Strange Bedfellows: Religious Fundamentalism and the Death Penalty in the U.S. and Saudi Arabia
What accounts for the judicial similarities on capital punishment between the United States and Saudi Arabia?
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DEATH PENALTY IN U.S. AND SAUDI ARABIA
As international law and national practice increasingly evolve towards the abolition of the death penalty, the United States and Saudi Arabia remain among the staunchest defenders of the practice. According to Amnesty International, the largest number of judicial executions in 2011 occurred in China (1000s), Iran (360+), Saudi Arabia (82+), Iraq (68+), and the United States (43). In contrast, 141 of 193 United Nations member states have abolished the death penalty (i.e. capital punishment) in law or practice. Of the 58 countries retaining capital punishment in their legal systems, 21 of them carried out executions in 2011 and the United States was the only Western democracy to do so.¹

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In both the United States and Saudi Arabia, the law allows for the application of the death penalty to a variety of crimes and categories of defendants. While capital punishment applies almost exclusively to murder cases in the United States, it is permissible, though rarely applied, in some states for other crimes such as the rape of a child, treason, aggravated kidnapping, or drug trafficking.² Saudi Arabia executed people last year not only for murder, but also for rape, robbery, kidnapping, drug-related offences, and “sorcery.”³ America and Saudi Arabia are also among the only six countries known to have executed juvenile offenders since 1990 (along with Iran, Nigeria, Pakistan and Yemen). The United States has executed ten juvenile offenders since 1990, in addition to multiple persons with mental disabilities.⁴ Whereas Saudi Arabia carried out over three times as many executions in 2011 as 2010, executions have decreased in the United States. However, capital punishment remains legal in 34 American states – 13 of which carried out executions in 2011 – and the federal government continues to defend the practice.⁵

I. DETERMINING SIMILARITIES
As a liberal, secular democracy, the United States could hardly appear more different from the fundamentalist, authoritarian Kingdom of Saudi Arabia. What accounts, then, for their strikingly similar positions on the issue of capital punishment, despite their significant societal differences and the global trend towards abolition? Why does America stand out among Western nations in refusing to abolish the death penalty, and why do Saudi jurists see the practice as a religious duty? Is the death penalty Christian or Islamic, or not religiously affiliated at all?
This paper examines the role of religious fundamentalism in influencing policy on capital punishment in the United States and Saudi Arabia. While religious views and practices differ greatly between the two countries, both exhibit a high degree of religiosity. Furthermore, religious fundamentalism has had a noticeable influence on social policy making in each country, especially in recent decades. It should come as no surprise that religion plays a central role in government in Saudi Arabia, an officially Islamic state with a legal system based on the fundamentalist Wahhabi interpretation of Islamic law, or shari’a.

In the United States, the oft-lauded principle of “separation of church and state” notwithstanding, religion is by no means absent from the public sphere. Fundamentalist Christians (also known as the Christian Right), though small in number, have had a disproportionate influence on U.S. politics since at least the 1970s, helping to shape the public discourse on issues such as abortion, LGBT rights, education and even foreign policy. The issue of capital punishment in particular illustrates how religious fundamentalists – whether Christian or Islamic – tend to show more affinities with each other than with their more moderate coreligionists. Their literalist interpretation of scripture has led Christian and Islamic fundamentalists to strikingly similar positions on the permissibility of capital punishment. Their influence in the United States and Saudi Arabia helps explain the strange convergence of the two countries’ positions on the death penalty, despite radically different social, political and legal systems.

