRANSITIONAL JUSTICE IN THE ARAB AND MUSLIM WORLD: CONCLUSION AND PRACTICAL RECOMMENDATIONS

An Islamic transitional justice institution would permit for both retributive and restorative justice depending on the criminal abuse, the victims *per se* and their families, if deceased. Moreover, restorative justice/retribution are commonly fashionable under *Sharie'a* and any attitude will depend on the victim family's desires. Classical TJ, authorize the imposition of the hybrid processes that concurrently offer both punishment and restitution.¹²³ Islamic TJ are slightly similar to those found under orthodox TJ. Likewise, transitioning countries under *Sharie'a* can accuse and punish culprits for intentional massacres and rape and launch reparations agendas for forced disappearances, deliberate and unintentional homicides, and bodily impairment. Truth commissions are the only foremost TJ instrument lacking under *Sharie'a*, yet, a state could institute these commissions via *maslaha* (public interest/welfare), as a secondary source of the law to manage the country's reparations programs if prosecutions are not exist. States that have barred death penalty might scowl upon the *qisas* punishment for the deliberate murders commissions and any punishment based merely on the wrongdoer's intent rather than on the injury suffered is less effective at achieving justice. It is complicated to distinguish between intentional and unintentional deaths in civil war status, as state can *solely* obtain a lenient sanction and avoid liability by claiming that their acts' concerns were unintended, as certain killings were inadvertent should never be an admitted defense. Also, reparation packages prepared along gender ranks is undoubtedly unjust and these policies alone are not operative at tracing mass killings that constitute war crimes, genocide, or crimes against humanity, as these crimes requires condemnation through punishment due to severe nature.

¹²³ Lavinia Stan and Nadya Nedelsky, ENCYCLOPEDIA OF TRANSITIONAL JUSTICE (2012), at 235-237. Likewise, families have to choose between prosecution and reparations, as they cannot have both.

Nonetheless, an Islamic angle to TJ could be active at addressing rape within armed conflict and violent régime alteration, opposing forces often use rape as a war's weapon to suppress antagonism actions. Sexual assault and rape during battle are dedicated on a much greater scale, with several offenders and countless victims. Hence, treating rape as *hirabah* nor *zina* would be more active at achieving Islamic TJ. After the Egyptian uprisings, truth commissions was recognized by the government to find the genuine facts behind the human rights violations; announce its recommendations for an efficient TJ; reparation of all victims fiscally and morally; hold individuals criminally accountable if proof that real crimes committed, and stimulate the Egyptian Penal code along with global treaties and worldwide protocols along with the (Islamic law norms).¹²⁴ The 2014 Egyptian Constitution reads “In its first legislative term . . . , the House of Representatives shall issue a law on transitional justice that ensures revealing the truth, accountability, proposing frameworks for national reconciliation, and compensating victims, in accordance with international standards.”¹²⁵

In terms of death penalty and TJ in Islam, some scholars oppose the death sentence's abolishment, those who recurrently claim in accurately that the "*Sharie'a*" presented by the Egyptian Constitutional Charter as an *unchallengeable* religious policy since it is considered to be consistent with the divine (God) Law. On the other hand, an extensive number of liberal Muslim jurists who argue that Islamic law should adapt to the daily developments which have come about since the time of the Prophet Mohammad, as they highlights for instance, that the *Tailon* Law, to which the *Sharie'a* explicitly refers to justify this penalty, is an old-fashioned

¹²⁴ This includes: (a) law's enactment to face economic, social, religious discrimination; (b) entire reform of the security force apparatus; (c) establishing statutes to respect all human rights along with launching a new administrative apparatus; (d) creating an organ to face corruption (corruption commission); (e) freedom to form political parties and media along with allowing the youth to participate in the regime (political and youth activism), and (f) ensure the rights of victims and their families to get fair compensation via respecting all judicial verdicts. 'Arafa, *supra* note 12.

¹²⁵ *EGYPT CONSTITUTION*, *supra* note 106, at art. 214.

classical tradition which should be switched by the judiciary, as reprisal no longer creates the punishments' source. Any progress seems to depend on the increasing of law's secularization, the object of which is to separate the Prince (man) law from God law. Also, the maintenance of extraordinary (exceptional) measures which are obvious ruins of human rights and of Egypt's universal duties under the international law should be considered. Domestic criminal statutes providing death penalty for various crimes, permit terrorist actions to be penalized without the need to worry about the punishments' legality. Additionally, manipulations are committed methodically, allegedly vindicated by the public order stability and national security protection should be eradicated, as it represents a direct transgressions to the common universal norms (e.g. defense rights and the independence of the judiciary).¹²⁶

Islam—like Christianity, Judaism, Hinduism, or any other faith either Abrahamic or not—is not only about peace nor is it about war. Numerous Islamic law norms jumped up in many regions, with shifting allegations for future progress. Currently, Islam involve a gigantic variety of beliefs and performances, as what is customarily experienced by one group may be proscribed by another. Islamic law has been applied in many forms by several nations, changing from a strict interpretation (Saudi Arabia), to a moderately liberal version (Egypt). *Sharie'a* law is predicted to be only applicable to Muslims and non-Muslims are conceived to be exempt from its provisions; and this standard should entirely followed as emphasized by Islamic law. There is a

¹²⁶ In this respect, it is highly recommended to adopt a suspension on death sentence's executions, as a first step towards its abolition in all cases, to be compatible with the universal resolutions, (e.g., the United Nations Human Rights Commission resolution) among others. Also, it is vital to limit the number of criminal acts punishable by death by restricting them to those which have severe and lethal criminal results; to assure the correct implementation of the Criminal Procedural Code concerning those sentenced by death, by advising them of the Court of Cassation verdicts; setting up an independent judicial remedy to appeal the State Security Criminal Courts judgments, in accordance with the international principles guaranteeing protection of the rights of those facing the death penalty; and to guarantee that the status of custody for those have death penalty, and all other prisoners, are in conformity regarding the inherent human's dignity. Last but not least, discussing systematically the death penalty's inquiry in a bilateral and national dialogues along with the support of the Egyptian civil societies and the official non-governmental organizations (NGOs)'s projects in this area. For further discussion on this point, *see* in details, 'Arafa, *supra* note 9, at 11-12.

prospect that Islam can advance throughout much of the world toward more democratic, miscellaneous civilizations along with sharing the aims of validating rationalism, secularism, democracy, modernity, and human rights. But what is erroneous is an active action plan to achieve this. Certainly, this need first to discover conducts to impact a suitable room with all those Muslims whose impression of their religion and whose personal routines are sociable with humanity's fragmentary synchronicity. This won't emerge if we admit to Osama bin Laden the signal that his Islam is the "only true Islam."

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