

**“TO OUR GREAT DETRIMENT”:  
IGNORING WHAT EXTREMISTS SAY ABOUT *JIHAD*  
(with appendices)**

by

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## PROLOGUE

North design to conquer the South, we must begin at Kentucky and reconquer the country from there as we did from the Indians. It was this conviction then as plainly as now that made men think I was insane. A good many followers now want to make me a prophet. I rather think you now agree with me that this is no common war. You must now see that I was right in not seeking prominence at the outstart. I knew and know yet that the northern people have to unlearn all their experience of the past thirty years and be born again before they will see the truth. Though our armies pass across and through the land, the war closes in behind and leaves the same enemy behind. ... I don't see the end or the beginning of the end, but suppose we must prevail and persist or perish. ... We cannot change the hearts of the people of the South, but we can make war so terrible that they will realize the fact that however brave and gallant and devoted to their country, still they are mortal and should exhaust.

**General Tecumseh Sherman, 1862**

Upon having his command restored

*The Civil War: A Narrative – Fort Sumter to Perryville*

Following the Chapter “War Means Fighting ...” 800, 801.

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It seems that the only way we can free ourselves from these preconceptions is this: that just once in our lives, we should make a concerted effort to doubt every previous belief in which we find so much as the slightest hint of uncertainty. It will even be useful to regard the beliefs we are going to put into doubt as false, so that we can discover all the more clearly what is most certain and readily knowable. However, this process of doubt should be restricted to our considering what is *true*. For as far as the *conduct of life* is concerned, the moment for action would usually have passed long before we could resolve our doubts. We are often forced to opt for what is only probably right, and sometimes we even have to choose between two equally probable alternatives. So now let us embark on our enquiry into what is true (but only what is *true*). To begin with, it can be doubted whether any sensible or imaginable things exist. The first reason is that we sometimes notice that our senses deceive us, ***and it is wise never to put too much trust in what has let us down***, even if on only one occasion. The second reason is that in our dreams we regularly seem to sense or imagine many things which are completely non-existent, and there are no obvious signs which would enable someone having such doubts to distinguish between sleeping and waking with any certainty.

**Rene Descartes, *The Principles of Philosophy*,**

Part I: “The Principles of Human Knowledge,” 1637.

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## CHAPTER 1

### THE CHAIRMAN'S CHARGE

However absorbed a commander may be in the elaboration of his own thoughts, it is sometimes necessary to take the enemy into consideration.

**Sir Winston Churchill**, as quoted in FM 34-130,  
*Intelligence Preparation of the Battlefield.*

And I know there is an international *jihadi* movement that desires to do us harm and they have territorial ambitions. The reason I know that is that's what they've told us. And part of their territorial ambition is to have safe haven in Iraq. That's what they've said. That's what the enemy has clearly said. And it seems like to me that the Commander-in-Chief ought to listen to what the enemy says.

**President George W. Bush**  
**Rose Garden Press Conference**  
**June 14, 2006**

### THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF COMMENTS ON DOCTRINE AND THE WAR ON TERROR

In a series of comments on *The National Strategy for Victory in Iraq* made at the National Defense University, 1 December 2005, four years into the War on Terror (WOT), Chairman of the Joint Chiefs of Staff General Peter Pace explained that:

To talk about how we are going to proceed, we need to understand the nature of the enemy. And clearly, the nature of this enemy is different than any we have faced in the past .... Our enemies had declared war on us years before, but the attacks in New York, in the skies over Pennsylvania and here in Washington, D.C. brought home very clearly to us that we were at war.<sup>1</sup>

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<sup>1</sup> General Peter Pace, USMC, Chairman Joint Chiefs of Staff, keynote speech presented at National Defense University, "Extemporaneous Remarks on Our National Strategy for Victory in

Consistent with the Chairman's injunction is the implication that after five years of prosecuting the War on Terror (WOT) we still don't understand the nature of the enemy, a devastating indictment of the Intelligence Community's inability to define the *jihadi* threat. Inherent in the Chairman's acknowledgement that the enemy "is different than any we have faced in the past," is the implication that we need to reconsider how we determine what motivates and animates the enemy in order to clarify the *jihadi* threat. Confident in our ability to meet this challenge, General Pace affirmed that "there is no way we can lose if we maintain our patience and our...resolve. But it's also true that inside of that patience and resolve, we should execute our mission as smartly as we possibly can."<sup>2</sup>

Continuing with his speech, General Pace suggested a simple starting point for improving our understanding and thereby our mission execution:

I say you need to get out and read what our enemies have said. Remember Hitler. Remember he wrote *Mein Kampf*. He said in writing exactly what his plan was, and we collectively ignored that *to our great detriment*. Now, our enemies have said publicly on film, on the Internet, their goal is to destroy our way of life. No equivocation on their part. They're not saying if you stay home, we will not come after you. They are saying their goal is to rid the Middle East of all foreigners. Then, overthrow all governments that are not friendly to them, which means every single one of those governments. Then, to use that base as a way to spread their terrorism and their oppression across the globe to include a map that shows 100 years from now that the entire globe will be under their domination.<sup>3</sup>

By singling out *Mein Kampf* as his example, General Pace focused on Hitler's declared strategic doctrine, used by the Nazis as the foundation for their tactical employment of

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Iraq," Washington, DC, 01 December 2005, URL: <[http://www.jcs.mil/chairman/speeches/051201remarks\\_NationalStrategyVictoryIraq.html](http://www.jcs.mil/chairman/speeches/051201remarks_NationalStrategyVictoryIraq.html)>, accessed 02 December 2005. Cited hereafter as Pace, NDU speech.

<sup>2</sup> Pace, NDU speech.

<sup>3</sup> Pace, NDU speech.

military, political, economic, and social instruments of power to establish the 1,000 year Reich. Likewise, the nature of today's jihadist enemies can only be understood within the context of their declared strategic doctrine to dominate the world. Just as we ignored *Mein Kampf* "to our great detriment" prior to World War II, so we are on the verge of suffering a similar fate today. The reason the Intelligence Community is unable to define the nature of the *jihadi* enemy, the Chairman implies, is because we have not "read what the enemy has said." In other words, we have failed to undertake an assessment of the threat based on the *jihadi* enemy's declared strategic doctrine. This conclusion leads to three fundamental research questions:

- Why have we failed to do a doctrine-based threat assessment?
- What is the doctrinal basis of the *jihad* threat?
- How can we come to understand the *jihadi* threat?

A brief discussion of the research questions will be used to frame the hypothesis that Islamic law forms the doctrinal basis of the *jihadi* threat that can only be understood through an unconstrained review of the the Islamic law of *jihad*.

## **FAILURE TO CONDUCT A DOCTRINE BASED-ASSESSMENT OF THE ENEMY**

"There's still a tendency to see these things in Sunni-Shia terms," Ms. Rice said. "But the Middle East is going to have to overcome that."

Secretary of State Condoleeze Rice,  
"Perhaps Thinking of Legacy, Bush Has Rice on the Move,"  
*New York Times*, January 19, 2007

## **Constrained by Policy**

Following the catastrophic events of 9-11 when 19 Muslim men attacked U.S. targets for reasons associated with *jihad* in furtherance of Islamic goals, President George Bush made broad statements that held Islam harmless:

The terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself. The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them.<sup>4</sup>

While there is little doubt the President made these comments to allay fears in the Muslim community while staring-down thoughts of vigilante justice in some circles, his statements exerted a chilling effect on those tasked to define the enemy's doctrine by effectively placing a policy bar on the unconstrained analysis of Islamic doctrine as a basis for this threat.

**The “Underlying Causes” Model.** Shifting focus from the “extremists” stated cause, the Underlying Causes model is the prevailing threat analysis paradigm in the WOT. But should it be? As recently as 15 May 2007, from the same utterance in which he acknowledged that "it is true that terrorist leaders seem more often than not to come from middle-class backgrounds," U.S. Ambassador to Turkey, Ross Wilson counterfactually asserted that "most people would find it hard to argue against the idea that [the underlying cause of] terrorist violence arises, sociologically speaking, out of poverty, despair, hopelessness and resentment."<sup>5</sup> In a single statement, the Ambassador stated both the policy view driving the WOT and its greatest weakness. The general

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<sup>4</sup> “Backgrounder: The President's Quotes on Islam,” *News and Policies/Policies in Focus*, the White House, URL: <<http://www.whitehouse.gov/infocus/ramadan/islam.html>>, accessed 6 May 2007. Cited hereafter as “Backgrounder.”

<sup>5</sup> Anne Fugate, “Conference Tackles Key Issues in Fight Against Terrorism,” *US Fed News* (USEUCOM Press Release), 15 May 2007, accessed via LexisNexis, 16 May 2007.

perception is expressed by Thomas Mockaitis when he said that a “hearts and mind” campaign should be directed against Underlying Causes he describes as “discontent stemming from bread and butter issues, lack of jobs, decent housing, electricity, running water, health care and education.”<sup>6</sup>

The Underlying Causes model reflects a choice to examine terrorism strictly in terms of economic deprivation, an approach our national defense apparatus can measure without having to change how it does business. The weakness of this approach is more broadly understood than many inside the U.S. Government realize, with people as diverse as David Brooks of the *Atlantic Monthly*,<sup>7</sup> Cardinal George Pell,<sup>8</sup> and Indian terrorism analyst N. S. Rajaram<sup>9</sup> all identifying the U.S. Government’s uni-dimensional materialist approach to understanding the WOT as a serious strategic shortcoming.

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<sup>6</sup> Thomas R. Mockaitis, *The Iraq War: Learning From the Past, Adapting to the Present, and Planning for the Future*, U.S. Army Strategic Studies Institute, February 2007, URL: <<http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB754.pdf>>, accessed 5 May 2007.

<sup>7</sup> David Brooks, “Kicking the Secularist Habit,” *The Atlantic Monthly*, March 2003.

<sup>8</sup> George Cardinal Pell, “Islam and Western Democracies,” Legatus Summit, Naples, Florida, Archdiocese of Sydney, 4 February 2006, URL: <[http://www.sydney.catholic.org.au/print.asp?ID=648&url=http://www.sydney.catholic.org.au/Archbishop/Addresses/200627\\_681.shtml](http://www.sydney.catholic.org.au/print.asp?ID=648&url=http://www.sydney.catholic.org.au/Archbishop/Addresses/200627_681.shtml)>, accessed 4 May 2006. “This does work for some, perhaps many, people in the rich, developed and highly urbanised Western world, particularly those without strong attachments to religion. Doubtless it has ideological appeal to many more among the elites. But as a basis for engagement with people of profound religious conviction, most of whom are not fanatics or fundamentalists, it is radically deficient. Sen’s words demonstrate that the high secularism of our elites is handicapped in comprehending the challenge that Islam poses.”

<sup>9</sup> N.S. Rajaram, “Pakistan’s Mein Kampf,” *Perspectives on Islam and Pakistan*, URL: <[http://members.tripod.com/pakjihad/pesrspectives\\_on\\_islam.htm#Concept](http://members.tripod.com/pakjihad/pesrspectives_on_islam.htm#Concept)>, accessed 09 September 2005. “This tenacious hold of religion is something that the West has failed to understand. When Muslims behave in a way that cannot be explained in rational terms—at least as understood in the West—they look for economic or social reasons. ... Until recently, most Western analysts were inclined to regard Islamic Fundamentalism as an aberration—a departure from the ‘true’ teachings of Islam, which they held was a religion of peace and brotherhood. To a large extent this is still true of academics in the West. Unlike some Indian scholars who sought explanation for it in the scripture of Islam itself, Western analysts tried to explain it in political and economic terms in keeping with their own secular-humanistic orientation.”

Disqualifying an enemy's stated *raison d'être* from inclusion in the threat development process is actually an extreme decision that not only runs counter to the Chairman's charge to "get out and read what our enemies have said," but also to principles of war that reach back to Sun Tzu.

**The Orientalism Paradox.** The Underlying Causes model for analyzing the WOT services what this paper calls the Current Approach. The outlines of the Current Approach can be traced back to Edward Said's 1978 literary deconstructionist classic *Orientalism*. In that book, Said took exception to Western scholarship on Arab and Islamic culture,<sup>10</sup> believing it to be a reflection of Western imperialism<sup>11</sup> and hence constructed solely to establish Western intellectual supremacy over the Orient by the simple fact of its being written.<sup>12</sup> Because Said believed all scholarship and literature to be political, his own work should be understood as having a political purpose.<sup>13</sup> His objection to Western scholarship did not address the merits of any particular work but rather the fact that such works are produced at all. Hence, the factual accuracy of any specific example of Western scholarship is of peripheral importance. For Said, it is not important to progress beyond the "exteriority" of a Western work in order to summarily invalidate the merits of its scholarship.<sup>14</sup> Because the only way for the West to progress beyond its prejudicial ideations of the Arab/Muslim world is to engage in dispassionate

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<sup>10</sup> Edward W. Said, *Orientalism* (New York: Vintage Books, 1978), 16.

<sup>11</sup> Said, 14.

<sup>12</sup> Said, 19.

<sup>13</sup> Said, 13-14.

<sup>14</sup> Said, 20-21.

discussion, by implication such a dialogue would have to be arbitrated by cultural experts with ethnic ties – or at least ideological conformance -- to the Arab/Muslim advocacy.<sup>15</sup> Interestingly, if Said’s line of reasoning was extended along general lines, two points would emerge: first, that no culture could ever explain another; and, second, if Said held true to his own syllogism -- that members of one culture cannot explain another’s -- there would be no basis for his writing *Orientalism* for the purpose of explaining to the West its own “intellectual genealogy ... in a way that has not been done.”<sup>16</sup>

### **Uninformed Decisionmaking – Who Cares?**

A Current Approach that avoids discussions of Islam and *jihad* by seeking terrorism’s Underlying Causes in strictly materialist terms is in line with the Chairman’s finding that we do not understand the enemy’s threat doctrine. In two articles spanning the Fall 2006 elections, Jeff Stein, national security editor for *Congressional Quarterly*, exposed the depth of the deficit among senior Washington decisionmakers, including those with direct responsibility for WOT related issues. Leading into the elections, in a *New York Times* article titled “Can you tell a *Sunni* from a *Shi’ite*?” Stein caused a stir by demonstrating that most American officials interviewed “did not have a clue” about the most basic issues concerning Islam. His sample “included not just intelligence and law enforcement officials but also members of Congress who have important roles overseeing our spy agencies.”<sup>17</sup>

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<sup>15</sup> Said, 26-27.

<sup>16</sup> Said, 24.

<sup>17</sup> Jeff Stein, “Can You Tell A Sunni from a Shiite?,” *New York Times*, 17 October 2006, accessed via LexisNexis 20 October 2006. Cited hereafter as “Jeff Stein, Sunni-Shia.

With Republicans still in control of Congress, the October 2006 article named two prominent Republican members of the House Permanent Select Committee on Intelligence (HPSCI) and found that neither could answer basic questions on the difference between *Sunni* and *Shia* Muslims.<sup>18</sup> Given the notoriety of the article, Stein's follow-up interview in December 2006 with the incoming Democratic Chairman of the House Permanent Subcommittee on Intelligence (and senior member of the Armed Services Committee), Congressman Silvestre Reyes, proved equally distressing when it turned out that the Democrats' chosen leader believed al-Qaeda to be a predominantly *Shia* organization.<sup>19</sup> Five years into the intelligence intensive WOT, the HPSCI's poor bipartisan showing regarding relevant Islamic identity issues caused Stein to ask the obvious question: "How can the Intelligence Committee do effective oversight of U.S. spy agencies when its leaders don't know the basics about the battlefield?"<sup>20</sup>

For Stein, the more pressing problem is that "too many officials in charge of the war on terrorism just don't care to learn much, if anything, about the enemy we're fighting."<sup>21</sup> This conclusion may have been driven as much by the troubling responses of prominent Federal Bureau of Investigations (FBI) leaders as by the ignorance of key Congressional leaders. What prompted Stein's investigation was FBI Counterterrorism Chief Gary Bald's insistence that knowing the distinctions between *Sunni* and *Shia* as it

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<sup>18</sup> Jeff Stein, *Sunni-Shia*.

<sup>19</sup> Jeff Stein, "Democrats' New Intelligence Chairman Needs a Crash Course on al Qaeda," *Congressional Quarterly*, December 8, 2006, URL: <[http://public.cq.com/public/20061211\\_homeland.html](http://public.cq.com/public/20061211_homeland.html)>, accessed 10 December 2006. Cited hereafter as "Jeff Stein, Reyes."

<sup>20</sup> Jeff Stein, Reyes.

<sup>21</sup> Jeff Stein, *Sunni-Shia*.

relates to differences between al-Qaeda and Hizballah was not as important as being a good manager.<sup>22</sup> When Stein spoke to FBI Public Affairs Director John Miller regarding Bald's assertion, Miller's response was that "a leader needs to drive the organization forward" and such questions were nothing more than "lawyers and journalists" using "Islamic Trivial Pursuit" questions as "cheap shots."<sup>23</sup> Given the inadequacy of Miller's explanation, when Stein interviewed Willie Hulon, Director of the FBI's National Security Branch, a year later, he knew enough to answer Stein's questions on the difference between *Sunnis* and *Shias* by saying "yes, sure, it's right to know the difference, it's important to know who your targets are."<sup>24</sup> Yet, when Stein presented the same *Sunni-Shia* question to Mr. Hulon, even after prompts like "Iran and Hezbollah," he still associated Hizballah with *Sunni* Islam.<sup>25</sup>

This knowledge deficit has become a strategic deficit. More than five years into the WOT against a threat that defines itself in Islamic terms, the national security community does not understand the most basic Islamic doctrines that the enemy self-identifies as being its primary motivating factor. This is the legacy of the Underlying Causes model and the Current Approach. A growing awareness of this knowledge deficit is taking hold among the broader public who is beginning to raise basic questions of competency. Diana West, editorial writer for the *Washington Times* tapped into this rising frustration:

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<sup>22</sup> Jeff Stein, *Sunni-Shia*.

<sup>23</sup> Jeff Stein, *Sunni-Shia*.

<sup>24</sup> Jeff Stein, *Sunni-Shia*.

<sup>25</sup> Jeff Stein, *Sunni-Shia*.

It's hard to say what's worse: ignorance of *jihad*, for which there's no excuse at this advanced stage of war, or indifference to it, for which there's never an excuse. Both attitudes deeply imbue U.S. war policy.<sup>26</sup>

## A DOCTRINAL BASIS EXISTS FOR THE *JIHADI* THREAT

### What We Choose Not to Know

Confirming the Chairman's frustration that we do not understand the enemy, the following example illustrates just what we have ignored to our great detriment.

Remembering that U.S. forces are non-Muslim forces operating in Muslim lands, the following citations from standard Islamic texts will be followed by a series of quotes from a known "extremist" that demonstrates conformity between Islamic law and "extremist" claims. The point is to demonstrate both how the duties of *jihad* as stated in Islamic law are applicable to non-Muslim forces in Muslim lands and that those duties are actually being applied to American forces. From the English language translation of the Saudi-published *Interpretation of the Meanings of the Noble Qur'an in the English Language*, one can read "Appendix III -- The Call to *Jihad* -- (Holy Fighting for Allah in the Qur'an Statement)," written by Saudi Arabia's Chief Justice, and learn that *jihad* -- holy fighting in Allah's Cause -- is a requirement of Islam:

The Verses of the Qur'an and the *Sunnah* (the Prophet's legal ways, orders) exhort Muslims greatly to take part in *Jihad* and have made quite clear its rewards, and praised greatly those who perform *Jihad* (the holy fighting in Allah's Cause) and explained to them various kinds of honours which they will receive from their Lord (Allah). This is because they - *Mujahidin* are Allah's troops. Allah will establish His religion (Islam), through them (*Mujahidin*). He will repel the might of His enemies, and through them He will protect Islam and guard the religion safely. And it is they (*Mujahidin*) who fight against the enemies of Allah in order that the worship should be all for Allah (Alone and not for any other deity) and that the Word of Allah (i.e. none has the right to be worshipped but Allah

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<sup>26</sup> Diana West, "Pay Attention to Jihad," *Washington Times*, 1 June 1 June 2007, URL: <<http://www.washingtontimes.com/op-ed/dwest.htm>>, accessed 1 June 2007.

and His religion Islam) should be superior.<sup>27</sup>

Then, from a translated 2005-2006 school-year edition of the 12<sup>th</sup> grade Saudi school textbook (already sanitized due to U.S. State Department pressure), one finds the requirements of *jihad*:

- Scholars have noted that *jihad* is obligatory for the individual in three cases:
  - (2) If the infidels attack a specific country, it is obligatory for its people to fight them and repel them. Self-defense is a duty. Allah said, "Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors."
- When is battle *jihad* in the path of Allah?
  - To fulfill an order from God, sacrifice in His path, spread the creed of monotheism, defend the realms of Islam and Muslims, and raise up the Word of Allah. This is *jihad* in the path of God.
- *Jihad* continues until the Day of Resurrection
  - It is part of God's wisdom that he made the clash between truth and falsehood continue until the Day of Resurrection. As long as this clash endures, *jihad* continues. It is not limited to a specific time. As long as there is falsehood, error, and unbelief, the *jihad* continues.<sup>28</sup>

The three items enumerated above lay the foundation for “extremist” claims.