U.S. and Saudi Exceptionalism in International Law

The practice of capital punishment in the United States and Saudi Arabia stands in stark contrast to the evolution of international legal norms towards abolition. Over two-thirds of United Nations Member States have abolished capital punishment, and international law has placed increasing restrictions on the practice. Adopted in 1948, the Universal Declaration of Human Rights (UDHR) affirms the “right to life, liberty and security of person,” (Article 3) and prohibits torture and cruel or inhuman punishment (Article 5). Although Articles 3 and 5 passed through the drafting committee with little objection, Saudi Arabia joined several Muslim nations in objecting to other provisions of the UDHR on marriage and family rights and religious freedom. However, Saudi Arabia was the only Muslim nation to abstain from the final vote. During the drafting process, the Saudi representative objected to the statement in Article 1 that, “all human beings are endowed with reason and conscience. That, he said, was not, and never had been, true.” The United States, though instrumental in the drafting of the UDHR, was particularly skeptical of the economic and social rights enumerated in the Declaration, and refrained from joining the subsequent binding conventions regarding such rights.

While the UDHR was a non-binding declaration, subsequent international human rights conventions established binding rules of international law regarding capital punishment. The International Covenant on Civil and Political Rights (ICCPR), adopted on December 16, 1966, upholds the “inherent right to life” of every individual and restricts the use of the death penalty to “the most serious crimes,” as well as outlawing it for pregnant women and for crimes committed by persons below the age of eighteen (Article 6). The United States ratified the ICCPR in 1992 with several reservations, among them on the right to impose capital punishment on any person duly convicted, including for crimes committed by juveniles. Saudi Arabia is not a party to the Convention. The Convention on the Rights of the Child, adopted on November 20, 1989, further prohibits capital punishment for offences committed by persons below the age of eighteen (Article 37(a)). The United States signed, but never ratified the Convention. Saudi Arabia ratified with a general reservation “with respect
to all such articles as are in conflict with the provisions of Islamic law,” which under the Saudi understanding of Islamic law would certainly apply to capital punishment.

In 1989, the UN General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolishing the death penalty. While providing for the eventual abolition of capital punishment, the Convention includes an exception for state parties to retain the death penalty in times of war pursuant to prior reservations to the Protocol. America and Saudi Arabia are not among the 75 states party to the Second Optional Protocol. Saudi Arabia was not eligible to sign the Protocol since it was not a party to the original Covenant, but during the drafting process in the Commission on Human Rights, Saudi Arabia again asserted its right to maintain the death penalty as “the only fitting sanction for those who took life, as provided for in Islamic law.”

II. Non-Islamic Fundamentalism and Capital Punishment in Saudi Arabia

The Saudi legal and criminal justice system is based on a literalist interpretation of shari’a law as espoused by the country’s fundamentalist religious establishment of Wahhabi clerics. Followers of the 18th century preacher Muhammad ibn Abdul Wahhab, Wahhabis advocate for a return to a literalist interpretation of the Qu’ran and the Sunna in order to reestablish the professedly utopic community of the first Muslims in 7th century Medina. For the Wahhabis, it is “imperative to return to a presumed pristine, simple, and straightforward Islam, which was believed to be entirely reclaimable by a literal implementation of the commands and precedents of the Prophet, and by a strict adherence to correct ritual practice.”

As a result of the Wahhabis’ alliance with the Saudi monarchy, the kingdom’s oil-induced geopolitical ascendency, and its central status in the Islamic world as guardian of Islam’s two holiest sites, Mecca and Medina, Wahhabi Islam has had a disproportionate impact on Muslim thought throughout the world. Indeed, “apart from oil, and financed by it, Wahhabism is Saudi Arabia’s most notable export.” Domestically, Wahhabi Islam pervades Saudi law, policy, and society.