Because the last examples are Saudi, it is appropriate to corroborate those statements with

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<sup>27</sup> Sheikh ‘Abdullah bin Muhammad bin Humaid, Chief Justice of Saudi Arabia, Appendix III - “The Call to Jihad- (Holy Fighting for Allah in the Qur’an Statement),” located in *Interpretation of the Meanings of the Noble Qur’an in the English Language: A Summarized Version of At-Tabari; Al-Qurtubi, and Ibn Kathir with Comments from Sahih Al-Bukhari*, trans. and commentary by Dr. Muhammad Taqi-ud-Din Al-Hilali, and Dr. Muhammad Muhsin Khan, (DARUSSALAM: Riyadh, Saudi Arabia, 1995), 963, 964.

<sup>28</sup> The Freedom House, *Excerpts from Saudi Ministry of Education Textbooks for Islamic Studies: Arabic with English Translation*, (Center for Religious Freedom of Freedom House with the Institute for Gulf Affairs, Washington, DC, 2006), 104, 105, translating Twelfth Grade, *Hadith and Islamic Culture*, Education Development, (Ministry of Education, Kingdom of Saudi Arabia: Riyadh), 58, 59.

an accepted mainstream text of Islamic law that is neither Saudi nor *Wahhabi*.<sup>29</sup> *Reliance of the Traveller: A Classic Text of Islamic Law*, translated by Nu Hah Mim Keller, confirms the personal obligation to fight *jihad* when non-Muslim forces enter Muslim lands:

*Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means.<sup>30</sup>

The requirement to fight *jihad* when non-Muslim forces enter Muslim lands is understood as a requirement of Islamic law. So how does one explain the prevailing assumption that Islam does not stand for such violence undertaken in its name with the fact that its laws and education materials validate the very acts undertaken by “extremists” in Iraq? In fact, the first “radicalizing” lesson that Saudi youth receive that motivates them to travel to Iraq and fight Coalition forces does not come from “extremists” groups like al-Qaeda, but rather is taught as part of Saudi Arabia’s standard secondary school curriculum. This raises the prospect that Osama bin Laden’s original 1996 call for *jihad* had merit. As bin Laden stated in 1996:

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<sup>29</sup> From Albert Hourani, *A History of the Arab Peoples*, (New York: MJF Books, 1991), 258, 181. Wahhabis are followers of an Islamic movement founded by Muhammad ibn ‘Abd al-Wahhab (1703-92). Wahhab “preached the need for Muslims to return to the teaching of Islam as understood by the followers of Ibn Hanbal: strict obedience to the Qur’an and Hadith as they were interpreted by responsible scholars in each generation, and rejection of all that could be regarded as illegitimate innovations. Among these innovations was the reverence given to the dead, saints as intercessors with Allah, and the special devotions of the Sufi orders. The reformer made an alliance with Muhammad ibn Sa’ud, ruler of a small market town, Dir’iyya, and this led to the formation of a state which claimed to live under the guidance of the *shari’a* and tried to bring pastoral tribes all around it under its guidance too.” The association between ibn Wahhab and ibn Sa’ud “led to the creation of the Saudi state in central Arabia.”

<sup>30</sup> Ahmad ibn Naqib al-Misri, ‘Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994), Book O “Justice,” at o9 “Jihad,” at o9.3. Cited hereafter as al-Misri.

While some of the well-known individuals had hesitated in their duty of defending Islam and saving themselves and their wealth from the injustice, aggression and terror -- exercised by the government -- *the youths (may Allah protect them) were forthcoming and raised the banner of Jihad against the American-Zionist alliance occupying the sanctities of Islam. ...* It is now clear that those who claim that the blood of the American soldiers (the enemy occupying the land of the Muslims) should be protected are merely repeating what is imposed on them by the regime; fearing the aggression and interested in saving themselves. *It is a duty now on every tribe in the Arab Peninsula to fight, Jihad, in the cause of Allah and to cleanse the land from those occupiers.* Allah knows that there (sic) blood is permitted (to be spilled) and their wealth is a booty; their wealth is a booty to those who kill them.<sup>31</sup> (Emphasis added)

From the 1996 fatwa, it is important to note that bin Laden never called for *jihad* on his own authority but rather based his claim on a Muslim's personal responsibility to do so when non-Muslim forces enter Muslim lands, as is stated in the law. Because this makes his statement less extreme than is generally characterized, it should have always been taken seriously. The problem from an Islamic legal perspective is that "extremist" statements appear to conform to the statement of law. Hence, groups like al-Qaeda can reasonably claim that they are simply executing the same Islamic legal requirements that Muslim governments require their students be taught. An analysis that relied on Islamic law to assess bin Laden's claim that Islamic law supports his 1996 fatwa would most likely have generated different results than an analysis that ignored it. (While this example concerns Saudi Arabia, it is not unique to it and could easily have been done with reference other entities in other places like, for example; Egypt and the Muslim Brotherhood. For such an example, see Appendix A – Muslim Brotherhood and Call to *Jihad*)

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<sup>31</sup> Osama bin Laden, "Declaration of War against the Americans Occupying the Land of the Two Holy Places" (bin Laden's "First Fatwa"), Online NewsHour Online Focus (first published in *Al Quds Al Arabi*, August 1996 URL: <[http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html)>, accessed 5 May 2007.

The close fit between bin Laden's assertions and accepted Islamic law should be a concern for the following reasons: first, we do not understand the Islamic components to the WOT; second, Muslim adversaries conceptualize the threat in authentic Islamic terms that; third, appear to drive their decisionmaking thereby; fourth, making an Islamic vision a component of adversaries' doctrine which; fifth, the Underlying Causes model does not account for and cannot compensate for by reference to alternative academic (behavioral, sociological, economic, psychological or anthropological) models. As the Chairman suggests, to know our enemies one must read their doctrine. Clearly, it is not possible to read and understand the threat doctrine in the WOT without coming to grips with Islamic notions of *jihad*. One cannot understand *jihad* without understanding its relationship to Islamic law.

### **Past the Breaking Point – Time to Learn the Enemy's Doctrine**

Are we the only ones who do not understand Islam's role in the enemy's doctrine?

In a poll released on 24 April 2007 by the University of Maryland's Program on International Policy Attitudes titled *Muslim Public Opinion on US Policy, Attacks on Civilians and al Qaeda*, 38% shared al-Qaeda's views of the United States with 15% agreeing with *jihadi* attacks on Americans.<sup>32</sup> The polling also revealed that majorities know al-Qaeda's stated objectives to re-impose strict Islamic (Shari'a) law and re-establish the Caliphate and agree with those goals.<sup>33</sup> On the "strict application of Shari'a

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<sup>32</sup> Steven Kull, *Muslim Public Opinion on US Policy, Attacks on Civilians and al Qaeda*, WorldPublicOpinion.org (Program on International Policy Attitudes, University of Maryland: Washington, DC, April 24, 2007), 13, URL: <[http://www.worldpublicopinion.org/pipa/pdf/apr07/START\\_Apr07\\_rpt.pdf](http://www.worldpublicopinion.org/pipa/pdf/apr07/START_Apr07_rpt.pdf)>, accessed 5 May 2007. Cited hereafter as "Muslim Public Opinion."

<sup>33</sup> Muslim Public Opinion, 14, 16.

law in every Islamic country” 79 percent of Pakistanis, 76 percent of Moroccans, 74 percent of Egyptians, and 53 percent of Indonesian agree with al-Qaeda.<sup>34</sup> Only Indonesia posted strong negatives with 40 percent opposed.<sup>35</sup> On the return of the Caliphate, 74 percent of Pakistanis, 71 percent of Moroccans and 67 percent of Egyptians agree with al-Qaeda.<sup>36</sup> Even Indonesia, at 49 percent, still claims a powerful plurality in favor of a caliphate.<sup>37</sup> Because Islamic law matters to Muslims, in the WOT, it should also matter to us.

In a war that many understand to be primarily informational, the enemy is posting decisive results that we can measure yet do not understand. Do we really know, as the President asserts, that the “terrorists are traitors to their own faith?”<sup>38</sup> Even if they are, are they not traitors in the context of an Islamic belief structure that fuels “extremist” doctrine? While certainly not his intent, the President’s statements holding Islam harmless continue to have a chilling effect on the unconstrained threat analysis of an enemies that openly declare that they fight *jihad* in furtherance of Islamic causes -- regardless of whether those causes are ultimately properly aligned with Islam. The result has been to prosecute the WOT by reference to its purported underlying causes, a term whose very meaning supplants the war’s presenting causes, almost all of which have some nexus to Islam.

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<sup>34</sup> Muslim Public Opinion, 15.

<sup>35</sup> Muslim Public Opinion, 15.

<sup>36</sup> Muslim Public Opinion, 16.

<sup>37</sup> Muslim Public Opinion, 16.

<sup>38</sup> Backgrounder.

There is no factual basis to the belief that the cause the enemy claims is not the cause in fact. We do not know the enemy and we know it and so does the world. Three days after Jeff Stein published his *New York Times* article demonstrating that our senior leaders lack a basic knowledge of the enemy, the *Daily Star* of Lebanon responded with the article “US Officials' Ignorance is Unsettling in Light of Forward Policy” that cut the issue to the quick:

From our view here in the Arab world, it seems as though the American government is unleashing a super-efficient killing machine without a clear understanding or objective.<sup>39</sup>

### **UNDERSTANDING THE THREAT - INTELLIGENCE PREPARATION OF THE BATTLEFIELD AND THE CURRENT APPROACH**

In furtherance of the General’s charge to “execute our mission as smartly as we possibly can,” we must return to a proven intelligence methodology with demonstrated ability to drive the decisionmaking process. Modified to account for the information-centric dynamics of the WOT, itself defined by Islamic-based “extremist” doctrine, the recommended process is based on a methodology defined by the Intelligence Preparation of the Battlefield (IPB).<sup>40</sup> While there is much to the WOT that is complex, the

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<sup>39</sup> “US Officials' Ignorance is Unsettling in Light of Forward Policy,” *Daily Star* (Lebanon), Friday, October 20, 2006. From the U.S. Central Command “Regional Media Daily.” Secondary source cited hereafter as RMD.

<sup>40</sup> <sup>40</sup> U.S. Army, Field Manual (FM) 34-130, *Intelligence Preparation of the Battlefield* (Washington, DC: Department of the Army, 08 July 1994). Cited hereafter as U.S. Army FM 34-130. AUTHOR’S NOTE: The manual selected for use in this paper, U.S. Army Field Manual (FM) 34-130 *Intelligence Preparation of the Battlefield* (IPB Manual), was chosen because it represents a basic, first-generation discussion of IPB that was simple enough in its explanation of threat development to train newly commissioned Second Lieutenants at the U.S. Army’s Military Intelligence Officers Basic Course, yet rigorous enough to facilitate execution once the students transitioned to the field.

methodology recommended to resolve the problem is simple in its essentials and understood by the military intelligence community.

### **Why an IPB Methodology**

IPB is the best process we have for understanding the battlefield and the options it presents to friendly and threat forces. IPB is a systematic, continuous process of analyzing the threat and environment in a specific geographic area. It is designed to support the staff estimates and military decisionmaking. Applying the IPB process helps the commander selectively apply and maximize his combat power at critical points in time and space on the battlefield.<sup>41</sup>

The IPB process starts with a solid intelligence assessment of the enemy that is grounded in its doctrine.<sup>42</sup> Tactical in orientation and designed to support kinetic operations, the IPB Manual provides a basic explanation of the process:

IPB identifies facts and assumptions about the battlefield environment and threat. This enables staff planning and the development of friendly course of actions (COAs) which drives the decisionmaking and targeting process and facilitates the command and staff's overall execution of the battle.<sup>43</sup>

When stating that we broadly recognize the enemy's COAs and objectives while lacking an ability to push that understanding back to its doctrinal foundations, the Chairman's frustration seems focused on the desynchronized nature of our understanding of the threat. The IPB Manual provides an answer to his concern: if we fail to align the enemy's COAs to its doctrine, it follows that friendly COA development and consequent decisionmaking will likewise be misaligned. While some will argue that there have already been intense rounds of IPB analysis throughout the course of the WOT, this paper

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<sup>41</sup> U.S. Army, Field Manual (FM) 34-130, 1-1. Cited hereafter as U.S. Army FM 34-130.

<sup>42</sup> U.S. Army FM 34-130, 2-1, 2. "The IPB process begins with an evaluation of the threat that includes the following steps in the creation (or updating) of the threat model: Convert threat doctrine or patterns of operation to graphics (doctrinal templates); describe in words the threat's tactics and options; identify High-Value Targets (HVTs); identify threat capabilities."

<sup>43</sup> U.S. Army FM 34-130, 1-5.

will argue to the contrary for the same reason the Chairman said that “the nature of the enemy is different than any we have faced.” Having yet to properly identify the nature of the threat, it can hardly be argued that the current enemy has been effectively analysed. A different form of threat requires a different IPB methodology that accounts for the differentiating characteristics posed. Designed to be flexible, the IPB process can be modified to account for the ideas-based WOT threat: “The doctrinal principles of IPB are sound and can be applied to all situations at all levels. The tactics, techniques and procedures (TTP) of applying IPB may vary according to the mission and enemy, etc.”<sup>44</sup>

### **The Current Approach Circumvents IPB**

An argument can be made that the IPB process is not failing but rather that its key components were supplanted by the Current Approach that simply generates different results. Engaging the IPB process at the event template phase, the Current Approach replaces the doctrinal and situation template phases. Rather than emphasizing the standard IPB methodologies associated with the doctrinal and situational templating of known enemy doctrine, the Current Approach is grounded in “moderate” concepts of Islam starting with the assumption that Islamic-based extremism is aberrant and that Islam has become a “religion hijacked.” The consequence of (uncritically) accepting this assumption is that it brings with it an unstated corollary that because extremists do not represent “true” Islam, Islam itself should be excluded from analytical processes that support threat development. It is the overriding fidelity to this assumption that justifies the Underlying Causes model. While not the product of the intelligence cycle, the analytical inputs of the Current Approach are infused into the process by “cultural

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<sup>44</sup> U.S. Army FM 34-130, 1- 4.

experts” who volunteer their information under the sole condition that it be accepted both uncritically and unconditionally.

The Current Approach replaces the threat analysis portion of the IPB process used to develop enemy COAs that facilitate production of friendly COAs. Understood this way, the inability to come to terms with the threat doctrine is a direct consequence of accepting a Current Approach that excludes IPB elements specifically designed to do so. The strategy arising from the Current Approach unhinges in a foreseeable way. A parallelism emerges between the desynchronized relationship associated with knowing an enemy COA while not understanding its driving doctrine, as noted by the Chairman, and the de-linking of the IPB process from the threat analysis that drives it. Admiral Edmund P. Giambastiani, Vice Chairman of the Joint Chiefs of Staff, recognizes the problem as well:

But, to my mind, we still haven't come up with a good enough strategy or even enough good ideas for competing in the war of ideas in this Islamic civil war in a way which strengthens the hand of the Islamic moderates against their hard-line, extremist co-believers.<sup>45</sup>

**Outsourcing Our Decisionmaking.** The Current Approach represents an outsourcing of information requirements that the IPB process is not structured to answer. Inputs into the decisionmaking process from the Current Approach are the product of borrowed knowledge from individuals and entities<sup>46</sup> that may be either unknown or un beholden to American national security interests. Borrowing from corporate

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<sup>45</sup> Gerry Gilmore, “Anti-Terror War is Struggle of Ideas, Vice Chairman Says,” *American Forces Press Service*, 29 March 2006.

<sup>46</sup> **Author’s Note:** Starting the decisionmaking process with the position that the moderates are correct has the effect of accepting as an assumption a question that is reducible to fact and hence should have been the product of an IPB process designed to answer those questions unconstrained by outside considerations.

decisionmaking models, the outsourcing of an understanding of events used to support decisionmaking brings with it an acceptance of risk commensurate with the centrality of the borrowed knowledge used. Borrowed knowledge is normally used to fill gaps in the knowledge-base that drives the decisionmaking process. Used to fill gaps extraneous to the principal concern, the risk is generally acceptable. But the business-model rule is that an entity can never outsource those information requirements central to its core decisionmaking. When this happens, the knowledge deficit masks unforeseen points of failure of potentially catastrophic effect. In the WOT, the knowledge deficit centers on our lack of understanding of Islam's role in *jihad*. This begs the question: At what point does the outsourcing of an information requirement lead to the outsourcing of the decisions associated with it?

**Underlying Causes Model and Current Approach Relationship.** Bringing the relationship together, Underlying Causes is the model decisionmakers and analysts adopt to subordinate U.S. information requirements to the Current Approach. The Current Approach requires enforcement of the "Islam does not stand for this" standard when characterizing *jihadi* activities. Current Approach advocates are willing to make themselves available to help enforce this standard by providing decisionmakers and analysts with the information they are permitted to know under the sole condition that it be accepted both uncritically and unconditionally. In order to conform to this standard, decisionmakers and analysts simply discount the role of the enemy's stated doctrine, focus on imputed underlying materialist causes and defer to Current Approach advocates for specific cultural information relied on to make decisions.

**Unsound Methodology.** The Current Approach is unsound because it subordinates U.S. national security interests to the outcome of an extraneous issue – the resolution of the “true” nature of Islam. For the Intelligence Community (IC), the Current Approach imposes limits on its mandate to develop a doctrinal understanding of threats to the United States, its citizens and allies. On the one hand, if the moderates are correct that “true” Islam has little to do with terrorism, then the moderate understanding of Islam will not contribute to the threat doctrine and, hence, would not be included in the threat development process. If, on the other hand, intelligence analysts limit their focus to factors that contribute to an understanding of the enemy’s doctrine, then a determination of what is or is not “true” Islam would be neutral to the threat assessment. Stated differently, if “true” Islam does not support terrorism as asserted, its inclusion in the evaluation process will not be necessary. If, however, certain data concerning Islam turns out to influence the enemy’s doctrine, then its “true” status should not serve as a bar to its inclusion.

### **Circumventing the IPB Process**

The IPB Manual anticipates the difficulties associated with inclusion of information in the threat development phase and resolves the problem by providing the criterion for determining what data to use when converting threat doctrine to doctrinal templates.<sup>47</sup> The criterion is that analysis of information must be unconstrained by factors that do not contribute to the definition of the doctrinal threat. Because questions

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<sup>47</sup> U.S. Army FM 34-130, GL-6. “**Doctrinal template** - A model based on postulated threat doctrine. Doctrinal templates illustrate the disposition and activity of threat forces and assets (HVTs) conducting a particular operation **unconstrained** by the effects of the battlefield environment. They represent the application of threat doctrine under ideal conditions.”

relating to the “true” nature of Islam serve to filter data that may be appropriate for use in the threat development process, they constrain and hence should be disfavored.

Suppression of unconstrained analysis is the necessary consequence of subordinating the IPB process to a predetermined outcome that assumes that the “moderate” view is accurate.

The Current Approach constrains every time it distracts analysts from following evidentiary trails that deviate from the desired outcome when following those trails could have led to information that would have otherwise supported unconstrained analysis. Recalling the Vice Chairman’s comment, while clearly recognizing the strategy impasse, he used language that accepts the Current Approach’s starting point that “true” Islam is (doctrinally) “moderate” and that the enemy has taken “extreme” interpretations of Islam to support its doctrinal views. This is the universally accepted, unchallenged assumption.

### **The Professional Standard**

The Current Approach should be rejected as antithetical to professional decisionmaking. In contrast to the Current Approach, the IPB process is aligned with general principles of professional responsibility relating to inquiry into issues whose origins come from outside ones own cultural milieu. By way of comparison, attorneys have a professional responsibility to account for bias when operating in cross-cultural environments. Law Professor Carl Warren explains:

We, as lawyers, are trained to think objectively and analytically. *There is no substitute for the real thing. Relying upon biased assumptions as a shortcut undermines our competency.* We must strive to keep our minds open.<sup>48</sup> (Emphasis added)

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<sup>48</sup> Carl Warren and Julie E. Bennett, “Dealing with the Biases of Others,” University of Minnesota, Minneapolis, 2 June 2007.

Substituting for the “real thing,” undermines competent analysis. The rule to keep an open mind reflects the legal requirement to assess unfamiliar situations in a manner that is unconstrained by our biases and assumptions. Warren’s use of the term “competency” was not arbitrary. As law Professor Julie Bennett explains, the legal requirement to “think objectively and analytically” is associated with the first rule of the *Model Rules of Professional Conduct* that hold that professionals, in this case attorneys, have a duty to be competent<sup>49</sup> that includes the requirement to inform oneself of the subject matter<sup>50</sup> by taking the necessary time to prepare oneself to a standard of preparedness necessary to provide successful representation.<sup>51</sup> This rule is easily exportable as a general rule of competency to other professions. The requirement that deliberate decisionmaking begin with an IPB methodology that starts with an unconstrained assessment of the enemy’s doctrine meets the professional standard. The Current Approach does not.

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<sup>49</sup> Rule 1.1 Competence, *ABA MODEL RULES OF PROFESSIONAL CONDUCT* (2002), Amended February 5th, 2002, American Bar Association House of Delegates, Philadelphia, Pennsylvania, per Report No. 401, Rule 1.1, URL: <[http://www.lexis.com/research/retrieve/frames?\\_m=ffaba7e13dc1219fdf879cff02a072ea&\\_fmtstr=CUSTOM&docnum=1&\\_startdoc=1&wchp=dGLbVzW-zSkAb&\\_md5=926be6625f82e0319c6aad2190304e5f](http://www.lexis.com/research/retrieve/frames?_m=ffaba7e13dc1219fdf879cff02a072ea&_fmtstr=CUSTOM&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAb&_md5=926be6625f82e0319c6aad2190304e5f)>, accessed 4 June 2007. (Hereafter “Model Rules”). Competence.

<sup>50</sup> Model Rules. Rule 1.1(2) Legal Knowledge and Skill, “A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. . . . A lawyer can provide adequate representation in a wholly novel field through necessary study.” (Emphasis added)

<sup>51</sup> Model Rules. Rule 1.1(5). Thoroughness and Preparation. “Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation.” (Emphasis added)

## THE RELEVANCE OF ISLAMIC LAW TO THE WOT

If the doctrines driving the enemy in the WOT are unconstrained by competing factors, decisionmakers will quickly realize what they have (collectively) ignored to this country's great detriment. This is the point the Chairman was making when appealing to a national security audience's collective understanding of the consequences of not reading a threat's published doctrine that is more readily available today than *Mein Kampf* was then. The United States is currently fighting a war on terror in a part of the world that defines itself in Islamic terms against an enemy who conceptualizes and communicates his objectives in the language of Islam that we know we do not understand and yet is not lost on the greater Muslim population. Under the Current Approach, we are fighting to the theory of terrorism when the fact of *jihad* is staring us in the face.

### **The Way Forward**

Chapter Two will introduce an IPB methodology tailored to idea-based threats in the context of a discussion on the role of doctrine on organizations. It will also undertake a review of literature that identifies the Islamic authorities that the thesis will rely on to explain Islamic law. When substantive Islamic law validates *jihadi* claims, it means that "extremists" are advocating the same Islamic law recognized as the basis of all law in the national constitutions of many Muslim governments as will be discussed in Chapter Three. Arguing that their claims actually belong to the body of Islamic law in precisely the way they claim, Chapter Four will demonstrate that when *jihadi* claims are validated, they are often more than simply technically accurate but also tend to be well grounded in the larger body of Islamic law. Because the conclusion of the thesis depends on findings

of substantive Islamic law, Chapter Five will sacrifice some flow for sufficiency to first state and then substantiate Islamic legal claims. While reading foreign law can be slow and tedious, it is the specific objective of this paper to examine Islamic law to demonstrate the legal sufficiency of *jihadi* claims.

**While this paper is written to demonstrate that the *jihadis* are correct on substantive issues of Islamic jurisprudence relating to jihad, the threshold event triggering Islamic laws inclusion in the IPB process is that “extremists” specifically state that it serves as the basis of their threat doctrine. This is true as matter of our own doctrine on threat identification. It is also true regardless of whether the “extremists” are correct in their understanding of Islam.**

## CHAPTER 2

### METHODOLOGY, DOCTRINE & REVIEW OF LITERATURE

The United States is engaged in a violent global struggle, which we expect to last for decades, in which we sense that popular attitudes and perceptions matter significantly, even fundamentally, to the desired outcome -- *even if we cannot fully explain why or how*. However, this challenge applies not only to conflict but also to cooperation and peaceful competition. (Emphasis added)

*STRATEGIC COMMUNICATION JOINT INTEGRATING CONCEPT (JIC) PROPOSAL,*  
Joint Futures Lab, U.S. Joint Forces Command, 2 MAY 2007

Because of the complex nature of a paper attempting to explain Islamic law as it relates to *jihad* while at the same time applying a process able to generate indicators of possible threat strategies or future action, Chapter 2 will discuss the methodology used to capture the threat doctrine as well as a review of the associated literature.

*A Note on Scope.* Discussions regarding doctrinal positions of Islamic law will be limited to those that reflect *Sunni* Islamic jurisprudence and associated supporting doctrines. Because this paper seeks to identify the depth of Islamic law on given points of law relating to *jihad*, where appropriate, it will cite to multiple authorities and Islamic legal scholars in an effort to establish that the point in question reasonably reflects the “seamless web” of Islamic law on that given point of law. Additionally, because much of the discussion is concerned with actual statements of Islamic law, this paper will borrow

from legal writing the practice of amplifying the legal discussion by embedding additional statements of law into the citations where appropriate.

*A Note on Shia Islamic law.* While *Shia* Islamic law draws most of its principles from the *Sunni*, there are enough differences that a finding in one does not automatically qualify as an explanation of the other.<sup>52</sup> The focus of this paper is *Sunni* Islamic law. While this paper will make a few references to statements made by prominent *Shia* leaders, those statements will be shown to reflect general notions of Islamic law and the assessment will narrow on the *Sunni* position from the general principle as stated by *Shias*.

The discussion on Islamic law could be written without reference to either Chairman Pace's comments or an IPB-emulating methodology. Such a discussion would then only be an interesting academic read. Chairman Pace's comments demonstrate the imperative of getting a handle on the enemy's doctrine in ways that an IPB methodology can convert to enemy and friendly COAs in support of a decisionmaking process that leads to victory in the WOT. Because the enemy openly states that Islamic law is his doctrine's center of gravity, its usefulness can only be realized by exposing the immediacy of the enemy's claim. A methodology that holds true to the underlying theory of IPB is used to demonstrate that the IC already has a known methodology that is

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<sup>52</sup> Hourani, 183. From Hourani's *A History of the Arab Peoples* comes the following general statement of comparative Islamic law between Sunni and Shia: "For the most part the principles of Shia jurisprudence were taken from that of the Sunnis, but there were some significant differences which arose from the specific Shia view of religion and the world. Only those hadith of the Prophet which had been transmitted by a member of his family were accepted; *hadiths* of what the *imams* had said or done were regarded as having the same status as those of the Prophet, although they could not abrogate the Qur'an or a prophetic *hadith*. The consensus of the community did not have the same importance as in Sunnism; if there was an infallible *imam*, the only *ijma* which was valid was that of the community gathered around the *imam*. 'Alq, reason used in a responsible way by those competent to use it, had an important position as a source of law."

recognized within the military community for its ability to resolve the precise issue in question – the proper identification of an enemy’s stated doctrine. The Chairman’s comments are used because they demonstrate that we know the Current Approach is not working and that the problem rests with a failure to properly identify the threat. This approach will show that what appears to be a dry theoretical discussion of Islamic law actually ends up identifying the enemy’s center of gravity in the WOT and hence, should have always been an element of the Commander’s Critical Information Requirement (CCIR). The “so what” of this paper, therefore, is an attempt to answer the Chairman’s concerns by reference to a known military process.

#### **METHODOLOGY: THE PURE AND APPLIED -- TEMPLATING OF AN IDEA-BASED THREAT**

In standard application, templating the doctrinal threat is done to capture threat elements in ways that reflect how the enemy would execute its vision if unconstrained by environmental considerations. In effect, the doctrinal template reflects the enemy’s “pure” vision unconstrained by competing views, interpretations or assertions of correctness. To accurately capture the enemy’s doctrine, therefore, the doctrinal template should always reflect what the enemy says its doctrine says and should always be assessed as true and valid. Considerations that cannot be shown to meet this threshold should be excluded. It can be no other way. To fully appreciate the threat posed by *Mein Kampf*, one had to start with the assumption that it was true and valid because it was true and valid for those who believed it, governed in furtherance of it, and killed because of it. Hence, constraining the doctrinal template is methodologically unsound because it fosters

misrepresentation and dilutes our concept of the threat model used to generate enemy and friendly COAs. Failure to recognize that Nazis believed the doctrine that defined them supported the assumption (by many) that Nazis would not act in furtherance of their stated doctrine, thus contributing to the decision (by many) not to assess it at all. Failing to appreciate that active members of a group will tend to conform to its published doctrine when able to do so misrepresents that doctrine's effects when conducting threat analysis. While the effects of dilution and misrepresentation manifest themselves in the IPB process through development of defective enemy COAs and associated friendly COAs, they will be felt at a later time and place when the pure doctrine asserts itself to the bewilderment and detriment of friendly forces whose doctrinal template failed to account for the pure vision of the doctrine. This is why, with the requirement to be unconstrained, the doctrinal template reflects the professional standard in decisionmaking.

For the WOT, this means that the relevant enemy doctrine used to drive the IPB and subsequent decisionmaking starts with the stated doctrine of Islamic "extremists"<sup>53</sup> irrespective of our assumptions of correctness. Specifically, "extremist" doctrine calls for a return to Islamic law, Islamic governance, a return of the Caliphate and the willingness to wage *jihad* (which we call terrorism) in furtherance thereof. If these views accurately reflect the core principles of the enemy in the WOT and its followers believe it, act in furtherance of it, and are willing to kill because of it, then this is the idea-based doctrine that represents a threat to the United States, its citizens and allies. At the

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<sup>53</sup> **Author's Note.** Other descriptors include radicals, Salafis, *Jihadis*, al-Qaeda, and the Islamic Brotherhood, etc. This paper will use the term "extremist" in quotations in recognition that it reflects a common designation for *jihadists* that cannot be sustained if based on assumptions that *jihadis* have taken license with Islamic law or taken "extreme" interpretations of it.

doctrinal template level, this is the threat that “extremists” in the WOT declare -- and nothing else. A doctrinal template that fails to capture this threat doctrine will fail to account for the enemy’s pure vision. It is the pure vision that drives the entire IPB and subsequent decisionmaking process. Failure to account for the threats’ pure vision is the single greatest point of failure in the WOT. Having assumed it to be irrelevant, the Underlying Causes model renders the enemy’s pure vision unnecessary.

**A final note on “Unconstrained”**

Assuming the Chairman is correct that we are fighting a “new” enemy, if the current strategy defines the threat with pre-existing terms wrapped around pre-existing threat models, it necessarily means that the old strategy is not aligned with the new enemy. Terms associated with unconstrained threat development should be the ones the enemy uses (for example, using “Division Artillery Group,” [DAG], when referring to Soviet division artillery instead of the American “Division Artillery,” [DivArty]). Downstream terms used later in the decisionmaking process that do not derive their meaning from either the threat doctrine or its environment are suspect. The second greatest threat to the unconstrained development of the doctrinal template is institutional pressure to make the threat assessment line up with pre-existing solution sets designed to capture earlier threat models; i.e.; using “blue” language to explain “red” events. While descriptively similar, there were real differences between American DivArty and Soviet DAGs that had a fundamental affect on the doctrinal template. It was not possible to effectively engage DAGs if the DivArty template was used to engage them. At the doctrinal level, understanding *them* has nothing to do with *us*.

### **Threat Labels and Descriptors the Exclusive Domain of the IPB Process.**

Rounding out the discussion on the use of language that began in the section “A Final Note on ‘Unconstrained’” that was amplified in the discussion on “key terrain,” the proper alignment of terminology with doctrine is critical. The IPB methodology requires a disciplined dispassionate application of the consequences of the validated threat profile that emerges - whatever that profile may be. When not grounded in threat development process, descriptive adjectives become unsupported editorial comments that either blur or mischaracterize the actual nature of the threat as defined by the IPB process. Special attention should be given to value-laden adjectives such as "extremist," "radical," and "ultra-conservative," not to mention national-security-centric terms like "Islamist," "political Islam" or “violent extremist.” Arguably, if the threat doctrine is not cancelled out in the sit-temp phase by actual Islamic doctrine, it cannot reasonably be characterized as "radical," "extremist," or even "ultra-conservative." Adjectives that do not draw their meaning from the IPB process, therefore, should be disfavored.

The reverse also applies. Institutional re-definition of terms should also be disfavored, especially when re-definitions include descriptors that, on the one hand do not draw their meaning from the IPB process and, on the other, can be associated with institutional definitions, doctrinal understandings, or requirements that draw their meaning from within a pre-existing national security framework. Simply stated, threat terms and adjectives should be validated as a part of the threat development process. Descriptors that do not draw their meaning from the threat environment will lead the national security community to make distinctions that may not exist inside the actual threat domain. This is not just an interesting academic debate.

**The Language of the WOT.** Examples of terms not grounded in the threat process as well as institutional redefinition of terms can be found in the *National Military Strategic Plan for the War on Terrorism* (“NMSP-WOT”). For adjectives that do not draw their meaning from the IPB process, the NMSP-WOT defines the terms “extremist” and “moderate” as follows:

The terms “*extremist*” and “*moderate*” are used in this document as follows: “*Extremists*” are those who (1) oppose – in principle and practice – the right of people to choose how to live and how to organize their societies and (2) support the murder of ordinary people to advance extremist ideological purposes. “*Moderates*” or “*mainstream*,” refer to those individuals who do not support the extremists. The term “*moderate*” does not necessarily mean unobservant, secular or Westernizing. It applies to people who may differ from each other and from the average American in any number of ways except that they oppose the killing of ordinary people. The term “*terrorist*” refers to those who conduct terrorist acts.<sup>54</sup>

These definitions are remarkable for how self-referencing they are. Reflecting Western values as expressed by the institutional language of the national security community, the definitions make no attempt to ground their meaning in the threat dictionary or to otherwise orient the terms to the threat environment they were developed to describe. As defined by the NMSP-WOT, the terms “extreme” and “moderate” are stripped of their ability to make meaningful distinctions concerning either the actual enemy or his threat doctrine. The NMSP-WOT also redefines terms to support institutional requirements. For example:

***Salafism.*** A movement comprised of *Sunni* extremists who believe they are the only correct interpreters of the Qur’an and consider moderate or mainstream Muslims to be infidels. *Salafists* seek to convert all Muslims and to insure their own fundamentalist version of Islam will dominate the world. “*Salafi*” comes from the word “*Salaf*” which means ancestors in Arabic. This worldview holds that the Righteous Ancestors were the Prophet, his companions, and the Four Caliphs who succeeded him: Abu-Bakr, Umar,

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<sup>54</sup> Joint Chiefs of Staff, *National Military Strategic Plan for the War on Terrorism* (Washington, DC: GPO, February 2006). Cited hereafter as NMSP-WOT, 11.

Uthman, and Ali (the nephew of the Prophet). This movement has influenced the rise of Wahhabism.<sup>55</sup>

A *Salafi* is one who believes that the most perfect form of Islam is that which was practiced by Muhammad, his Companions, and the Four Rightly Guided Caliphs. Because all Muslims are under some requirement to emulate the life of Muhammad, assuming a *Salafi* is competent in his belief, there is something overwhelmingly genuine about the claims he makes. The NMSP-WOT repositions the term “*Salafism*” to provide extensions to policy considerations that drive the new term and give it *new* meaning. The redefinition succeeds at creating a sense of doubt about the authenticity of Salafist claims that then become the object of exploitation campaigns. But the term was redefined to support operational concepts that are, themselves, not threat facing. The sense of vulnerability comes from the operational redefinition and not from any actual vulnerability of *Salafism* as Islam defines the term. Redefining existing terms that have already been defined within their own milieu – especially those doctrinally defined – can have the same effect as moving a target to accommodate the targeting system.

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<sup>55</sup> NMSP-WOT, 36.

**Author's Note on Doctrine.** Through the Cold War, national security analysts and decisionmakers evaluated the Soviet threat based on its known doctrine. Soviet military commanders trained their forces using Soviet warfighting doctrine and their competencies and capabilities were evaluated based on their conformance to it. When commanders deviated, they were evaluated to determine if they broke from it because they were inadequate to the task or whether instead they exceeded its parameters through sheer command of the operational art. In all cases, the evaluation was templated against the Soviet doctrine that defined their rules of engagement. If, rather than evaluating Soviet military commanders based on their doctrine, national security analysts and decisionmakers used U.S. warfighting standards, those analysts and decisionmakers would have concluded that Soviet warfighting was incoherent and therefore difficult to explain rationally. A Soviet meeting engagement was not the same as a U.S. movement to contact. This was true even as they appeared the same in battle because they reflected two different concepts of the battle based on competing theories of war. Islam is not Christianity, Judaism, or Hinduism. Islamic law is not U.S. Constitutional, English common or European civil law. Hence, to measure against those standards, or to allow Current Approach advocates to explain along those lines, is to find incoherence and an inability to explain – or predict – the rational decisions of a rational threat. This often leads one to erroneously conclude that we are facing an irrational threat making irrational decisions. Before being able to generate the ability to reliably plan against terrorism perpetuated in the name of Islam, one must first know Islamic doctrine and then Islamic doctrine as it relates to Islamic concepts of war. To be able to do this, one must first read their doctrine.

### **The Situation Template Becomes the Ideological Scen**

The IPB Manual defines situation template (“sit-temp”) as follows:

Depictions of assumed threat dispositions, based on threat doctrine and the effects of the battlefield if the threat should adopt a particular COA. In effect, they are the doctrinal templates depicting a particular operation modified to account for the effects of the battlefield environment and the threat’s current situation (training and experience levels, logistic status, losses, dispositions).<sup>56</sup>

It is in the sit-temp phase of the IPB process that the IPB Manual applies constraints to threat doctrine by subjecting the “pure” vision to the environmental realities. While the doctrinal template focuses on the pure, the sit-temp focuses on the applied. Because of its tactical orientation, the sit-temp as described in the IPB Manual

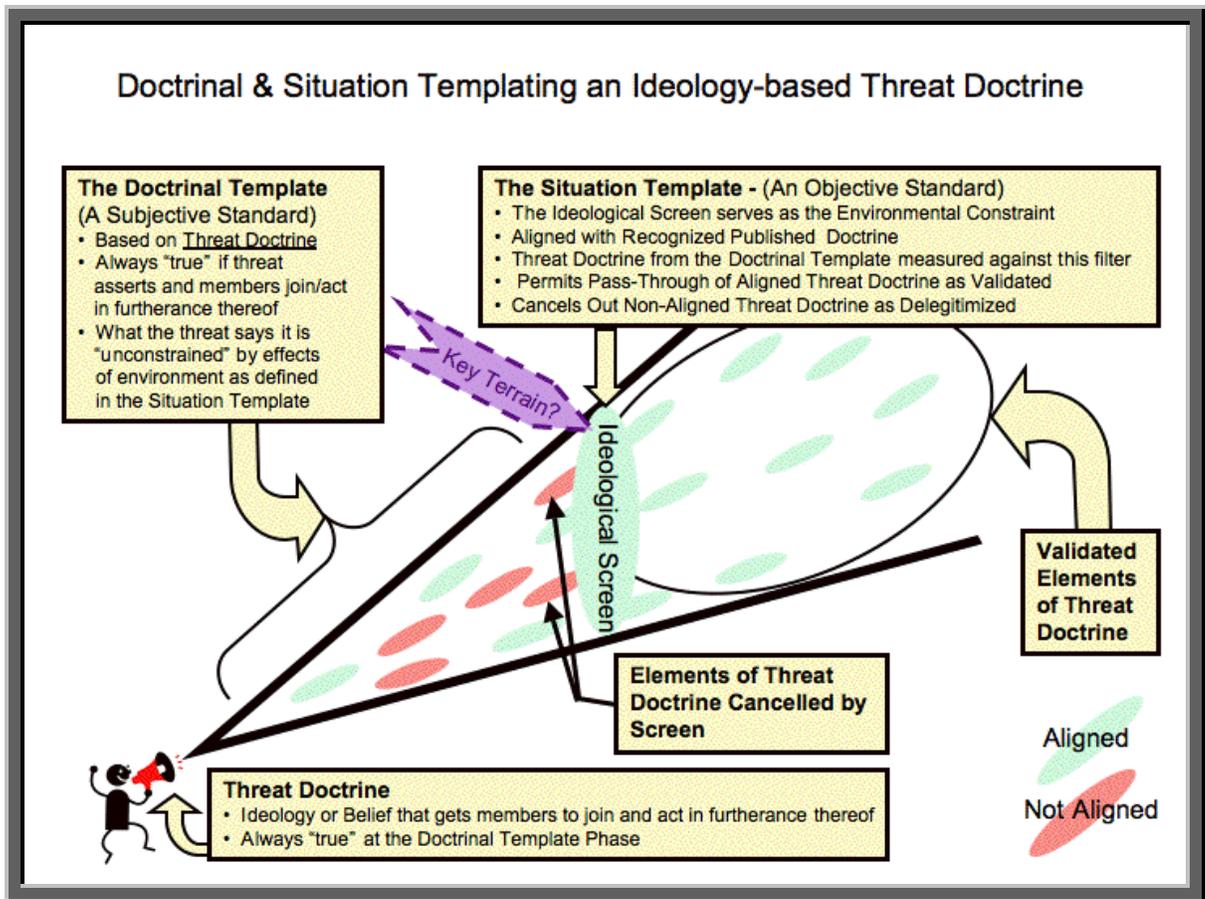
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<sup>56</sup> U.S. Army FM 34-130, GL-10.

needs to be transformed to accommodate environmental constraints associated with idea-based threats – in this case Islamic-based terrorism. Generalizing from the IPB Manual, the following redefinition of sit-temp is proposed:

**Situation Template.** Application of environmental constraints particular to a situation or event that limits a doctrine’s range of execution.