In accordance with their puritanical interpretation of Islam, Saudi Arabia’s Wahhabi religious establishment provides the theological justification for capital punishment. As Grand Mufti (senior cleric) of Saudi Arabia in the 1990s, Sheikh Abdallah bin Abd al-Aziz bin Baz issued a series of fatwas (religious judgments) calling for the death penalty for even non-violent crimes such as riddah (apostasy, or giving up the Islamic faith), zina (sexual intercourse outside marriage), and sihr (witchcraft). Bin Baz saw capital punishment as not only permitted, but as obligatory under Islamic law, since for particular crimes the penalty is “divinely inspired with no room for reason.” In 2008, the leading Wahhabi cleric Sheikh Abdul-Rahman al-Barrak issued a fatwa calling for the death penalty for two Saudi writers accused of apostasy. In a further fatwa issued in 2010, al-Barrak ruled in favor of the death penalty for opponents of strict gender segregation, arguing that whoever “allows forbidden things...is an infidel and this means defection from Islam. Either he retracts or he must be killed.” These fatwas represent only a selection of those issued by Wahhabi clerics in favor of the death penalty, which is legally applicable to a variety of offences in Saudi Arabia, including murder, rape, armed robbery, drug trafficking, adultery, apostasy, as well as “witchcraft” and “sorcery.”

While their support for capital punishment is particularly extreme and wide-ranging, especially with regard to nonviolent crimes, Saudi Arabia’s Wahhabi clerics are not alone in the Islamic world. Indeed, Arab and Islamic states have formed the main opposition to attempts to abolish the death penalty under international law. Islamic law, however, does not necessarily prevent or forbid the abolition of capital punishment. There is a basis for capital punishment in the Qur’an, although it is highly restricted. The Qur’an states: “Do not kill a Soul which Allah has made sacred except through the due process of law(6:151).” It also limits the
The application of capital punishment to a small category of crimes. Thus, “the use of the death penalty is characterized by stringent evidentiary requirements and other means of avoiding imposition of the punishment.”

The result of such restrictions is that the death penalty is justified in theory under Islamic law, but should only be practiced in highly limited circumstances.

Furthermore, the scripture is open to interpretation, and there is in fact great disagreement among the various schools of Islamic law on the question of capital punishment. Many theologians and scholars emphasize the Qur‘anic principles that all people have the right to life, and that all life is sacred. “If any one slew a person,” states one Qur‘anic verse, “it would be as if he slew the whole humanity: and if any one saved a life, it would be as if he saved the whole humanity(5:32).”

Imam Feisel Abdul Rauf, founder of the American Society for Muslim Advancement (ASMA) and the Cordoba Initiative, stresses the similarities between Islamic and Christian law in this regard. He notes that both religions share the common Abrahamic ethic as also expressed in the U.S. Declaration of Independence that “all humans are equal, endowed by the Creator with inalienable rights.” Furthermore, both religions begin with the two commandments to “love the Lord thy God with all of one’s mind, heart, soul, and strength,” and to “love thy neighbor as thyself.”

Dr. Khaled M. Abou El Fadl, professor of Islamic law at UCLA, also affirms that in Islam, life is sanctified and inviolable. “Its existence or termination is placed squarely within the boundaries of the divine jurisdiction. Consequently, human life may be extinguished pursuant only to a clear, explicit, unambiguous and unwavering authorization … by the possessor of the ultimate right over human existence – in a word, by God.”

As a result, the “entrustment of the state to be God’s faithful executioner is, to say the least, problematic.” The assertion made by many Islamists that apostasy and treason be punishable by death, says writer and religious scholar Dr. Reza Aslan, is “unsubstantiated and un-Quranic.”

Thus, although capital punishment is mentioned in the Quran, scholars are divided on whether the death penalty should continue to be considered Islamic today.

The diversity of state practice on capital punishment in the Islamic world reflects this ambiguity. In 2011, thirteen of the twenty-two Arab League states abstained from executions, as did 175 of 193 UN Member States. The Islamic states have also drafted their own international conventions reiterating the strict restrictions placed on capital punishment by Islamic law. The Universal Islamic Declaration of Rights, adopted by the Islamic Council in 1981, states: “Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.”

The Arab Charter of Human Rights, which was adopted in 2004 and entered into force in 2008, proclaims a similar right to life (Article 8) and provides that the “sentence of death will be imposed only for the most serious crimes (Article 10).”