Establishing a workable definition of sit-temp appropriate for the WOT gives rise to a second consideration: how does one define a relevant environment for an idea-based threat? It makes no sense to think of an idea-based threat in physical terms. Rather, the relevant environment should be defined in ways that account for the enemy’s doctrinal template. The threat doctrine in the WOT reflects a firm belief that Islamic law supports “extremist” positions while Current Approach advocates maintain that those same views violate the tenets of “true” Islam. If doctrinal authority is found that can reasonably be shown to reflect ground truth on doctrinal positions, then it can serve as a measuring criterion because, if Current Approach advocates are correct, it will constrain “extremist” claims of authority whenever those claims diverge from the doctrinal norm. For this reason, Islamic doctrine with demonstrated claims to broadly accepted authority will serve as the environmental constraint to “extremist” claims because it is the only source capable of offsetting “extremist” threat doctrine. Hence, the sit-temp will be called the “ideological screen” that reflects accepted Islamic law and doctrine on *jihad*.



Graphic 1

**KEY TERRAIN** is any locality or area the seizure, retention, or control of which affords a marked advantage to either combatant.

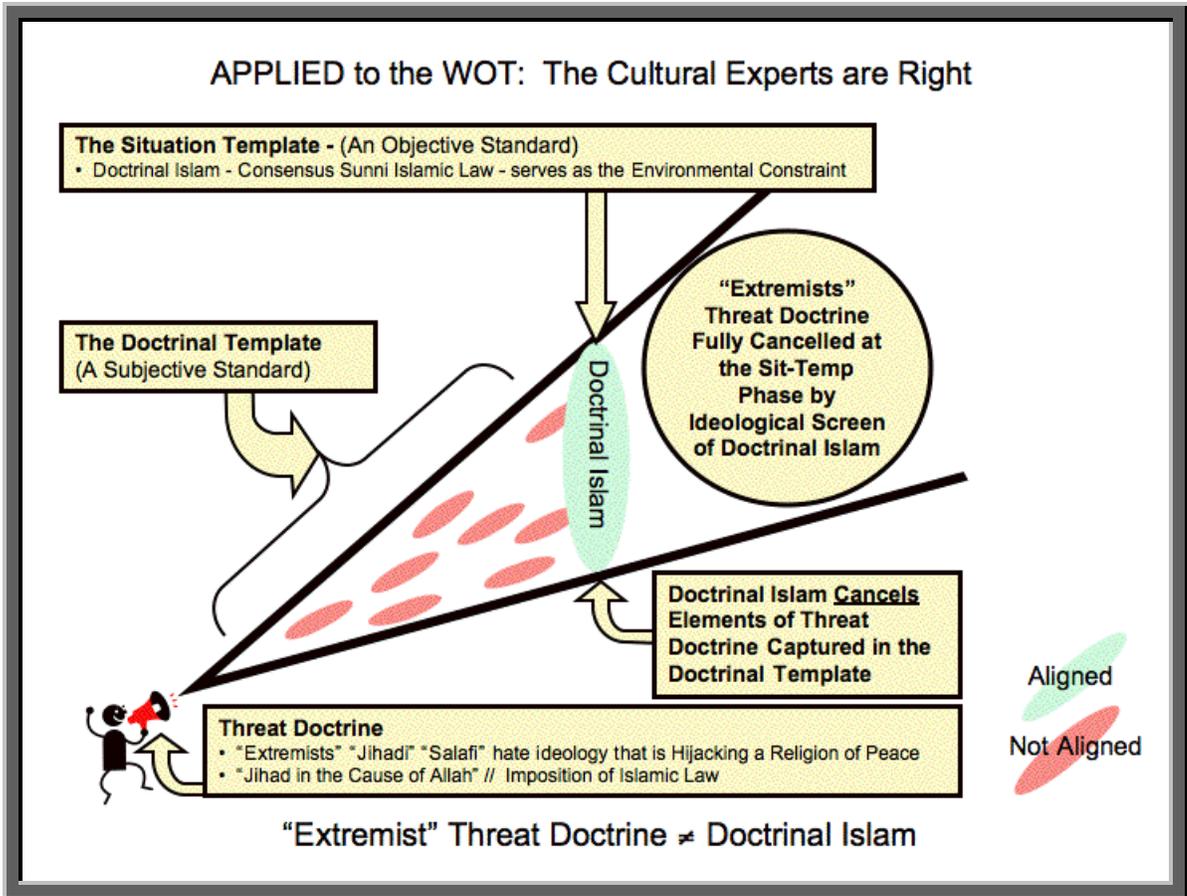
U.S. Army, Field Manual (FM) 34-130, *Intelligence Preparation of the Battlefield*  
(Washington, DC: Department of the Army, 08 July 1994), 2-17.

*An observation:* In idea-based threat models, when the ideological screen either validates or invalidates doctrinal claims, it also represents *key terrain* later in the IPB process. This is because, in an ideological struggle, controlling the terms of debate goes a long way towards controlling the debate itself. Hence both sides will seek to maximally control the language of the debate while at the same time denying its adversary access to

that language (key terrain) or any other language that could constitute competing key terrain. It is through the language we use to define the WOT that we understand it. Language that does not align with the enemy's doctrine will cause decisionmaking to miscalculate. This observation on key terrain reinforces the need to use vocabulary that reflects either the enemy's doctrine or environment. Lexicons that reinforce assumptions that Islam has nothing to do with the WOT will cascade into Underlying Cause models that assume the enemy's threat language to be irrelevant. The effect is to sustain an ongoing lack of awareness of the presence of key terrain in the WOT.

For this reason, the standard used to qualify sources as doctrinal will be that they be published writings from widely-regarded Islamic authorities recognized in the Islamic community as authoritative on issues of Islamic law and doctrine. A subsidiary aspect of this standard is that the published writings will be those that were written by Islamic authorities for the benefit of a Muslim readership. Further, if authoritative sources identify established rules or doctrines in the interpretation of Islamic law, then those "rules of interpretation" will likewise be treated as mandatory elements that must be applied in accordance with the stated authority. Hence, when arguments are offered by "extremists" that are properly grounded in a rule, dissenting Current Approach views that do not account for that rule's effect will be disfavored. The reasoning is simple: if the proposed ideological screen is accurately aligned with the Islamic law it seeks to reflect, then the presumption will be that it is valid unless superseding Islamic authority demonstrates it to be otherwise. Allowing Current Approach advocates to counterclaim without reference to a competing rule would allow them to impermissibly challenge an authoritative position without authority.

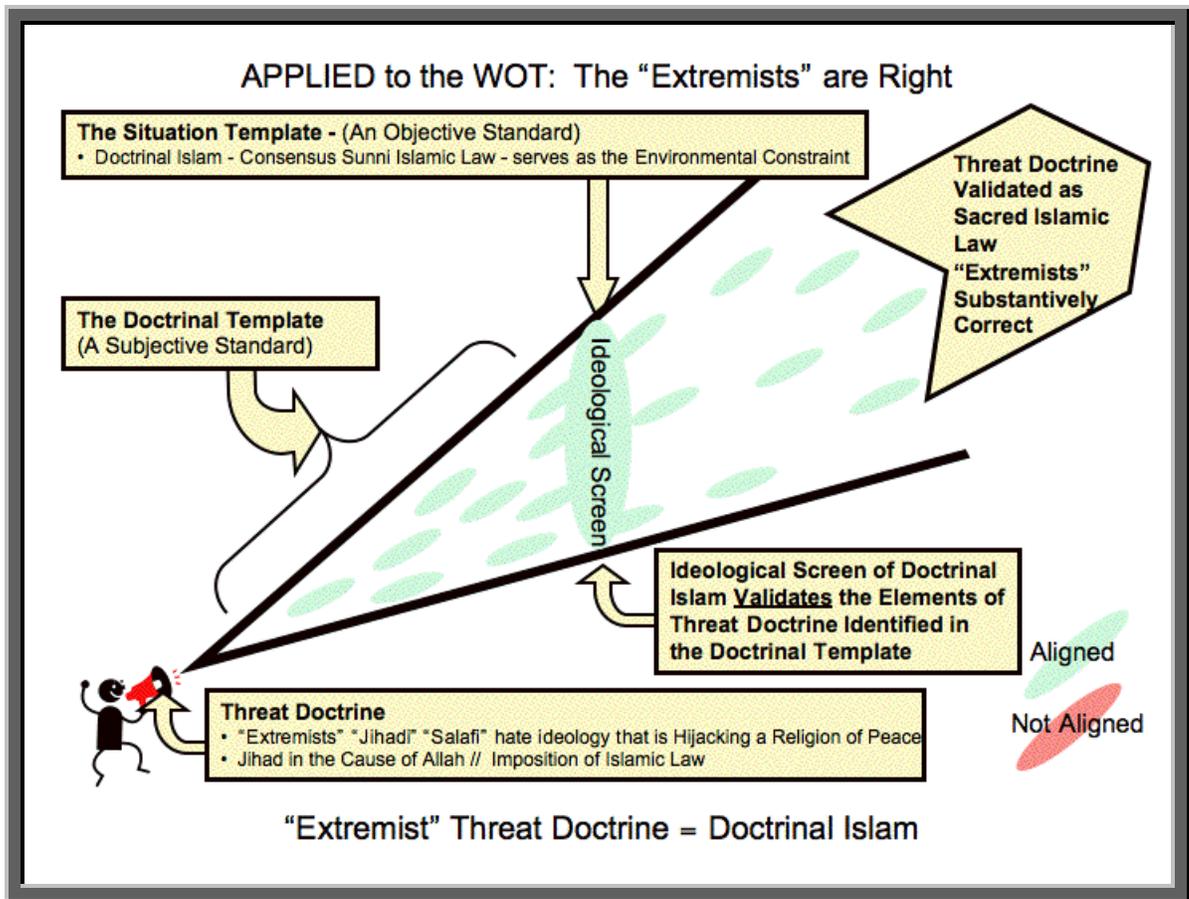
With Islamic doctrine as the environmental constraint, the playing field is not level. For the “extremist” argument to succeed, it simply has to assert a claim that has some doctrinal basis that survives the ideological screen because any surviving portion of the claim still leaves the “extremist” with a validated argument in support of the *jihadis*’ agenda. Hence, exclusivity is not an essential requirement for the “extremists.” The Current Approach, however, must be able to demonstrate exclusive correctness to the exclusion of the “extremist” position because the success of their argument can only be measured by the extent to which it constrains the “extremist” doctrine. Hence, all ties go to the “extremists.” It is as simple as this: if those advocating the Current Approach are correct, an ideological screen that positions actual Islamic doctrine as the relevant information environment will filter out the erroneous representations of the “extremists” and, in so doing, de-legitimize their claims to be acting in the name of Islam as authoritatively defined. If Current Approach claims are valid, the WOT could theoretically be waged with little more than an education campaign that isolates the “extremists” from the doctrinally sound “moderate” mainstream.



Graphic 2

**On the Insistence that there are “Thousands of Different Interpretations of Islamic Law”**

**Author Comment.** Current Approach advocates often shut down issues based on Islamic law by claiming that there are “thousands of different interpretations to Islamic law” (and hence there is no point to looking to Islamic law for solutions). This comment often arises in the same discussion where supporting claims are made -- often with respect to the same fact pattern -- that “Islam does not stand for this.” These arguments are inconsistent and mutually exclusive. To assert that it is pointless to argue based on Islamic law because there are “thousands of different interpretations” is to concede that the “extremist” interpretation is valid in at least one of those interpretations thus affirming the “extremist” position. Hence, the “thousands of different interpretations” argument is not a pointless pursuit for the “extremists” because any interpretation that survives the ideological screen of the IPB process validates their threat doctrine. For Current Approach arguments to succeed at neutralizing “extremist” positions, they must establish that “Islam does not stand for this” in every situation ranging through all interpretations. Ironically, close inspection reveals that the argument used by Current Approach advocates to shut-down non-Muslim inquiries into the nature of “extremists” claims has the ultimate effect of supporting the “extremist” position.



Graphic 3

### Enforcing the Discipline

There is no sense to using an IPB methodology if there is no commitment to abiding by the conclusions it generates in furtherance of the deliberate decisionmaking process it drives. Threat doctrine that survives the ideological screen should be assessed as validated and scored as an "extremist" strength. When such a conclusion is reached, it is not intended to be an assessment of what constitutes "true" Islam but rather reflects the application of a finding used to determine the composition and strength of an identified threat to the United States, its citizens and allies.

## English Language Sources

This paper takes the position that Islamic law is a real body of law in the same sense as U.S. Constitutional, English common or European civil law and hence will be analyzed in that manner when applied to the ideological screen. Individuals and sources broadly recognized as authorities or as authoritative sources inside the Islamic legal world will be presumed to be correct on the issues of law authoritatively attributed to them. In this regard, it should be pointed out that to be an Islamic jurist one must be both Muslim<sup>57</sup> and have an in-depth knowledge of Arabic.<sup>58</sup> In fact, there is consensus among Islamic authorities to the effect that non-Muslims cannot hold positions of authority over Muslims.<sup>59</sup> As the author is neither Muslim nor Arabic speaking, citations to the Qur'an, hadith and related sacred texts will be for the purpose of reporting what is stated without

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<sup>57</sup> Ahmad ibn Naqib al-Misri, 'Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994). Cited hereafter as al-Misri. Book O "Justice," at o24.0 "Witnessing and Testifying." o24.2 Legal testimony is only acceptable from a witness who: (a) is free; (b) is fully responsible (*mukalaf*, def: c8.1)(O: as testimony is not accepted from a child or insane person, even when the child's testimony regards injuries among children that occurred at play; (c) is able to speak; (d) is mentally awake; (e) is religious (O: meaning upright (o24.4)(A: and Muslim), for Allah Most High says, "*Let those of rectitude among you testify*" (Qur'an 65:2), and unbelief is the vilest form of corruption, as goes without saying.

<sup>58</sup> From al-Misri, Book O "Justice," o22.0 "The Judge and the Court," at o22.1(d(III): He (and Islamic Judge [*qadi*]) must also have knowledge of the Arabic language, its lexicon, grammar, word morphology, and rhetoric. He must likewise know the position of the scholars of the Sacred Law regarding their consensus and differences, and not contradict their consensus (which is unlawful (dis: b7.2) with his own reasoning.

<sup>59</sup> From al-Misri, Book O "Justice," o25.0 "The Caliphate," "The Qualifications of a Caliph," at 025.3: (Nawawi:) Among the qualifications of the caliph are that he be: Muslim (H: so that he may see to the best interests of Islam and the Muslims (K: it being invalid to appoint a non-Muslim (*kafir*) to authority, even to rule non-Muslims.) (S: Qadi 'Iyad states that there is scholarly consensus (def: b7) that it is not legally valid to invest a non-Muslim as caliph, and that if a caliph becomes a non-Muslim (dis: o8.7) he is no longer caliph, as also when he does not maintain the prescribed prayers.

benefit of personal interpretation.<sup>60</sup> Having said that, this thesis will rely on authoritative writings that reasonably claim to reflect doctrinally settled issues of Islamic law.

Because it is not the intent of this paper to delve into closely argued positions of law, but rather to provide a broad overview of Islamic legal principles on relevant issues, English language translations of authorities and authoritative sources will suffice. At the level of review for which this paper is written, there is no genuine reason to unilaterally bar professionally or officially sanctioned English language translations as a source for review. Care was taken in the selection of texts and translations, seeking out officially approved translations where available and relying on those translations with broad acceptance inside the English speaking Muslim community when not. Hence, as a minimum threshold, the English language texts relied on by this paper can be reasonably assumed to represent the same texts non-Arabic speaking Muslims use in the United States in furtherance of their Islamic faith. It is with these qualifications that the author will proceed in the hope of not running afoul of the Islamic legal warning for the unlearned to hold their tongue:

**Holding One’s Tongue.** The Sheikh al-Akbar (A: Muhyiddin ibn al-Arabi), Allah Most High sanctify his inmost being, writes in his letter about the spiritual station of annihilation in Gnostic vision: “When a book falls into a person’s hands concerning a subject he knows nothing about [*knows* meaning through having studied it with sheikhs who are masters of it] and has not learned by engaging in it at first hand, he should do absolutely nothing with the book, but rather return it to those whom it concerns. He should not believe, disbelieve, or discuss it at all.”<sup>61</sup>

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<sup>60</sup> From al-Misri, Book R “Holding One’s Tongue,” r14.0 “Explaining the Koran By Personal Opinions,” at r14.2: As for would-be exegetes, who do not know the dimensions of Arabic, the figurative, literal, and the types of metaphor, it is not permissible for them to explain it beyond what they have heard, by way of *reporting* and not actual interpretation.

<sup>61</sup> al-Misri, Book R “Holding One’s Tongue,” r20.3.

## LITERATURE REVIEW

*Thou wilt not find any people who believe in Allah and the Last Day, loving those who resist Allah and His Messenger, even though they were their fathers or their sons, or their brother, or their kindred. For such He has written Faith in their hearts, and strengthened them with a spirit from Himself. And He will admit them to Gardens beneath which rivers flow, to dwell therein forever. Allah will be well pleased with Him. They are the **Party**<sup>5367</sup> of Allah that will achieve Felicity.*

(Qur'an 58:22)

5367. [Qur'an Commentator Yusuf Ali] This is the antithesis to the Party of the Evil One, mentioned in verse 19 above. The Party of Evil will perish, but while it has its run in the scheme of the present world, the Party of Truth and Reality may be figuratively called the Party of Allah, even though all Creation in Allah's in another sense.

**NOTE:** Party of Allah = Hizballah

### On Source Selection – the Need for Authority

Narrated Um Kulthum bint Uqba: That she heard Allah's Apostle saying, *“He who makes peace between the people by inventing good information or saying good things, is not a liar.”*

Bukhari vol 3:857

**Going Straight to the Source.** This paper relies on Islamic source materials written by Muslims for Muslims at the instructional or professional level. Disfavored are materials written for the benefit of non-Muslim audiences, as they may reflect Edward Said's preference for the “exteriority”<sup>62</sup> of Islam's cultural position that is unconcerned by “what lays hidden”<sup>63</sup> when Muslims dispassionately communicate with non-Muslims.<sup>64</sup> This reflects a decision to unconstrain analysis of the threat doctrine by

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<sup>62</sup> Said, 20.

<sup>63</sup> Said, 20.

<sup>64</sup> Said, 27.

detaching it from intervening methodologies that serve to filter out essential underlying facts. As with the example earlier of non-Muslims forces in Muslim lands, often all that is needed to bring underlying facts forward is an accurate citation to existing doctrinal authority that bears those facts out. When this happens, understanding becomes unconstrained -- and the Current Approach is countered -- the moment light is shined on the authority that until then lay hidden.

Because the paper seeks to reflect the broader consensus view, Islamic authorities and authoritative sources relied on will be those demonstrating broad acceptance within the four orthodox schools of *Sunni* Islamic law - the Hanafi, Maliki, Shafi'i, and Hanbali -- as reflected by the broad acceptance of those authorities in the historical writings on *jihad*. For this reason, while reference to Hanbali authorities may be used to round out representation of the four doctrinal schools, this paper will not rely on Hanbali law to establish the doctrinal authority of any point of law. The decision is purposeful and based on three reasons. First, a review of "extremist" literature from *Wahhabi* groups like al-Qaeda reveals that they rely on the writings of the authorities from all the schools, including those used in this thesis. Extremists rely on these authorities not only because they are recognized among the broader Islamic community but also because, by using them, they can genuinely demonstrate that *jihad* -- as they define it -- actually is a requirement of Islam for all Muslims.

Second, when Current Approach advocates are pushed to the point where they are forced to acknowledge an Islamic nexus to the WOT; they tend to strictly construe those motivations as being *Wahhabi*. For example:

- El Fadl states that “fanatic groups derive their ideological premises from the intolerant Puritanism of the *Wahhabi* and *Salafi* creeds,”<sup>65</sup>
- Esposito says that “They contribute to a worldview that is anti-reformist at best or one that promotes a militant exclusivist Islam and vision of the world. The spread of *Wahhabi* or *Salafi* Islam is a reflection of this problem.”<sup>66</sup>
- Stephen Schwartz, a convert to Islam, in the introduction to his book *The Two Faces of Islam: Saudi Fundamentalism and its Role in Terrorism* said: “Despite the proliferation of terrorist groups with diverse sounding names and backers, the real source of our problem is the perversion of Islamic teachings by the fascistic *Wahhabi* cult that resides at the heart of the Saudi establishment, our putative friends in the region.”<sup>67</sup>

**Why No Hanbali Law?** Third, for Current Approach advocates, the fallback position has been to focus all blame for the excesses of Islamic-based terrorism solely at the feet of Wahhabism and, by extension, Saudi Arabia. Because Saudi Arabia governs along Hanbali legal lines<sup>68</sup> and recognizes Muhammad ibn ‘Abd al-Wahhab as a defining Hanbali legal authority,<sup>69</sup> there is a genuine reason to equate Wahhabism with Hanbali law.<sup>70</sup> Yet, when assessing the harsh attacks on Hanbali law, it should be remembered that its status as one of the four *bona fide* doctrinal schools of Sacred Islamic law remains

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<sup>65</sup> El Fadl, 8.

<sup>66</sup> John Esposito in El Fadl, 74.

<sup>67</sup> Stephen Schwartz, *The Two Faces of Islam: Saudi Fundamentalism and its Role in Terrorism* (New York: Anchor Books, 2003), xii. Note: A convert to Islam, Schwartz, or Suleyman Ahmad, introduces himself in his book as the “Washington bureau chief for the *Jewish Forward*.”

<sup>68</sup> Saudi Arabian General Investment Authority (SAGIA), “Legal System,” 02 July 2006, URL: <<http://www.sagia.gov.sa/innerpage.asp?ContentID=573&Lang=en>>, accessed 02 July 2006.

<sup>69</sup> Saudi Arabia Information Resource, “The Teachings of Muhammad bin Abdul Wahhab,” 03 July 2006, URL: <<http://www.saudinf.com/main/b5.htm>>, accessed 03 July 2006.

<sup>70</sup> Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, 4<sup>th</sup> ed. (Delhi, India: Oxford University Press, 1974), 36. Cited hereafter as Fyzee.

unchallenged and unchanged. Hence, while not looking to excuse Wahhabism, Hanbali law or Saudi Arabia for its role in the WOT, it is important to demonstrate that a clear doctrinal basis for *jihad* can be shown to exist in which all doctrinal schools agree. The decision not to rely on Hanbali authorities was taken to demonstrate the point that mainstream *Sunni* Islamic law supports concepts of *jihad* that are often exclusively associated with Wahhabism or Islamic “extremism” without having to misdefine, misrepresent or misinterpret that law.

For example, ibn Taymiya is among the more prominent Hanbali authorities on *jihad*. While considered authoritative within Hanbali law, however, ibn Taymiya does not enjoy broad acceptance among the other three orthodox schools. From the Shafi’ite *‘Umdat al-Salik*:

While few deny that ibn Taymiya was a copious and eloquent writer and hadith scholar, his career, like that of others, demonstrates that a man may be outstanding in one field and yet suffer from radical deficiencies in another, the most reliable index of which is how a field’s Imams regard his work in it. By this measure, indeed, by the standard of all previous *Ahl al-Sunna* scholars, it is clear that despite a voluminous and influential written legacy, ibn Taymiya cannot be considered an authority on tenets of faith, a field which he made mistakes profoundly incompatible with the belief of Islam, as also with a number of his legal views that violated the scholarly consensus (*ijma*) of *Sunni* Muslims. It should be remembered that such matters are not the province of personal reasoning (*ijtihad*), whether ibn Taymiya considered them to be so out of sincere conviction, or whether simply because, as Imam Subki said, “his learning exceeded his intelligence.”<sup>71</sup>

Because the thesis seeks out the consensus view of Islamic law on *jihad*, it will rely on authorities broadly recognized as such among all four schools. As the strength of the thesis depends largely on the quality of the authorities relied on, a brief description of the principle authorities will be undertaken to demonstrate their *bona fides*. This will include identifying what school they belonged to, what period they are from, and what status they held.

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<sup>71</sup> al-Misri, Book X “Biographical Notes,” at § x178.

## Authoritative Sources

*“If not Him, ye worship nothing but names which ye have named – ye and your fathers – for which Allah hath sent down no authority: the Command is for none but Allah: He hath commanded that ye worship none but Him: that is the right religion, but Most men understand not ...*

(Qur’an 12:40)

*This day have I perfected your religion for you, completed my favor upon you, and have chosen for you Islam as your religion.*

(Qur’an 5:3)

As with any legal system, not speaking the language of the law creates an impediment – not a bar – to its understanding. “Moderates” who imply that only native speaking believers can understand the subject matter overstate the issue. Such arguments, pushed to their natural conclusion, would mean that only those Muslims who speak classical Arabic are “true” Muslims. Most Muslims do not speak Arabic and would probably disagree with this premise. If this view were extended to other bodies of law, it would result in an inability to enter into international business contracts between parties from different jurisdictions that use different legal systems that operate in different languages. This holds true for international treaties as well. Yet thousands of international transactions occur every day.

Given the weight of the common doctrinal picture that emerges, readers should force themselves to assess whether it is rational to believe that Islamic law consistently redefines itself in the same way in the process of transitioning from Arabic to English. Even given the loss of some meaning when translated, the professional standard holds that one should still inform oneself to the best of one’s ability with whatever sources are

available. The decision not read any English language translations of Islamic law because some portions may be in error runs counter to general principles of professional competency.

### **Sacred Islamic Law: The *'Umdat al-Salik***

*Oh ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you.*<sup>580</sup> *If you differ in anything among yourselves, refer it to Allah and His Messenger ...* (Qur'an 4:49)

580. [Qur'an Commentator Yusuf Ali note.] *Uli al amr* = those charged with authority or responsibility or decision, or the settlement of affairs. All ultimate authority rests with Allah. Prophets of Allah derive their authority from Him. As Islam makes no sharp division between sacred and secular affairs, it expects governments to be imbued with righteousness. Likewise, Islam expects Muslims to respect the authority of such government for otherwise there can be no order or discipline.

Of sources relied on, the authoritative English language translation of Ahmad ibn Naqib al-Misri's *'Umdat al-Salik (Reliance of the Traveller: A Classic Manual of Islamic Sacred Law)* is used not only for its authoritative translation of Sacred Islamic Law – the *Shari'a* – but also for its ability to serve as a bridge between the English speaking reader and applied Islamic law as known, practiced, and understood in Muslim world. The *'Umdat al-Salik* is a standard Islamic legal reference whose translation into English was vetted and approved by designated national authorities from no less than four Arab states: the Imam of the Mosque of Darwish Pasha, Damascus;<sup>72</sup> the Mufti of

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<sup>72</sup> al-Misri, xiv, xv. Document 1. Warrant of Sheikh 'Abd al-Wakil Durabi, Sha'ban A.H. 1408/April 1988 A.D., 'Abd al-Wakil Durabi [stamped], Imam of the Mosque of Darwish Pasha, Damascus, Syria, x 2 signed witnesses.

the Jordanian Armed Forces;<sup>73</sup> a member of the Islamic Fiqh Academy, Jedda, Saudi Arabia;<sup>74</sup> and Cairo's al-Azhar University.<sup>75</sup> From the most prestigious and authoritative institute of Islamic higher learning, al-Azhar's endorsement is particularly on point: "We certify that the above-mentioned translation corresponds to the Arabic original and conforms to the practice and faith of Orthodox *Sunni* Islam (*Ahl al-Sunna wa al-Jama'a*)."<sup>76</sup>

Assuming proper citation, the rebuttable presumption will be that the English language text of *'Umdat al-Salik* accurately represents the official Arabic equivalent which, in turn, is recognized as an authoritative statement of Sacred Islamic law as actually understood, explained and implemented in the Islamic world. Hence, when properly cited, the burden of proof will shift to those dissenting from the cited point of law to prove that the English language translation is erroneous or that the *'Umdat al-Salik*'s statement of law is in error, is non-mainstream, or is otherwise defective in a material way. In other words, those opposed to positions that rely on the *'Umdat al-Salik* for authority will have to show that al-Azhar is wrong when it states that the translation "correspond to the Arabic original" or that the law does not "conform to the practice and

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<sup>73</sup> al-Misri, xvi, xvii. Document 2. Warrant of Sheikh Nuh 'Ali Salman, Jumada II, A.H. 1409/February 1989 A.D., Nuh 'Ali Salman [signed], Mufti of the Jordanian Armed Forces, x 3 signed witnesses.

<sup>74</sup> al Misri, xviii, xix. Document 3. Dr. Taha Jabir al-'Alwani [signed], President of the International Institute of Islamic Thought, Member of Islamic Fiqh Academy at Jedda, President of the Fiqh Council of North America, A.H. 01 Jumada II 1411/18 December 1990 A.D.

<sup>75</sup> al-Misri, xx, xxi. Document 4. [Certification of al-Azhar], Al-Azhar, Islamic Research Academy, General Director of Research, Writing, and Translation, Fath Allah Ya Sin Jazar [signed], x 1 signed witness, Seal of al-Azhar [stamped], A.H. 26 Rajab 1411/11 February 1991 A.D.

<sup>76</sup> al-Misri, xx.

faith of Orthodox *Sunni* Islam.” To the extent it can be shown that predominantly Muslim countries recognize Islamic law in some official capacity, especially those countries that endorsed the *‘Umdat al-Salik*, the English language reader will be allowed the presumption that positions grounded in the *‘Umdat al-Salik* reflect the current understanding of that same law in those countries that claim Islamic law as a basis for law. Thus, the *‘Umdat al-Salik* serves as a bridge between English speaking readers and the actual operation of Sacred Islamic law as understood and practiced inside the crucible of Middle Eastern *Sunni* Islam.

By way of example, the law of apostasy in the *‘Umdat al-Salik* states:

o8.0 Apostasy from Islam (*Ridda*) – Leaving Islam is the ugliest form of belief (*kufir*) and the worst. ...

o8.1 When a person who has reached puberty and is sane voluntarily apostatizes from Islam, he deserves to be killed.<sup>77</sup>

Given the statement of law on apostasy in English from the *‘Umdat al-Salik*, readers can not only reasonably infer that it says the same thing in Arabic but also that it means the same thing in the Arabic when Muslim governing authorities implement it in Islamic jurisdictions. Those in dissent should be made to demonstrate an actual breakdown in the links as part of any refutation.<sup>78</sup> Reading the law of apostasy, it should

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<sup>77</sup> al-Misri, Book O “Justice,” § o8.0 “Apostasy from Islam (*RIDDA*),” at §§ o8.0 and o8.1.

<sup>78</sup> Because some of the violations of Islamic law in this paper involve apostasy, it should be noted that the preferred method of execution for apostasy is beheading. As Imam Malik ibn Anas, founder of the second of the four doctrinal schools of Islamic law, noted in his classic treatise on Islamic law, the *Muwatta*: “Yahya related to me from Malik from Zayd ibn Aslam that the Messenger of Allah, may Allah bless him and grant him peace, said, “*If someone changes his religion – then strike off his head!*” The meaning of the statement of the Prophet, may Allah bless him and grant him peace, in our opinion – and Allah knows best – is that, “*If someone changes his religion – then strike off his head!*” refers to those who leave Islam for something else – like heretics and suchlike, about whom that is known. They are killed without being called to repent

not surprise that Afghan President Hamid Kharzai ruled that the Muslim Apostate who converted to Christianity was insane as part of his decision to suspend execution in March 2006.<sup>79</sup>

As Chapter Three will demonstrate, Islamic law plays a large role the Muslim world. Alien to most in the West, most predominantly Muslim Middle Eastern countries formally recognize Islamic law as the basis of law for governance and jurisprudence.

### **The Qur'an: Yusuf Ali's The Meaning of the Holy Qur'an**

*... and We have sent down to thee a Book explaining all things, a Guide, a Mercy and Glad Tidings to Muslims.*

(Qur'an 16:89)

*Nothing have We omitted from the Book, and they all shall be gathered to their Lord in the end.*

(Qur'an 6:38)

*Verily this Qur'an doth guide to that which is most right or stable, and giveth the glad tidings to the Believers who work deeds of righteousness, that they shall have a magnificent reward.*

(Qur'an 17:9)

*For Allah hath set down to thee the Book and Wisdom and taught thee what though knewest not before: and great is the Grace of Allah unto thee.*

(Qur'an 4:113)

When citing to sources that likewise cite to the Qur'an, this paper will use the same quotes without modification. When making direct reference to the Qur'an, this paper will rely on *The Meaning of the Holy Qur'an* (cited as "The Qur'an" or "Yusuf

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because their repentance is not recognized." Imam Malik ibn Anas, *Al-Muwatta of Imam Malik ibn Anas: The First Formulation of Islamic Law*, trans. Aisha Abdurrahman Bewley (Kuala Lumpur: Islamic Book Trust, 1997), 36.18.15 at 303. Cited after next reference as Malik.

<sup>79</sup> Rachel Morarjee and Dan Murphy, "Conversion a thorny issue in Muslim world," *Christian Science Monitor*, online ed., 27 March 2006, URL: <<http://www.csmonitor.com/2006/0327/p01s04-wosc.html>>, accessed 27 March 2006.

Ali”) with translation and exhaustive commentary by ‘Abdullah Yusuf ‘Ali.<sup>80</sup> Selection of this particular text was based on its being the most commonly used Qur’an within the American-Muslim community for scholarly research in English. Additionally, arising out of several Qur’an abuse allegations,<sup>81</sup> an “Explore the Koran” initiative launched by the Council on American Islamic Relations (CAIR)<sup>82</sup> included providing free copies of the Qur’an to all interested parties. As the English language translation of choice, CAIR selected Yusuf ‘Ali’s *The Meaning of the Holy Qur’an*.<sup>83</sup> In light of these facts, the Yusuf ‘Ali translation is often considered one of the Qur’ans of record for the American-Muslim community.

*A Caveat.* While the version of choice at mosque bookstores and CAIR, *The Meaning of the Holy Qur’an* is not without its critics. Khaleel Mohammad, Assistant Professor at the Department of Religious Studies at San Diego State University, while acknowledging it to be “the most popular English language version among Muslims,” criticizes it for three reasons in a recent *Middle East Quarterly* article titled “Assessing English Translations of the Qur’an.”<sup>84</sup>

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<sup>80</sup> *The Meaning of the Holy Qur’an*, 10<sup>th</sup> ed., trans. ‘Abdullah Yusuf ‘Ali (Beltsville: Amana Publications, 1999). Cited hereafter as Yusuf Ali.

<sup>81</sup> Catherine Philp, “Newsweek sparks global riots with one paragraph on Koran,” *The Times Online (UK)*, 14 May URL: <<http://www.timesonline.co.uk/article/0,3-1611925,00.html>>, accessed 14 May 2005.

<sup>82</sup> BBC, “US Citizens Snap up Free Korans,” *BBC News*, online edition, 06 June 2005, URL: <[http://news.bbc.co.uk/2/hi/south\\_asia/4613889.stm](http://news.bbc.co.uk/2/hi/south_asia/4613889.stm)>, accessed 06 June 2005.

<sup>83</sup> G. Jeffrey MacDonald, “Getting the Holy Word Out,” *USA Today*, 01 June 2005, Religion 1. See also: Art Moore, “CAIR Distributes Quran Banned as Anti-Semitic,” *WorldNetDaily*, 02 June 2005, URL: <[http://www.worldnetdaily.com/news/article.asp?ARTICLE\\_ID=44543](http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=44543)>, accessed 02 June 2005.

<sup>84</sup> Khaleel Mohammad, “Assessing English Translations of the Qur’an,” *Middle East Quarterly*, Spring 2005, URL: <<http://www.meforum.org/article/717>>, accessed 15 March 2005.

- First, he criticizes Yusuf ‘Ali’s commentaries for blindly “reproducing the exegetical material from medieval texts without making any effort at contextualization.” But in so doing, Khaleel actually acknowledges that ‘Ali’s commentaries remain true to orthodox *Sunni* Islam as doctrinally understood. If recognized as authoritative, an exegetical treatment does not become any less authoritative because it is medieval. Before making the case for contextualization, Khaleel should first demonstrate that the contextualization he speaks to is doctrinally recognized as a basis for analysis among recognized *Sunni* Jurists.
- Second, he states that Yusuf ‘Ali’s commentaries are unacceptably anti-Semitic. Yet Khaleel neither provides an example of the anti-Semitism nor demonstrates that such language runs contrary to Islamic doctrine. While Khaleel is comfortable making non-specific claims, he does not offer specifics, possibly because Ali’s anti-Semitic translations are faithful to doctrine.
- Third, despite being a Cambridge-educated jurist, accomplished Indian civil servant, and learned Hanafi Muslim who translated his English language version of the Qur’an and wrote his commentaries in the 1930s, Khaleel undermines Yusuf ‘Ali’s work by associating it with contemporary Wahhabism and twice referencing the Saudi preference for this particular English language translation. But, being preferred by the Saudis today does not automatically make Ali’s translation radical.

Additionally, far from being a *Wahhabi*, Yusuf ‘Ali – as Khaleel himself acknowledged – was not a Hanbali jurist but rather a Hanafi.

When deciding which translation to use, the selection criteria was weighted in favor of translations most broadly used and accepted among English speaking Muslims as opposed to more neutral translations designed to be less offensive to Western sensibilities.

### **Hadith (the *Sahih Sittah*)**

*He who obeys the Messenger, obeys Allah; but if any turn away, We have not sent thee to watch over their deeds.*<sup>599</sup> (Qur’an 4:80)

599. [Qur’an Commentator Yusuf Ali] The Messenger’s duty is therefore to convey the Message, they are not disobeying him but they are disobeying Allah. In the same way those who obey the Messenger are obeying Allah. They are not obliging the Messenger; they are merely doing their duty.

*So take what the Messenger assigns to you, and deny yourselves that which he withholds from you.*<sup>5381-A</sup> *And fear Allah; for Allah is strict in punishment.* (Qur’an 59:7)

5381-A. Alternatively these words may be translated: “*So take what the Messenger gives you, and refrain from what he prohibits you*”.

Hadith are also used because its stories relating to Muhammad have been reduced to rules of law that consist of all the authentic reports of pronouncements and acts of Muhammad or such deeds or sayings of other people that had his explicit approval.<sup>85</sup>

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<sup>85</sup> ‘Abdul Hamiid A. Abu Sulayman, *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought*, 2d rev. ed. (Herndon: International Institute of Islamic Thought, 1993), 70.

Hadith establish the standards that all Muslims are to emulate.<sup>86</sup> Because not all hadith are equal, this paper will limit itself to those that are presumed authentic<sup>87</sup> and, where possible, will rely on the collection of hadith from Bukhari<sup>88</sup> because his are regarded as the most reliable by Muslim scholars (and therefore have the highest presumption of accuracy).<sup>89</sup> When referring to the “primary” or “*sahih*” hadith in this paper, the reference will be to one of the “Six Canonical Collections (*Sahih Sittah*)” of hadith whose primacy are acknowledged -- especially when reliably citing to one of the authoritative collectors. In precedent order, the “Six Canonical Collections” (the *Sahih Sittah*), are the works of Bukhari, Muslim, Abu Dawud, Tirmidhi, Ibn Maja and Nasa’i.<sup>90</sup> In recognizing

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<sup>86</sup> ‘Abdur Rahman I. Doi, *Shari’ah: The Islamic Law*. (Kuala Lumpur: A.S. Noordeen, 1984), 48.

<sup>87</sup> Doi, 54.