Saudi Arabia ratified the Charter in 2009, though its imposition of the death penalty for crimes such as adultery and apostasy would hardly conform to that standard. Nonetheless, while many Muslim states retain the death penalty, they recognize the similar restrictions placed on the practice by Islamic and international law, especially the requirement of due process and the “most serious crimes” limitation (Article 6(2) of the ICCPR).

Furthermore, religious law is not the only determinant of national policy in Muslim countries. William Schabas, professor of international law at Middlesex University, notes that “although essentially all Moslem or Islamic countries retain the death penalty in their domestic law, practice varies considerably from one to another.”

Islamic legal practice throughout history, especially on the death
penalty, writes El Fadl, “often wavered between obstructionism and accommodation, as Muslim jurists balanced between the perceived need for practicality and functionality on the one hand, and the call of idealism on the other.” Given the different possible interpretations of capital punishment under Islamic law, and the pull of other Islamic values such as mercy, compassion and peace, it would be equally conceivable to argue against capital punishment from an Islamic perspective. Such a position, however, would demand a much more progressive interpretation of religious law than fundamentalists, especially Saudi Wahhabis, could stomach.

If capital punishment is not necessarily Islamic nor widely practiced across the Islamic world, what accounts for its prevalence in Saudi Arabia? While the preceding discussion shows that the permissibility of capital punishment in Islam remains open for interpretation, Saudi Arabia’s political environment allows for Wahhabis to impose their strict interpretation of Islamic justice on the country as a whole.

The political alliance between the Saudi royal family, the Al-Saud, and the fundamentalist Wahhabi clerics, the Al-Wahhab, dates back to long before the creation of the modern Kingdom of Saudi Arabia in 1932. In his efforts to consolidate power on the Arabian Peninsula in the 1700s, Muhammad ibn Saud, the father of the ruling Saudi dynasty, concluded a pact with Muhammad ibn Abdul Wahhab, the father of Wahhabi Islam. Today, the Al-Saud continue to defer to the religious judgments of the Al-Wahhab, whose religious authority in turn serves to legitimize the monarchy. Fundamentalist Wahhabi Islam thereby constitutes a bedrock of the Saudi regime, accounting for the Wahhabi’s strict interpretation of capital punishment as official state policy.

III. Christian Fundamentalism and Capital Punishment in the United States

In 2010, Oklahoma voters overwhelmingly approved a ballot measure to ban shari’a law from state courts. Although a federal judge later declared the ban to be unconstitutional, over two dozen states have subsequently considered similar measures. While the supposed ‘creeping’ of shari’a law into the United States strikes fear in the hearts of many conservative Americans, how different is the American position on the death penalty? “Intriguingly,” writes Schabas, “the Islamic law position would seem to be the same as that found in the Fifth Amendment to the United States Constitution and such international instruments as the European Convention on Human Rights.” The United States’ reservation to the ICCPR in 1992 reflects the continued legality of capital punishment in 34 states, including for juvenile offenders, although the Supreme Court outlawed the juvenile death penalty in 2005. It would appear then that supporters of capital punishment in the United States have more in common with Wahhabi jurists in Saud Arabia than they would care to acknowledge.

Support for the death penalty has decreased across the United States since the mid-1990s, although a majority of Americans remain in favor of the practice. In a 2012 Gallup poll, 63 percent of respondents in the United States favored the death penalty for a person convicted of murder (down from a peak of 80 percent support in 1994); 58 percent of respondents found the death penalty to be “morally acceptable”, whereas 34 percent saw it as “morally wrong.” Definitive proof of a correlation between religious views and death penalty support continues to elude researchers, although various studies have found a correlation between support for capital punishment and Protestant fundamentalism, especially in the American South. In general, however, “most social science empirical studies have found that religious affiliation is not a significant predictor of a person’s views on the death penalty,” and that support among Protestants and Catholics tends to be about the same as the general population. Nonetheless, the majority of the population continues to favor capital punishment on moral grounds.