<sup>88</sup> From al-Misri, Book X “Biographical Notes,” § x107: al-Bukhari is Muhammad ibn Isma’il ibn Ibrahim ibn Muhira, Abu ‘Abdullah al-Bukhari, born in Bukhara (in present day Uzbekistan) in 194/810 (Islamic/Judeo-Christian times or anno hegirae/anno domini). A Shafi’i scholar who learned Sacred Law in Mecca, Bukhari became the greatest Imam in hadith that the world has ever known. He began his long travels in search of hadith from nearly a thousand sheikhs, gathering some 600,000 prophetic traditions from which he selected the approximately 4,400 (not counting those repeated) that compose the Jami’ al-Shaih [Rigorously authenticated collection]. Choosing them for their authenticity, he was the first scholar in Islam to compile a work on this basis, and his book in the foremost of the six great hadith collections.

<sup>89</sup> Doi, 52.

<sup>90</sup> Doi, 26. Individuals associated with Muhammad in his lifetime were called “companions.” Among the numerous companions, the seven most prolific commentators on his life were Abu Hurairah ‘Abdur Rahman bin Sakhar Dasi (5,374 hadith), Abdullah bin Umar bin Khattab (2,630), Anas bin Malik (2,286), Aisha (2,210), Abdullah bin Abbas (1,660), Jabir bin Abdullah Ahsan (1,540), and Sa’ad bin Malik Abu Saeed Khudhri (1,540). The compiled hadith of these companions did not survive in their original creations but were passed down and collected by numerous hadith collectors of varying quality and repute. Six scholars stand out among hadith collectors for the reputed accuracy and authenticity in the selection of hadith they chose to include as a part of their collections. In precedent order, the six “correct” collections of the Sunni, also called the “Six Canonical Collections” (the *Sahih Sittah*), are the works of Bukhari, Muslim, Abu Dawud, Tirmidhi, Ibn Maja and Nasa’i. Hence, if a story concerning Muhammad is related through one of the six “correct” collections and it reliably cites one of the seven companions, a presumption emerges, verging on irrebuttable, that the texts cited are

the “Sacred Six,” it should be noted that that all six collectors belonged to the Shafi’i school.<sup>91</sup> Taken together, the Qur’an and hadith are the primary sources of Islamic law and are considered *nass* (legally binding) because of their status as direct and indirect divine revelation.<sup>92</sup> While disagreements of interpretation and validity for specific citations from the Qur’an and primary hadith exist, there is little debate over their status as revealed text that must be followed and cannot be ignored. This position is doctrinal to Islamic law and the *‘Umdat al-Salik* states this in its “Book of Enormities” when discussing the preemptive nature of positions in Islamic law whose authority comes from the Qur’an and strong (*Mutawatir*<sup>93</sup>) hadith:

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accurate for the points being made - as matters of both Islamic theology and law. Because those accounts are presumed reliable, the *Sunna* arising from them cannot be construed to contradict the Qur’an but rather are to be understood as doctrinally authoritative explanations of the Quranic verses they support: “*Whatever the Messenger gives you, then take it and whatever he prohibits you, then stay away from it.*” (Qur’an 59:7)

In assessing the weight Islamic law gives to the *Sunna*, three things should be kept in mind - that:

- 1) The Qur’an and *Sunna* serve as the basis of Islamic law;
- 2) The Qur’an, as the ‘uncreated’ word of Allah, is considered direct divine revelation while the *Sunna* is indirect divine revelation;
- 3) Given both their primary law status and divine natures, the legal principles arising from the Qur’an and *Sunna* are reasonably fixed, immutable and divine.

<sup>91</sup> From al-Misri, Book X “Biographical Note,” at § x324: (Imam) al-**Shafi’i** ... paved the way for the enormous importance attached by subsequent generations of Muslims to the study of prophetic hadith, as reflected in the fact that most of the Imams in the field were of his school, including Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa’i, Ibn Majah, Bayhaqi, al-Hakim, Abu Nu’aym, Ibn Hibban, Daraqutni, Ibn Khuzayma, Ibn Salah, al-‘Iraqi, Suyuti, Dhahabi, **Ibn Kathir**, Nur al-Din Haythami, Mundhiri, Nawawi, Taqi al-Din Subki, and others.

<sup>92</sup> Fyzee, 20.

<sup>93</sup> al-Misri, Book O “Justice,” § o22.0 “The Judge and the Court,” o22.1(d(II)) “The Types of Sunna(A: i.e. hadith) include,” o22.1(d(II(1))): hadiths (*mutawatir*) related by whole groups of individuals from whole groups, in multiple contiguous channels of transmission leading back to the Prophet himself (Allah bless him and grant him peace), such that the sheer number of separate channels at each stage of transmission is too many for it to be possible for all to have

The Prophet (Allah bless him and give him Peace) said,

*“None of you believe until his inclinations conform to what I have brought.”*

(Nawawi:) This means that a person must examine his acts in light of the Koran and sunna, suspending his own inclinations and following what the Prophet (Allah bless him and give him peace) has brought. The hadith resembles the word of Allah Most High,

*“When Allah and His messenger have decided a matter, no believer, male or female, has a choice in the affair.”* (Qur’an 33:36)<sup>94</sup>

This rule is important because if a statement on *jihad* is made in the Qur’an and supported by specific reliable hadith, not only do those statements assume the status of revealed truth, but a presumption in Islamic law emerges that the positions taken in those texts assume the status of legal requirements. Both the divine and legal status of the primary texts should be borne in mind when reading them. As important, where an issue is addressed in the Qur’an and supported by primary hadith, other forms of legal analysis, *qiyas*<sup>95</sup> and *ijtihad*,<sup>96</sup> for example, cannot serve to supersede it and are in fact precluded from doing so:

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conspired to fabricate the hadith (A: which is thereby obligatory to believe in, and denial of which is unbelief (*kufir*)).

**ALSO:** al-Misri, Book W “Notes and Appendices,” w47.0 “A Warning against Careless Accusations of Unbelief:” There is scholarly consensus that it is unlawful to charge with unbelief anyone who faces Mecca to pray, unless he denies the Almighty Creator, Majestic and Exalted, commits open polytheism that cannot be explained away by extenuating circumstances, denies Prophethood, or something which is necessarily known as being of the religion, or which is *mutawatir* (def: o22.1(d(II))) (N: whether the latter is of the Koran or hadith), or which there is scholarly consensus upon its being necessarily known as part of the religion.

<sup>94</sup> al-Misri, Book P “Enormities,” § p75.3: Contending with what the Prophet (Allah bless him and give him peace) has Brought.

<sup>95</sup> al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid (The Distinguished Jurist’s Primer)*, vol. 2, trans. and ed. Imran Ashan Khan Nyazee, (Reading: Garnet Publishing Ltd, 2002), 590. Cited hereafter as Ibn Rushd 2. In the Glossary, *Qiyas* is defined as: “Analogy; syllogism. The extension of the *hukm* of a specific case established by the texts to a new case awaiting decision on the basis of a common underlying cause.”

*(The Prophet asked:) ‘How will you judge the cases that come to you? He replied: ‘I will judge according to the Book of Allah’. ‘But if you do not get anything there, what will you do?’ the Prophet (sws) asked. He said: ‘I will refer to the Sunnah of the Prophet (sws)’. ‘But if you do not get it even there, what will you do?’ the Prophet (sws) asked again. He replied: “I will exercise my judgment.’ Hearing this, the Prophet (sws) patted Mu’adh (rta) on the shoulder and said: ‘Praise be to Allah who has guided the Messenger of His Messenger to what pleases His Messenger’. (Nisa’i: No. 1327)<sup>97</sup>*

### **Malik’s *Al-Muwatta* (Maliki School)**

Meaning “The Trodden Path,” the *Al-Muwatta*<sup>98</sup> was written in the eighth century by the founder of the second of the four orthodox schools of *Sunni* Islamic law, Malik ibn Anas.<sup>99</sup> The *Muwatta* is “the oldest corpus of *Sunni* law extant and is of interest because

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<sup>96</sup> ibn Rushd 2, 581. In the Glossary, *Ijtihad* is defined as: “Striving. In Islamic law it is the effort that the jurist exerts to discover the law from the sources. *Ijtihad* is not a source of law, as is assumed by some; it is merely the effort invested in interpretation according to a prescribed methodology.”

<sup>97</sup> From al-Misri, Book X “Biographical Notes,” § x283: al-Nasa’i is Ahmad ibn ‘Ali ibn Shy’ayb ibn ‘Ali ibn Sinan ibn Bahr ibn Dinar, Abu ‘Abd al-rahman al-Nasa’i, originally of Nasa, Persia, born in 215/830. He was a Shafi’i scholar and judge, a hadith master (*hafiz*) and Imam. Educated in hadith by scholars like Ishaq ibn Rahawayh, Abu al-Qasim Taqbarani, and others ... While he authored works on the merits of the Companions and an outstanding volume on the excellence of Imam ‘Ali ibn Abi Talib (Allah be well pleased with him), his main work is his *Sunnan* [*Sunnas*], one of the six great hadith collections of Islam.

<sup>98</sup> Imam Malik ibn Anas, *Al-Muwatta of Imam Malik ibn Anas: The First Formulation of Islamic Law*, trans. Aisha Abdurrahman Bewley. (Kuala Lumpur: Islamic Book Trust, 1997). Cited hereafter as Malik.

<sup>99</sup> From al-Misri, Book X “Biographical Note,” at § x228: (Imam) **Malik** ibn Anas, Imam Malik is Malik ibn Anas ibn Malik, Abu ‘Abdullah al-Asbahi al-Himyari, the *mujtahid* Imam born in Medina in 93/712. The second of the four greatest Imams of Sacred Law, his school has more followers than that of anyone besides Abu Hanifa. He was known as the Scholar of Medina, and was as renowned for his sincerity, piety, and god fearingness as for his command of the sciences of hadith and knowledge of Sacred Law. He was the author of *al-Muwatta*’ [*The Trodden Path*], the greatest hadith collection of its time, nearly every hadith of which was accepted by Bukhari in his *Sahih*. His disciple Imam Shafi’i used to say of it, “After the Book of Allah, no book has appeared on earth that is sounder than Malik’s.” When he gave the opinion that the caliph al-Mansur should be removed and Muhammad ibn ‘Abdullah of ‘Ali’s family be instituted, the caliph’s uncle Ja’far ibn Sulayman, governor of Medina, had Malik scourged seventy lashes, dislocating his shoulder. The only effect of this was to increase the Imam’s highmindedness and dignity, and when al-Mansur learned of it, he apologized profusely and asked Malik to write a book of Islamic jurisprudence that he could enjoin with the force of law upon all Muslims regardless of their school but the Imam refused. He authored outstanding

it forms a link between the *fiqh* literature of earlier days and the *hadith* collections of later times.”<sup>100</sup> Among the most respected and authoritative works of Islamic jurisprudence, the *Muwatta* dedicated an entire chapter to the topic of *jihad*. Titled *Al-Muwatta of Imam Malik ibn Anas: The First Formulation of Islamic Law*, it was translated by Aisha Abdurrahman Bewley. The *Muwatta* is both an authoritative and seminal work in *Sunni* Islamic law and will be cited in this document as the *Muwatta* (Maliki).

### **Al-Shafi’i’s *Risala* (Shafi’i School)**

Meaning “The Letter,” the *Risala* was written in the early ninth century by Imam Muhammad ibn Idris al-Shafi’i,<sup>101</sup> a *mujtahid* and founder of the third of the four formally recognized orthodox schools of *Sunni* Islamic law. With the title “*mujtahid of the World*,” his status in Islamic jurisprudence is particularly high. As with *Al-Muwatta*, the *Risala* is considered both seminal and authoritative. Hence, the assumption should be

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works in Sacred Law, hadith, and Koranic exegesis, and left behind a host of brilliant scholars he had trained as part of his great legacy to Islam and the Muslims. He died in Medina in 179/795.

<sup>100</sup> Fyzee, 34.

<sup>101</sup> Imam Muhammad ibn Idris **al-Shafi’i**, *Risala Fi Usul al-Fiqh: Treatise on the Foundations of Islamic Jurisprudence*, trans. Majid Khadduri (Cambridge: Islamic Texts Society, 1987). Cited hereafter as al-Shafi’i. From al-Misri, Book X “Biographical Note,” § x324. x.324: Imam Shafi’i is Muhammad ibn Idris ibn Idris ibn al-‘Abbas ibn ‘Uthman ibn Shafi’i ibn al-Sa’ib ibn ‘Ubayd ibn ‘Abd Yazid ibn Hashim ibn al-Muttalib ibn ... al-Shafi’i, descended from the great-grandfather of the Prophet (Allah bless him and give him peace). Born in 150/767 in Gaza, Shafi’i was the Imam of the World, the *mujtahid* of his time, one of the most brilliant and original legal scholars mankind has ever known ... The Imam and his legacy are monumental. His *al-Risala* [*The Letter*] was the first work in the history of mankind to investigate the theory and practical bases of jurisprudence. In Koranic exegesis, he was the first to formulate the principles of the science of which verses abrogate others and which are abrogated (*‘ilm al-nasikh wa al-mansukh*). ... He (al-Shafi’i) paved the way for the enormous importance attached by subsequent generations of Muslims to the study of prophetic hadith, as reflected in the fact that most of the Imams in the field were of his school, including Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa’i, Ibn Majah, Bayhaqi, al-Hakim, Abu Nu’aym, Ibn Hibban, Daraqutni, Ibn Khuzayma, Ibn Salah, al-‘Iraqi, Suyuti, Dhahabi, Ibn Kathir, Nur al-Din Haythami, Mundhiri, Nawawi, Taqi al-Din Subki, and others.

that statements from his treatise have authoritative weight that cannot be easily discounted or dismissed. The English language version relied on was translated by Majid Khadduri and is titled *al-Shafi'i's Risala: Treatise of the Foundations of Islamic Jurisprudence*.

### **Ibn Shaybani's Siyar (Hanafi School)**

A *mujtahid* and Imam in his own right, Muhammad ibn Hasan al-Shaybani<sup>102</sup> was a student of Abu Hanifa's,<sup>103</sup> the "greatest" Imam and founder of the first school of

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<sup>102</sup> Muhammad ibn Hasan al-Shaybani, *The Islamic Law of Nations: Shaybani's Siyar (Kitab al-siyar al-kabir)*, trans. Majid Khadduri, (Baltimore: Johns Hopkins Press, 1966). Cited hereafter as al-Shaybani. From al-Misri, Book X "Biographical Notes," at § x257: Muhammad ibn Hasan Shaybani (w43.1) is Muhammad ibn al-Hasan ibn Farqad, Abu 'Abdullah al-Shaybani, born in Wasit, Iraq, in 131/748. A *mujtahid* Imam of powerful intellect, prodigious mastery of Koranic and hadith primary texts, and the matchless legal training of being educated by Imams Abu Hanifa, Abu Yusuf, and Malik, he was among the greatest figures in the history of Islamic jurisprudence. He was raised in Kufa where he met Abu Hanifa, joined his school of thought, and distinguished himself before moving to Baghdad, where he was appointed by Hurun al-Rashid to the judiciary. He was among the sheikhs of Imam Shafi'i, who once observed, "If I wish to say the Koran was revealed in the language of Muhammad ibn Hasan, I would say it, for the purity of his Arabic." He wrote a large number of works in Sacred Law and its methodology, as well as in the sciences of hadith, and it is related when Imam Ahmad was once asked, "From whence did you acquire these legal subtitles?" he replied, "From the books of Muhammad ibn Hasan." He died in 189/804 in Rayy, Persia.

<sup>103</sup> From al-Misri, Book X "Biographical Notes," at § x37: (Imam) **Abu Hanifa** (b1.2) is Abu Hanifa al-Nu'man ibn Thabit, the Greatest Imam born, born in A.H. 80 in Kufa. He was the Scholar of Iraq and the foremost representative and exemplar of the school of juridical opinion (ra'y). The Hanafi school, which he founded, has decided court cases in the majority of Islamic lands for the greater part of Islam's history, including the Abbasid and Ottoman periods, and maintains its pre-eminence in the Islamic courts today. Abu Hanifa was the first to analyze Islamic jurisprudence, divide it into subjects, distinguish its issues, and determine the range and criteria for analogical reasoning (*qiyas*) therein. Shafi'i used to say of him, "In jurisprudence, all scholars are the children Abu Hanifa." The Imam and his school have been misunderstood by some who have believed that the Imam's knowledge of hadith was largely limited to what was transmitted by the narrators of Kufa, especially through the Companion Ibn Mas'ud. In fact, the Imam was a hadith expert who had all the hadiths of the Companions of Mecca and Medina in addition to those of Kufa, and only lacked the relatively few channels of narrators who were in Damascus. His *Musnad* [Ascribed Traditions] is comparable in size to the *Muwatta'* of Imam Malik and the *Musnad* of Shafi'i which the latter based their respective schools upon, and when one reads *Muwatta' al-Imam Muhammad*, Malik's word which Abu Hanifa's disciple Muhammad ibn Hasan al-Shaybani studied and annotated for three years under Malik at Mecca, one gains complete conviction from Muhammad's notes that virtually every hadith therein was

orthodox *Sunni* Islamic law. Al-Shaybani later studied under Malik ibn Anas, helped annotate his *Muwatta*, and later in life counted al-Shafi'i among his students. Meaning "the conduct of the state in its relationship to other communities,"<sup>104</sup> the term "*siyar*," as used in Shaybani's *Siyar*, reflects Abu Hanifa's view to foreign policy<sup>105</sup> as al-Shaybani transcribed them and may be regarded as the first systematic treatment on Islamic "law among nations."<sup>106</sup> In fact, Shaybani's *Siyar* is the first major Muslim work "devoted exclusively to Islamic law dealing with relations with non-Muslims."<sup>107</sup> *Siyars* "describe the conduct of the Muslim community in its relations with unbelievers from the territory of war (*dar al harb*) as well as with those whom the Muslim state enters into treaties."<sup>108</sup> It is a body of law that "Muslims declared to be binding upon themselves, *regardless of*

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familiar to Abu Hanifa before he arrived at the positions of his school, all of which is a persuasive case against the suggestions of the unlearned that Abu Hanifa did not know hadith. Nevertheless, the Imam was of an age that was plagued by hadith forgers, and he was moved by his extreme piety to reject any hadith that was not reasonably sure was authentic, for which reason he applied a relatively selective range of hadith evidence in Sacred Law. His school, for example, does not accept qualifications or modifications of any ruling established by a Koranic verse (*takhsis ayah*) when such qualification comes through a hadith with but one, even if rigorously authenticated (*sahih*), channel of transmission, but only if it comes through a hadith with three separate channels of transmission. So despite Abu Hanifa's being a hadith specialist, his school reflects a legacy of extensive use of analogy and deduction from specific rulings and general principles established by primary texts acceptable to the Imam's rigorous standard, as well as the use of inference and juridical opinion as to what conforms to the human interests in general protected and furthered by Sacred Law. He died in Baghdad in A.H. 150 at seventy years of age, leaving an intellectual and spiritual legacy that few scholars have ever equaled.

<sup>104</sup> al-Shaybani, 39.

<sup>105</sup> Fyzee, 34.

<sup>106</sup> al-Shaybani, 40-41.

<sup>107</sup> Rudolph Peters, *Jihad in Classical and Modern Islam: A Reader*, (Princeton: Markus Wiener Publishers, 1996), 137.

<sup>108</sup> al-Shaybani, 40, citing Shams al-Din Muhammad Sarakhsi's *Kitab al-Mabsut*, Vol. X (Cairo: 1324/1906), 2.

whether non-Muslims accept it.”<sup>109</sup> Called *The Islamic Law of Nations: Shaybani’s Siyar*, the English language version was translated by Majid Khadduri. As the seminal work on Islamic law among nations, Majid Khadduri counts it as still being good law to this day.<sup>110</sup> *Shaybani’s Siyar* will be relied on to substantiate various longstanding positions in Islamic law at the doctrinal level. Of note, the *Siyar* is the earliest surviving treatise where the terms “territory of peace” (*dar al-Islam*) and “territory of war” (*dar al-harb*) are used to distinguish between the world of Islam and the world of the non-believer.

It should be understood that with Malik’s *Muwatta*, al-Shafi’i’s *Risala*, and Hanafi’s student Shaybani’s *Siyar*, this paper has established direct reference to the seminally authoritative works from three of the four orthodox schools of *Sunni* Islamic law.

### **Ibn Kathir’s *Tafsir Ibn Kathir* (Shafi’i School)**

The *Tafsir al-Qur’an al-Azim (Tafsir of the Noble Qur’an)*, better known as the *Tafsir ibn Kathir* (hereafter *Tafsir*) is the most widely relied on interpretation of the Qur’an in the Arabic language.<sup>111</sup> It is also the most renowned and accepted explanation of the Qur’an in the entire world. In fact, most Muslims consider the *Tafsir* to be the best interpretation of the Qur’an based on the Qur’an and Sunnah.<sup>112</sup> The back-cover states:

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<sup>109</sup> al-Shaybani, 41.

<sup>110</sup> al-Shaybani, 16-17.

<sup>111</sup> Al-Hafiz Abu al-Fida’ ‘Imad Ad-Din Isma’il bin ‘Umar bin Kathir Al-Qurashi Al-Busrawi ibn Kathir, *Tafsir of Ibn Kathir*, vol. 1, Trans. Abdul-Malik Mujahid. (Riyadh: Darussalam, 2000), 5. Cited hereafter as *ibn Kathir* 1.

<sup>112</sup> *ibn Kathir* 1, 5.

In [the *Tafsir*] one finds the best presentation of Hadiths, History, and scholarly commentary. Darussalam is proud to present for the first time this abridged version of *Tafsir Ibn Kathir*, which is free from unauthentic Hadith.<sup>113</sup>

Because of the *Tafsir's* recognized status, 7th grade level American Muslim students are encouraged to read ibn Kathir's work as one of the four most important treatments of the Qur'an and life of Muhammad.<sup>114</sup> Ibn Kathir (1302 – 1373) was a prominent jurist, hadith master (*hafiz*) and historian whose writings are recognized as reflecting his "magisterial command of the sciences of hadith."<sup>115</sup> While many Current Approach advocates say that ibn Kathir as a Hanbali scholar<sup>116</sup> and protégé of ibn Taymiya,<sup>117</sup> in fact he was a renowned Shafi'i jurist and recognized as such.<sup>118</sup> Ibn

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<sup>113</sup> ibn Kathir, all volumes, back cover.

<sup>114</sup> Emerick, 15. History books about the Blessed Prophet are called books of *Seerah*. Below are the names of four of the most important history books about the Blessed Prophet: Ibn Ishaq, Ibn Sa'd, Ibn Kathir and Ibn Hisham.

<sup>115</sup> From al-Misri, Book X "Biographical Notes," § x165. **Ibn Kathir** is Isma'il ibn 'Umar ibn Kathir ibn Daww ibn Dara', Abu al-Fida' 'Imad al-Din, born in 701/1302 in a village outside of Damascus, where he moved with his brother at the age of five. He later traveled in pursuit of Sacred Knowledge, becoming a principle **Shafi'i scholar**, hadith master (*hafiz*), and historian who authored works in each of these fields, though he is perhaps best know for his four-volume *Tafsir al-Qur'an al-'Azim* [*Commentary on the Mighty Koran*], which reflect its author's magisterial command of the sciences of hadith. He died in Damascus in 774/1373.

<sup>116</sup> Youssef H. Aboul-Enein and Sherifa Zuhur, *Islamic Rulings on Warfare*, Monograph, Strategic Studies Institute (Carlisle: U.S. Army War College, October 2004), 35. "Ibn Kathir: Islamic scholar who lived in the 13th century and authored 13 major works of Islamic history, thought, jurisprudence, and explanations of the Quran and *hadith*. Ibn Kathir was a student of Ibn Taymiyyah and two other major Islamic scholars in Damascus of the middle 13th century."

<sup>117</sup> See End Note 278 on Ibn Taymiya.

<sup>118</sup> Ahmad ibn 'Abdul-Haleem Ibn Taymeeyah, *Essay on the Jinn (Demons)*, abr. an. & trans. Abu Ameenah Bilal Philips. (Riyadh: International Publishing House, 1999), vi. Cited hereafter as Ibn Taymeeyah. "Ibn Taymeeyah also had a major effect on the open-minded scholars on his day, most of whom were from the Shaafi'ite school of law. Among the most famous of his students was Ibn Katheer."

Kathir's *Tafsir* was reviewed to assess any undue "Taymiyan" influences. The *'Umdat al-Salik* classifies ibn Kathir as a preeminent Shafi'i scholar with in the tradition of other great Shafi'ite scholars of prophetic hadith.<sup>119</sup> In a separate commentary on the topic, Sheikh Nuh Ha Mim Keller, translator and editor of the English language translation of the *'Umdat al-Salik* stated:

In scholarship, ibn Kathir was a hadith master (*hafiz*, someone with at least 100,000 hadiths by memory), while ibn Taymiya was not: his name does not appear in any of the works of *tabaqat al-huffaz* or "successive generations of hadith masters," that comprehensively document such scholars. Whatever length of time ibn Kathir studied with ibn Taymiya, he was in his twenties when the latter died, and his long and fruitful career extended over the next forty-six years. Although I have not read all of ibn Kathir's Quranic exegesis (*Tafsir*), I have not found in it any traces of ibn Taymiya's more unusual positions ...<sup>120</sup>

The primary version of the *Tafsir* used in this paper is the abridged ten volume series from the Saudi Darussalam Publishers. It is available in most Mosque bookstores, online Islamic publication vendors, and even through Amazon™. As part of the translation effort, the publisher stated: "as Darussalam made a policy to publish only such works which are based on the Qur'an and authentic *Hadiths*, we appointed a board of Islamic scholars to summarize *Tafsir Ibn Kathir* in the original Arabic language."<sup>121</sup>

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<sup>119</sup> al-Misri, Book X "Biographical Note," § x324. x.324. (Imam) **Shafi'i** ... paved the way for the enormous importance attached by subsequent generations of Muslims to the study of prophetic hadith, as reflected in the fact that most of the Imams in the field were of his school, including **Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa'i, Ibn Majah**, Bayhaqi, al-Hakim, Abu Nu'aym, Ibn Hibban, Daraqutni, Ibn Khuzayma, Ibn Salah, al-'Iraqi, Suyuti, Dhahabi, **Ibn Kathir**, Nur al-Din Haythami, Mundhiri, Nawawi, Taqi al-Din Subki, and others.

<sup>120</sup> Shaikh Nuh Ha Mim Keller, "The Reformers of Islam," 1995, *Masud.Co.Uk*, URL: <<http://www.masud.co.uk>>, accessed 01 July 2006.

<sup>121</sup> ibn Kathir, 5.

As a part of the “Publisher’s Note,” detailed information was provided on the international effort to translate and edit the text to ensure maximum fidelity.<sup>122</sup>

### **Ibn Khaldun’s *Muqaddimah* (Maliki School)**

*Al-Muqaddimah* (in English *The Prolegomenon*), written in 1377 by ‘Abd-ar-Rahman Abu Zayd ibn Muhammad ibn Muhammad ibn Khaldun (1332 – 1406), was written as the introduction and Book One of a larger work titled *Kitab al-‘Ibar (Universal History)*.<sup>123</sup> Regarded as among the earliest attempts by any historian to find patterns of change that occur in a man’s political and social organization, ibn Khaldun sought an explanation of events that spoke to a philosophy of history.<sup>124</sup> Originally translated by Yale Professor Franz Rosenthal in 1958, ibn Khaldun’s work was hailed by Arnold Toynbee:

Undoubtedly the greatest work of its kind that has ever been created by any mind in any time or place ... the most comprehensive and illuminating analysis of how human affairs work that has been made anywhere.<sup>125</sup>

More than just a great historian, however; ibn Khaldun was also a Maliki jurist who served as a judge (*qadi*) in both Northern Africa and Andalusia (Spain).<sup>126</sup> Hence,

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<sup>122</sup> ibn Kathir, 5.

<sup>123</sup> ‘Abd al-Rahman ibn Muhammad ibn Muhammad Abu Zayd Ibn Khaldun, *The Muqaddimah: An Introduction to History*, trans. Franz Rosenthal, (Princeton: Princeton University Press, 1969),1. Cited hereafter as ibn Khaldun.

<sup>124</sup> ibn Khaldun, ix.

<sup>125</sup> ibn Khaldun, cover.

<sup>126</sup> From al-Misri, Book X “Biographical Notes,” at § x167. **Ibn Khaldun** (b3.1) is ‘Abd al-Rahman ibn Muhammad ibn Muhammad, Abu Zayd Ibn Khaldun, born in Tunis in 732/1332. He was a philosopher and historian who grew up in Tunis and traveled to Tlemcen, Fez, Granada, and Andalusia, where he was appointed to various governmental positions, which he lost through the vicissitudes of the day and eventually returned to Tunis. He then set out for Egypt, where the sultan al-Zahir welcomed and honored him, appointing him to the **Maliki** judgeship, a position from which he was dismissed for preferring his native Tunisian dress during

ibn Khaldun's philosophy of history was influenced by the Islamic law that defined his world. For example, one of his theories concerned the primacy of *jihad* as a form of war because faith was a factor in the military prowess of the Muslims: "the secret of it lay in the willingness of the Muslims to die in the *holy war* against their enemies because of their feeling that they had the right religious insight."<sup>127</sup> His historical comments, therefore, reflect the state of mind of a renowned Maliki jurist and historian living in Northern Africa and Spain during the famed "Golden Age" of tolerance.

**Ibn Rushd's Bidayat al-Mujtahid wa Nihayat al-Muqtasid (Maliki School)**

*Bidayat al-Mujtahid wa Nihayat al-Muqtasid (The Distinguished Jurist's Primer)*

was written in the 12th century by Maliki judge (*qadi*) and Imam of the Great Mosque of Cordova -- Abu al-Walid Muhammad ibn Ahmad ibn Rushd. Recently translated to English by Pakistani Professor Imran Khan Nyazee of the Shari'ah Academy of the International Islamic University in Islamabad, the legal treatise is considered a classic in Maliki jurisprudence. The translation of ibn Rushd's treatise was peer reviewed and published with the approval of the Chairman of the Board of Trustees of the Center for Muslim Contribution to Civilization.<sup>128</sup> While written as a book of comparative Islamic law that recorded the views of the different schools in order to compare them, ibn

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hours of work over the customary judicial robes, but to which he was later reinstated. He is most famous for his seven-volume *al-'Ibar wa diwan al-mubtati' wa al-khabar fi tarikh al-'arab wa al-'ajam wa al-barbar* [*The Reflections and Record of Subject and Predicate: A History of the Arabs, Persian, and Berbers*], whose *al-Muqaddimia* [*The Prolegomenon*] is considered the world's first work on social theory. He died in Cairo in 808/1406.

<sup>127</sup> ibn Khaldun, 255.

<sup>128</sup> al-Walid Muhammad ibn Ahmad ibn Muhammad ibn Rushd, *Bidayat al-Mujtahid wa Nihayat al-Muqtasid (The Distinguished Jurist's Primer)*, vol. 1, trans. and ed. Imran Ashan Khan Nyazee, (Reading: Garnet Publishing Ltd, 2002), xxxiii. Cited hereafter as ibn Rushd 1.

Rushd's intent was to impart skills that made students of law competent jurists able to undertake independent legal analysis.<sup>129</sup> As part of the treatise, ibn Rushd included a detailed, 33 page Book X: "The Book of *Jihad*."<sup>130</sup>

Ibn Rushd does not have a biographical note in the *Umdat al-Salik* like most others in this thesis (Wahhab being the other notably absent person). While ibn Rushd's status as a legal authority remains, he was also a renowned philosopher and this got him in trouble. From the biographical note in *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*, ibn Rushd came from a long line of famous Maliki jurists and Islamic law judges and was himself a *qadi* at Seville until he was forced to flee to Marrakesh where he also served as a judge. Nyazee's biographical note understates the difficulties Rushd faced with his peers concerning their animosity towards philosophy. The institutionalized<sup>131</sup> aversion Islam has with philosophy<sup>132</sup> is attested to by the fact that his surviving philosophical works came to the West through his surviving Latin transcripts because his Arabic texts were burned.<sup>133</sup>

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<sup>129</sup> ibn Rushd 1, xxxiii.

<sup>130</sup> ibn Rushd 1, 454-487.

<sup>131</sup> From al-Misri, Book A "Sacred Knowledge," a7.0: "Subjects that are not Sacred Knowledge," at a7.2: Unlawful knowledge includes: (2) philosophy; (5) the sciences of the materialists.

<sup>132</sup> From al-Misri, Book W, w10.0: "In what sense philosophy is unlawful (from a7.2(2)," at w10.1: What Nawawi and other Islamic scholars seem to have in mind when they speak of the unlawful character of philosophy is not the efforts at a logical critique of the methodology of the sciences which have been seen particularly in this century, but rather cosmological theories and all-to-human attempts to solve ultimate questions about man, Allah, life after death, and so forth without divinely revealed guidance from the Koran and sunna: Any opinion that contradicts a well-known tenet of Islamic belief that there is scholarly consensus upon (*ijma*) is unbelief (*kufr*), and is unlawful to learn or teach, except by way of explaining that it is unlawful. And Allah knows best.

<sup>133</sup> ibn Rushd 1, xxviii, xxix.

Ibn Rushd is better known in the West as the Muslim philosopher Averoes. In discussions of the Golden Age of Islam, the Andalusian period is often singled out as the period when philosophy was tolerated with Averoes often cited as an exemplar. In his *The Islamic Conception of Justice*, Majid Khadduri explains ibn Rushd's problem more directly than did Nyazee. Running counter to Islam's chronic ambivalence to philosophy, ibn Rushd's thoughts on justice included concepts from Plato's *Republic* and Aristotle's *Ethics* that met with hostile reaction among his legal and governing peers. Ibn Rushd's attempts to harmonize reason with revelation led to his denunciation and being driven from town. Averoes' re-emergence in Islamic legal studies stems from a need to accommodate Western legal theories within the Islamic legal milieu. Khadduri states:

In the modern age, under the impact of Western secular thought, there has been a revival of interest in Ibn Rushd's philosophy and the use of Reason as a method to validate the adoption of Western concepts and institutions as consistent with Islamic traditions. ... To modern scholars, Ibn Rushd is considered more relevant to resolve questions arising from the impact of Western culture on Islam than al-Ghazali, although Muslim scholars (Revelationists) still adhere to Ghazali methods.<sup>134</sup>

The extended treatment of ibn Rushd, along with his inclusion in this work, is because his writings are considered progressive and potentially amenable to Western notions of law. Yet even as a progressive thinker belonging to the more tolerant Maliki school who violated Islamic norms on the study of philosophy, he still defined *jihad* unambiguously in terms that reflect the doctrinal view that *jihad* is a requirement of Islam to fight non-Muslims to establish the religion.

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<sup>134</sup> Majid Khadduri, *The Islamic Conception of Justice*. (Baltimore: Johns Hopkins University Press, 1984), 101-102.

## What Islam is all About<sup>135</sup>

*What Islam is all About* is different from the other sources used because it is neither a text of Islamic law nor is it written by an authority. *What Islam is All About* remains a best selling English language Islamic school text for junior high level students in the United States since its initial publication in 1997. While other editions have been published in the United States, this paper uses the Fifth Revised Printing, June 2004. The author, Yahiya Emerick, is an American-born convert to Islam based out of Long Island, New York, who is widely regarded as a “leading Islamic children’s educationalist in the U.S.”<sup>136</sup> Noorart Publishing appears to operate out of Richardson, Texas.<sup>137</sup>

Because much of the discussion on Islamic law may seem overly theoretical (in fact it is not), this paper will at various times undertake a reality check by comparing the doctrinal points to the junior high level curricula as taught to contemporary American-Muslim students. With *Salafi*-esque statements like “the best example to follow is that of the Messenger of Allah and the Sahaba and those righteous people throughout Muslim history who followed Islam sincerely,”<sup>138</sup> the question this text will force readers to confront is whether national leaders can even demonstrate success in instilling democratic principles among Muslim populations inside the United States.

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<sup>135</sup> Yahiya Emerick, *What Islam is all About: A Student Textbook (Grades 7 to 12)*, 5<sup>th</sup> rev. ed. (Lebanon: Noorart, 2004).

<sup>136</sup> *Witness Statement of Mark John Durie, Islamic Council of Victoria Inc v. Catch the Fire Ministries Inc.*, Victorian Civil and Administrative Tribunal (Australia), No. A392/2002, 03 October 2003, 41 at 11 - 12. Cited hereafter as Durie, Statement.

<sup>137</sup> Noorart Publishing, Noorat, URL: <<http://www.noorart.com/index.html>>, accessed 08 July 2005.

<sup>138</sup> Emerick, 282.

While other treatments on Islamic law will also be used, each of the above works was chosen because they are either accepted translations of recognized authorities, are officially approved Islamic legal documents or are in some other way reflective of current views on Islam from within the Islamic *Ummah*.<sup>139</sup>

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<sup>139</sup> ibn Rushd 2, 595. The Glossary defines *Ummah* as: “The Muslim nation.”

## CHAPTER 3

### ISLAMIC LAW – ALREADY THE LAW

#### CONSTITUTIONAL DEFERENCE TO ISLAM

Thought by Western analysts and decisionmakers to be ancillary to the actual conduct of policy for most Middle Eastern Muslim countries, Islamic law's status turns out to be constitutionally established in most of them. "Extremists" and Islamist who know this reasonably claim that if the Western-style constitutions of many Muslim countries were properly followed, they would have to yield to Islamic law. One such example comes from the article "Constitutions of the Muslim Countries Reveal the Great Betrayal" from the Webpage *Kalifah.com*.<sup>140</sup> Calling for the imposition of Islamic law, Muslim forms of governance, and a return of the caliphate, the article alleges that the constitutions of most Muslim states already require this and so accuses those governments of betrayal. Recreating the research from the *Kalifah.com* article reveals that it is accurate concerning the underlying facts. A cursory review of the constitutions of a few select countries will demonstrate this point. When sampling, specific focus will be on how those national constitutions orient themselves to Islamic law and whether there

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<sup>140</sup> "Constitutions of the Muslim Countries Reveal the Great Betrayal," *Khilifah.com*, 01 March 2005, URL: <<http://www.khilafah.com/home/category.php?DocumentID=10775&TagID=1>>, accessed 14 March 2005.

is language that indicates a subordination of the nation-state to a higher governing authority.

## **Muslim National Constitutions**

### **Pakistan**

The Constitution of Pakistan declares Pakistan to be an “Islamic Republic” that is required to subordinate its principles of democracy, freedom, equality, tolerance and social justice to Islamic law. It specifically states that all sovereignty belongs exclusively to Allah. In furtherance of recognizing Islamic law as the base law of Pakistan, Pakistani Muslims are called to “order their personal and communal lives in accordance with the teachings and requirements of Islam as set out in the Holy Qur’an and *Sunnah*.”<sup>141</sup>

### **Syria**

The Syrian Constitution states that Islamic law is Syria’s primary source of law.

The Syrian Constitution also gives explicit recognition to Syria’s membership in a

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<sup>141</sup> **Pakistan Constitution**, 12 April 1973, URL: <<http://www.pakistani.org/pakistan/constitution/preamble.html>>, accessed 20 March 2005. Reads:

#### **Preamble**

Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust; Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah.

1. Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.
2. Islam shall be the State religion of Pakistan.

larger “Arab” nation that includes being “a part of the Arab homeland” and being a “member of the Union of Arab Republics.”<sup>142</sup>

### **Jordan**

Jordan is the most moderate of the Muslim states surveyed in terms of recognizing the role of Islam and its governing principles. The Jordanian Constitution states that Islam is the state religion and that the state “shall safeguard the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom.” In so far as the customs and traditions of the Kingdom include conformance to Islamic law, making Islam the state religion and following tradition could be interpreted to mean following Islamic law as the law of governance. (This is not to say that this is the current Royal Jordanian policy; rather that such a reading can reasonably be argued.) As with the Syrian, the Jordanian Constitution formally recognizes that it is a part of the larger “Arab Nation.”<sup>143</sup>

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<sup>142</sup> **Syria Constitution**, 13 March 1973, URL: <[http://www.oefre.unibe.ch/law/icl/sy00000\\_.html](http://www.oefre.unibe.ch/law/icl/sy00000_.html)>, accessed 20 March 2005. Reads:

**Article 1 [Arab Nation, Socialist Republic]**

- (1) The Syrian Arab Republic is a democratic, popular, socialist, and sovereign state. No part of its territory can be ceded. Syria is a member of the Union of the Arab Republics.
- (2) The Syrian Arab region is a part of the Arab homeland.
- (3) The people in the Syrian Arab region are a part of the Arab nation. They work and struggle to achieve the Arab nation's comprehensive unity.

**Article 3 [Islam]**

- (1) The religion of the President of the Republic has to be Islam.
- (2) Islamic jurisprudence is a main source of legislation.

<sup>143</sup> **Jordan Constitution**, 08 January 1952, URL: <<[http://www.cmfmena.org/countrys/Constitutions/Jordan\\_Constitution.htm](http://www.cmfmena.org/countrys/Constitutions/Jordan_Constitution.htm)>>, accessed 20 March 2005. Reads:

**CHAPTER ONE: The State and System of Government**

**Article 1.** The Hashemite Kingdom of Jordan is an independent sovereign Arab State. It is indivisible and inalienable and no part of it may be ceded. The people of Jordan form a part of the Arab Nation, and its system of government is parliamentary with a hereditary monarchy.