Interestingly, support for capital punishment among Americans in general and Christians in particular is no longer shared by many religious authorities. While “the vast
majority of Christian and Jewish adherents continue to favor retention of the death penalty,” writes Douglas, “the Roman Catholic Church, both Reform and Conservative Jewish groups, and most mainstream Protestant denominations in the United States have taken a formally abolitionist stance in recent decades, indicating a significant difference of opinion between the “pulpit and the pew.” The U.S. Conference of Catholic Bishops, for example, first called for the abolition of the death penalty in 1980, and in 2005 it launched a “Catholic Campaign to End the Use of the Death Penalty.” In 1995, Pope John Paul II stated the official position of the Catholic Church as condemning the use of the death penalty: “The dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform.” Thus, if a significant proportion of American Catholics still support capital punishment, it is despite official church doctrine.

Lacking the centralization of the Catholic Church, Protestant denominations in the United States differ on the issue of capital punishment, although the majority of mainstream Protestant clergy also oppose the death penalty. The United Methodist Church, the second largest Protestant denomination in America with nearly eight million members, officially opposes the death penalty, as do the Presbyterian Churches, Episcopal Church, Reformed Church, and United Church of Christ. The Mormons and Jehovah’s Witnesses have no official stance on capital punishment, whereas Pentecostal and Lutheran Churches have mixed positions.

Many conservative Protestant denominations, however, are officially supportive of capital punishment. The Southern Baptist Convention (SBC), the largest Protestant denomination in the United States with over 16 million members, issued this resolution in June 2000:

*Whereas God authorized capital punishment for murder after the Noahic Flood, validating its legitimacy in human society…and has established capital punishment as a just and appropriate means by which the civil magistrate may punish those guilty of capital crimes,…* [we support the fair and equitable use of capital punishment by civil magistrates as a legitimate form of punishment for those guilty of murder or treasonous acts that result in death.]

Other conservative Christian churches have also expressed their support for the death penalty in recent decades, including the Orthodox Presbyterian Church, the Lutheran Church-Missouri Synod, the National Association of Free Will Baptists, and the Christian Reformed Church.

Examining the Holy Scriptures, Christian law on capital punishment resembles many of the previously cited tenants of Islamic law. As with the Qur’an, the Bible sanctions capital punishment. In the Old Testament, God commands the death penalty for a variety of acts, including murder (Exodus 21:12), kidnapping (Exodus 21:16), bestiality (Exodus 22:19), adultery (Leviticus 20:10), homosexuality (Leviticus 20:13), false prophecy (Deuteronomy 13:5), prostitution and rape (Deuteronomy 22:24). Genesis 9:6 commands, for example, that “Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image.” Again, however, in Christianity God is also merciful, compassionate and peaceful, as well as the ultimate arbiter of judgment. Any non-literal interpretation of Christian scripture would thus leave ample room for rejecting the death penalty, as the positions of the Catholic Church and many Protestant clergy show.

If most mainstream American churches now reject capital punishment, what accounts for Americans’ continued support for the practice? Retribution and deterrence are two of the most commonly cited philosophical rationales for capital punishment, yet in a 2011 Gallup poll, 64 percent of U.S. respondents believed that the death penalty does not deter acts of murder. In fact, a 2011 poll conducted by the Pew Research Center found that Americans’ reasons for supporting the death penalty have changed little in the last 20 years: 53 percent consider the death penalty to be a deserved or appropriate punishment, followed by significantly fewer people who give justifications such as cost-savings (15 percent), deterrence (5 percent), prevention of further crimes (5 percent)
or biblical reasons (5 percent). The Gallup polls report similar results. Public support for the death penalty in the United States thus appears to be overwhelmingly driven by a belief in retribution, whether conceived in terms of revenge or just desserts for the crime. While separate from biblical justifications for capital punishment, the idea of retribution is imbued with religious notions of morality. Americans’ acceptance of retribution as a legitimate justification for capital punishment is a product of socialization and culture within a highly religious society.

Unlike Saudi Arabia, the United States was founded on the principle of religious freedom and “separation of church and state.” However, Americans are nonetheless highly religious, and religion remains an important factor in U.S. policymaking. In a 2012 poll conducted by the Pew Forum, 67 percent of American respondents considered it to be important that the President have strong religious beliefs. In 2011, 61 percent said they would be less likely to support a presidential candidate who did not believe in God, the only potential candidate trait by which a clear majority said they would be dissuaded. Furthermore, though small in number, fundamentalist Christians have played an active role in U.S. politics in recent decades. The so-called Christian Right has mobilized millions of voters through organizations such as the Moral Majority (founded in 1979 by Jerry Falwell), the Family Research Council (formed in 1981 by James Dobson) and the Christian Coalition (founded in 1989 by Pat Robertson). These organizations shape public dialogue on social issues such as abortion, gay rights, and school prayer through political lobbying and a strong media presence. They are also credited in part with propelling conservative Republicans Ronald Reagan and George W. Bush into office. Both presidents adopted the kind of dualistic moral rhetoric common to the Christian Right, whether in Ronald Reagan’s branding of the Soviet Union as “the evil empire,” or George W. Bush’s “Axis of Evil” and description of the War on Terror as a “a confrontation between good and evil.” As a presidential candidate, Bush, himself an evangelical Christian, named Jesus Christ as his favorite political philosopher. Speaking in 2002 after an appeals court banned the Pledge of Allegiance in schools on account of phrase “under God”, Bush declared: "We need common sense judges who understand that our rights were derived from God and those are the kind of judges I intend to put on the bench.” While Americans may fiercely defend the freedom of religion and the separation of church and state in theory, the reality is that religion features prominently in American politics.

II. CONCLUSION

In their 2004 book, “Sacred and Secular: Religion and Politics Worldwide,” Pippa Norris and Ronald Inglehart propose that “any deep-seated divisions between Islam and the West will revolve far more strongly around social than political values.” As the issue of capital punishment demonstrates, however, the literal interpretation of scripture has led Christian and Islamic fundamentalists in the United States and Saudi Arabia to strikingly similar positions. On the one hand, religious views, though historically significant, are a less robust determinant of policy on capital punishment in the United States than in Saudi Arabia, given the latter’s explicit welding of religious fundamentalism with public policy. “Americans may be a religious people,” concludes Douglas, “but the theological understandings of our religious institutions no longer directly shape the views of many Americans on a variety of social issues, including penal policy.” On the other hand, Islam cannot wholly explain the Saudi position on capital punishment either. Saudi Arabian law is officially “Islamic,” but its insistence on “an eye for an eye and a tooth for a tooth” may have much more to do with pre-
Islamic tribal traditions than Islam itself. “Unmodified by the philosophies and practices of modern legal systems, the undergirdings of the Wahhabis’ law remains as it was in the seventh century – a combination of Hammurabi’s code, tribal justice, and Mohammed’s teachings.”

Religion is thus an important, though not exclusive factor shaping national policy on capital punishment. While a causal relationship is difficult to discern, the nature of religious influence on policymaking raises important questions for further research.

The influence of religious fundamentalism, on the other hand, goes further in explaining the convergence of national policy in the United States and Saudi Arabia than do religious differences alone. Given the striking similarities between the positions of Christian and Islamic fundamentalists on the death penalty, and their abilities to influence policy in both countries, the status of the United States and Saudi Arabia as two of the world’s leading practitioners of capital punishment should no longer be surprising. There may be no single Islamic or Christian position on the death penalty, but where literalist interpretations of holy justice are given a disproportionate voice in national policymaking, the systems are bound to converge.

The views and opinions expressed in articles are strictly the author’s own, and do not necessarily represent those of Al Nakhlah, its Advisory and Editorial Boards, or the Program for Southwest Asia and Islamic Civilization (SWAIC) at The Fletcher School.
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