**Article 2.** Islam is the religion of the State and Arabic is its official language.

## **Egypt**

The Egyptian Constitution is straight-forward in stating that Islam is the official religion of the state and that Islamic law is the principal source of all law. The Constitution also gives specific recognition to the “Arab Nation” and goes so far as to proclaim that the government is to work to realize the “comprehensive unity” of that Arab Nation.<sup>144</sup>

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**Article 14.** The State shall safeguard the free exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality.

**Article 106.** The Shari’a Courts shall in the exercise of their jurisdiction apply the provisions of the Shari’a law.

<sup>144</sup> **Egypt Constitution**, 22 May 1980, URL: <<http://www.uam.es/otroscentros/medina/egypt/egypolcon.htm>>, accessed 20 March 2005. Reads:

### **PART ONE: The State**

**Article 1.** The Arab Republic of Egypt is a democratic, socialist State based on the alliance of the working forces of the people. The Egyptian people are part of the Arab Nation and work for the realization of its comprehensive unity.

**Article 2.** Islam is the religion of the state and Arabic its official language. Islamic jurisprudence is the principal source of legislation.

## **Saudi Arabia**

The Saudi Arabian Constitution is perhaps the most systematic in its tying Saudi governance to Islamic law. In keeping with its Hanbali tradition, the Saudi Constitution states that the Qur'an and hadith are to serve as the basis of law for the Saudi state and, moreover, that Saudi government itself derives all of its governing authority from the Qur'an and hadith. In looking for guidance when seeking out concepts of justice, equality and consultation, the Saudi Constitution limits such inquiries to what is found in the *Shari'a*. The Constitution "strives for the achievement of the Arab and Islamic nation" and looks to the safeguarding of "Islamic and Arab heritage."<sup>145</sup>

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<sup>145</sup> **Saudi Arabia Constitution**, March 1992, URL: <[http://www.oefre.unibe.ch/law/icl/sa00000\\_.html](http://www.oefre.unibe.ch/law/icl/sa00000_.html)>, accessed 20 March 2005. Reads:

### **Chapter 1 General Principles**

**Article 1.** The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution, Arabic is its language and Riyadh is its capital.

**Article 7.** Government in Saudi Arabia derives power from the Holy Koran and the Prophet's tradition

**Article 8 [Government Principles].** Government in the Kingdom of Saudi Arabia is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari'ah.

**Article 25 [World Peace].** The state strives for the achievement of the hopes of the Arab and Islamic nation for solidarity and unity of word, and to consolidate its relations with friendly states.

**Article 26 [Human Rights].** The state protects human rights in accordance with the Islamic Shari'ah.

**Article 29 [Science, Culture].** The state safeguards science, literature and culture; it encourages scientific research; it protects the Islamic and Arab heritage and contributes toward the Arab, Islamic and human civilization.

**Article 45.** The source of the deliverance of fatwa in the Kingdom of Saudi Arabia are God's Book and the Sunnah of His Messenger. The law will define the composition of the senior ulema body, the administration of scientific research, deliverance of fatwa and it's (the body of senior ulema's) functions.

**Article 46.** The judiciary is an independent authority. There is no control over judges in the dispensation of their judgments except in the case of the Islamic Shari'ah.

## **Iraq**

The Iraqi Constitution<sup>146</sup> ties Iraqi governance to Islamic law -- to the exclusion of the democratic principles that are given superficial recognition in the text of the Constitution. The Constitution starts by stating that the official religion of Iraq is Islam; that Islamic law serves as a basis of Iraqi law; and that “no law that contradicts the established provisions of Islam may be established.”<sup>147</sup> While it is true that this restrictive language is jumbled in with other restrictors relating to democracy, etc., because Islamic law is the only law specifically enumerated as a body of law that serves as a fundamental source of legislation that no law can contradict, there is no reasonable basis to deny the simple meaning of the constitutional language that the Iraqi Constitution formally subordinates itself to Islamic law. While Western drafters insist that the Iraqi Constitutions includes “guarantees [for] full religious rights of all individuals to freedom of religious belief and practice” based on specific language in

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<sup>146</sup> **Iraq Constitution**, 15 October 2005, URL: <[http://portal.unesco.org/ci/en/files/20704/11332732681iraqi\\_constitution\\_en.pdf/iraqi\\_constitution\\_en.pdf](http://portal.unesco.org/ci/en/files/20704/11332732681iraqi_constitution_en.pdf/iraqi_constitution_en.pdf)>, accessed 17 July 2006. Cited hereafter as Iraqi Constitution. Reads:

**Article 2:**

**First:** Islam is the official religion of the State and it is a fundamental source of legislation:

- A. No law that contradicts the established provisions of Islam may be established.
- B. No law that contradicts the principles of democracy may be established.
- C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established.

**Second:** This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice such as Christians, Yazedis, and Mandi Sabeans.

**Article 3: Amendment:** Iraq is a country of many nationalities, religions and sects and is a founding and active member of the Arab League and is committed to its covenant. Iraq is a part of the Islamic world. Iraq is a country of many nationalities, religions and sects, and is a part of the Islamic world, is a founding and active member of the Arab League, and is committed to its covenant.

<sup>147</sup> Iraqi Constitution.

the Iraqi Constitution, to the extent that such language contradicts published Islamic law, those constitutional protections can be superseded by Islamic law. As with the other Arab countries, the Iraqi Constitution gives specific recognition to the status and existence of the larger “Arab Nation.” Unique to the Iraqi Constitution, specific constitutional language associates Iraq with the Arab League in ways that add substance to the concept of a larger “Arab Nation.” The two times that the constitution associates with the Covenants of the Arab League, it specifically identifies that association in terms of being a part of the greater Islamic World.<sup>148</sup>

### **Afghanistan**

The Afghan Constitution<sup>149</sup> suffers from the same defect as the Iraqi. The Afghan Constitution states that it is an “Islamic Republic,” putting Afghanistan in the same status as Pakistan and Iran. Stating that Islam is the state religion, the Constitution then says “followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law.” Believing this language secured a religious right of tolerance; those rights are actually subsumed by Islamic law as specifically stated in the very next clause where the constitution says

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<sup>148</sup> Iraqi Constitution.

<sup>149</sup> **Afghanistan Constitution**, 04 January 2004, URL: < [http://www.oefre.unibe.ch/law/icl/af00000\\_.html](http://www.oefre.unibe.ch/law/icl/af00000_.html)>, accessed 20 March 2005. Reads:

**Article 1 [Islamic Republic].** Afghanistan is an Islamic Republic, independent, unitary and indivisible state.

**Article 2 [Religions].**

(1) The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam

(2) Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law.

**Article 3 [Law and Religion].** In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.

that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam.” Islamic law has clearly stated provisions on the rights of non-Muslim subjects of the Islamic State (see Book O - “Justice” at o11- “Non-Muslim Subjects of the Islamic State”)<sup>150</sup> and, as discussed earlier, on apostasy as well. Hence, any constitutional guarantees on freedom of faith would have to be interpreted in ways that are not “contrary to the beliefs and provisions of the sacred religion of Islam” which means that constitutional rights cannot have interpretations that contradict Islamic law on the rights of both Muslim and non-Muslim subjects of the Islamic State. The certainty of this point was demonstrated earlier by the example of the Afghan Muslim apostate in Spring 2006.<sup>151</sup>

## **OBSERVATIONS**

The sampling of Middle Eastern constitutions indicates that Muslim countries formally recognize Islamic law’s role in the governance of their respective countries. For the Arab countries, there is also specific recognition of a larger “Arab Nation” that Saudi Arabia defines in explicit Islamic terms. For the other constitutions, the same point is implicit in the statement that Islamic law serves as a basis of law for the relevant national constitutions.

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<sup>150</sup> See footnotes 332, 336 and 337 to review the relevant law concerning Non-Muslim Subjects of the Islamic State.

<sup>151</sup> Morarjee, “Thorny Issue,” 27 March 2006.

Concepts of an Arab / Islamic nation should be understood as an attempt to use Western nation-state language to describe the Islamic concept of *Ummah*. A concept that has no a real equivalent in the West, discussions of the *Ummah* in Islamic terms ends up seeming too opaque to most Western sensibilities. Either way, decisionmakers and analysts are prone to discount Islamic concepts they do not understand by characterizing them in cultural mythology or utopian terms. As with the associated concept of the caliphate, the *Ummah* is a currently existing reality given specific definition in Islamic law and reflected in the national constitutions of the Muslim countries surveyed. In terms of either the greater Arab Nation or the Muslim *Ummah*, one needs look no further than currently existing *Ummah*-level organizations like the Arab League, the Supreme Islamic Counsel, the Organization of the Islamic Conference (OIC) or the Muslim World League – all of which have demonstrated an ability to speak with authority.

Also noteworthy is that the two constitutions that the U.S. Government played a role in drafting provide strong deference to the role and supremacy of Islamic law that includes permissive language that supports “extremist” demands to constitutionally subordinate constitutional language with superseding requirements from Islamic law. A principle objective of “extremist” groups like al-Qaeda and the Muslim Brotherhood is the implementation of Islamic law in Muslim countries. Current Approach advocates failed to provide meaningful insight into how language in the Afghan and Iraqi Constitutions undercut democratic principles. (For an example of how failure to account for Islamic law can undermine policy decisions, see Appendix B - “Is the Iraqi Constitution Fatally Flawed?”)

When assessing secular violence in Iraq and branding it “extra-legal,” consideration should be given to the possibility that what we call “secular” violence may actually be violence associated with imposing one of two competing bodies of Islamic law -- *Sunni* or *Shia* -- in control of Iraq. Because both *Sunni* and *Shia* law are Islamic law, their superseding status over the Iraqi Constitution is already established. Hence, the term “sectarian violence” may be masking a real political struggle between the two bodies of Islamic law for control of Iraq through control of its constitution as called for by the Iraqi Constitution.

Islamic law is a real body of law with actual presence in the legal systems of the Muslim Middle East and, as such, has actual presence in the decisionmaking of those governments that are accountable to it. This is true as a constitutional matter of law. It is also true even if that influence remains in varying stages of latency within those countries. To the extent that countries subordinate their constitutions to Islamic law, it means that they subordinate their laws to same Islamic law that is stated in the *‘Umdat al-Salik*. Hence, if the Egyptian Constitution states that Islamic law is the principle source of Egyptian Constitutional law and the *‘Umdat al-Salik* addresses a specific point of law in Islamic law, then the rebuttable presumption will be that statements on a point of law cited to the *‘Umdat al-Salik* should reflect the Egyptian government’s legal position on that same point of law.

While the “radical” website *www.khilafah.com*’s<sup>152</sup> is considered *Salafi* because it calls for the imposition of Islamic law, Muslim forms of governance, and a return of the

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<sup>152</sup> “Constitutions of the Muslim Countries Reveal the Great Betrayal,” URL: <http://www.khilafah.com/home/index.php>>, accessed 01 March 2005.

caliphate, it should be noted that these same goals are taught to contemporary 7th grade American Muslim students as well:

To begin with, the law of the land is the Shari'ah of Allah. The leader, or Khalifa of the Islamic nation implements the Shari'ah in society.<sup>153</sup> In an Islamic political system, the leader of the political community, the Kalifa, is the head of the whole Ummah.<sup>154</sup>

Also, because Islamic law holds that all law comes from Allah, that it is to be the law of the land, and that the leader should be the Caliph, it should not surprise that it is also taught to contemporary 7th grade Muslim Americans: "The duty of Muslim citizens is to be loyal to the Islamic State, to live as good Muslims, to approve of good and oppose wrong-doing and to answer the call of their leader if he needs them. (4:59)"<sup>155</sup>

The 7<sup>th</sup> grade text grounds its position in Qur'an Verse 4:59:

*Oh ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination. (Quran 4:59)*

## CONCLUSION

Among the constitutions from the Islamic countries reviewed, when stating that Islamic law serves as a basis of legislation, it should be noted that no other legal standards were recognized as providing such a basis in those constitutions. From a legal perspective, the omission of other enumerated bodies of law in the constitutions means that a positive preference was given to the Islamic. Hence, the national constitutions of all the countries surveyed remain true to the Islamic legal requirement to recognize

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<sup>153</sup> Emerick, 376.

<sup>154</sup> Emerick, 381.

<sup>155</sup> Emerick, 382.

Islamic law as the pre-eminent basis of all law. Because this language was found in all the constitutions surveyed, those constitutions are likewise subordinated to the same Islamic law identified in the *'Umdat al Salik*. Hence, a jurisprudential linkage between the laws stated in the English language translation of the *'Umdat al Salik* and the national laws of countries acknowledging Islamic law as the basis of their laws is established. This holds true even when regimes do not currently follow the requirements of Islamic law as this simply proves the point made by the “extremists” at *khilafah.com*.

If the national security community truly believes that the Current Approach accurately reflects the true state of events when asserting that “extremists” have taken “extreme” interpretations of Islamic law in furtherance of their “extreme” agendas, they should be on notice that, if such “extreme” language can be located and validated in the *'Umdat al Salik*, then it may reflect the end-state rule of law that the Islamic governments we currently assess as moderate should be following if they actually governed according to their national constitutions.

## CHAPTER 4: PRINCIPLES OF SUNNI ISLAMIC LAW

### PRINCIPLES OF SUNNI ISLAMIC LAW

When I took a decision or adopted an alternative, it was after studying every relevant – and many irrelevant – factor. Geography, tribal structure, religion, social customs, language, appetites, standards – all were at my finger-ends. The enemy I knew almost like my own side.

T.E. Lawrence (Lawrence of Arabia), as quoted in FM 34-130  
*Intelligence Preparation of the Battlefield*

*If anyone desires a religion other than Islam (submission to Allah), never will it be accepted of him; and in the Hereafter he will be in the ranks of those who have lost all spiritual good.*

Qur'an 3:85

### PRINCIPLES

While it is not the point of this paper to undertake a detailed analysis of Islamic law *per se*, a review of a few guiding principles is necessary to provide an understanding of Islamic legal concepts that frame legal doctrines on *jihad* discussed in this paper. Contrary to Western notions of “separation of church and state,” Islam defines itself in unitary terms as a complete way of life governed by a single body of law that comes from Allah who retains sole sovereignty. This concept is strictly construed. The concepts reviewed in this chapter will be those used to ground the enemy’s doctrine in the ideological screen. It is not enough to simply state Islamic doctrines of *jihad* as if they

exist in a vacuum; rather, they must be associated with the seamless web of Islamic law of which they are a part. To do this, basic legal concepts will be introduced followed by a series of bulleted quotes from various Islamic treatises that establish those concepts. This method is chosen because it will give readers the chance to gather a measure for how such concepts are discussed and understood by those who describe them within the Islamic legal community.

Because the concepts reflect guiding principles of Islamic law that underpin non-optional doctrines, analysts and decisionmakers should be on notice when those concepts support competing theories of law, sovereignty and governance that do not square with Western notions of the same but which cannot be ruled out for that reason. This applies to competing theories of Islam like those proffered by the Current Approach that facially appear to offer alternatives to bedrock doctrine but, when submitted to informed review, simply take license with them. The operating assumption will be that, once a doctrinal belief has been identified and confirmed, policy options that operate on the erroneous belief that such concepts are either passive, peripheral or malleable elements that can be manipulated to accommodate national security policies should be disfavored. The reverse will also be true. When an element of Islamic doctrine is properly assessed to be a non-optional element of belief, then questions concerning the subjective belief of individual Muslims will not be relevant to the ultimate determination of the issue in question.

As important, when U.S. Government policies undercut core Islamic doctrine, the Islamic community will be assessed to be within its right to interpret those policies as attacks on Islam through the deliberate assault on its doctrines. When this happens, it

will not matter that those responsible for the offending policy were unknowledgeable as to its effects. When determining whether Islam is under attack, a Muslim jurist's assessment can be objectively based on whether the relevant policy undercuts Islamic doctrine and will be under no obligation to determine the subjective intent of U.S. policy makers when they undertake an offending course of action.

Islamic jurists can reasonably assert this position for the same reason that American jurists would assert the reasonable standard for professionals. Also called the knowing standard, it asserts that professionals should either "know or should have known" those things that qualify them as professionals. This standard is related to the legal requirement that professionals be competent. Applying the standard, the Muslim jurist could ask whether it reasonable for professionals in the American national security community with responsibility for the WOT to argue that they are unfamiliar with Islamic drivers to terrorism when the "extremists" explicitly state that they fight *jihad* in furtherance of those same Islamic principles?

### **Islam is a Complete Way of Life**

In most discussions of Islam, one is likely to find a statement to the effect that "Islam is not just a religion but a way of life." Often read as a throw-away line to those unfamiliar with the topic, when the statement is made in formal writings it is meant to be taken seriously. When made, two points usually follow: first, that Islam is not a religion along the norms of Christianity or Judaism to be practiced once a week in a church or synagogue – especially as practiced in the West as part of the larger secular community; and; second, that "as a way of life" Islam is governed by laws that encompass every aspect of life. The relevant law is Islamic and is meant to dictate all aspects that

comprise a believer's "complete way of life." Hence, the statement "Islam is not just a religion but rather is a complete way of life" is usually intended to put readers on notice that Islam does not follow secular concepts of church and state, that believers are, in fact, governed by Islamic law, and that, consequently, readers should base their assessment of Islam on its "total way of life" reality. Hence, in a book of Islamic law, the *'Umdat al-Salik* states at the beginning:

- There is no disagreement among the scholars of the Muslims that the source of legal rulings for all acts of those who are morally responsible is Allah Most Glorious.<sup>156</sup>
- **Imran Ahsan Khan Nyazee provides what is perhaps the most descriptive general purpose explanation for what is meant by the statement when he states:** "Islam, it is generally acknowledged, is a "complete way of life" and at the core of this code is the law of Islam. This implies that a Muslim through his submission to Islam not only accepts the unity of Allah, the truth of the mission of Muhammad, but also agrees through a contract (*bay'ah*) with the Muslim community that his life be regulated in accordance with the *ahkam* of Allah, and in accordance with these *ahkam* alone. No other sovereign or authority is acceptable to the Muslim, unless it guarantees the application of these laws in their entirety. Any other legal system, howsoever attractive it may appear on the surface, is alien for Muslims and is not likely to succeed in the solution of their problems; it would be doomed from the start. ... A comprehensive application of these laws, which flow directly or indirectly from the decrees (*ahkam*) of Allah, would mean that they should regulate every area of life, from politics to private transactions, from criminal justice to the laws of traffic, from ritual to international law, and from the laws of taxation and finance to embezzlement and white collar crimes."<sup>157</sup>
- **Hence, there should be little confusion about what is meant when reading in the 7th grade Islamic catechism for American Muslims titled *What Islam is All About* when it says:** "Islam is not a religion, however, but a complete way of life that is patterned after the natural trend in the universe."<sup>158</sup> Or: "According to the Qur'an, Islam is the way of life Allah instituted for humanity, even as the rest of the universe submits to His will. (41:11) "<sup>159</sup>

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<sup>156</sup> al-Misri, Book A "Sacred Knowledge," al.0 "The Knowledge of Good and Bad," at § al.1.

<sup>157</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihad.*, 2d ed., (Kuala Lumpur: The Other Press, 2002), 50. Cited hereafter as Nyazee, *Ijtihad*.

<sup>158</sup> Emerick, 2.

<sup>159</sup> Emerick, 50.

### **Sovereignty Belongs to Allah Alone**

The next principle is that Islamic law comes exclusively from Allah. “The verse of the Qur’an, “*The hukm belongs to Allah alone,*” (6:57) is often cited in support of this rule.”<sup>160</sup> As the exclusive law creating authority, Allah is the sole Lawmaker and the exclusive Sovereign. The difficulty in grasping this concept does not appear to be based on a failure to understand what is stated *per se* but rather on an inability to accept that what is stated is what is meant – with all of its ramifications. Because Allah transcends mortality, time and space, His revealed law likewise applies to all mankind through time and space until the Last Day. This concept is closely associated with the concept in Islam of Allah’s absolute timeless unity and oneness – the dogmatic doctrine known as *tawhid*.<sup>161</sup> Islamic law reflects Allah’s exclusive sovereign status by further stating that empowerment for temporal legal authority is based on a theory of delegated sovereignty or vice-regency. The consequences that flow from the doctrine of Allah’s exclusive sovereignty are both logically consistent and pre-emptive. If Allah enjoys exclusive sovereignty, then His laws can never be legally overruled by non-sovereign entities -- including all of mankind. As important, if Allah’s law is eternal, and eternally applicable, then one cannot ascribe temporal or time-fixed notions to His law. This challenges Western concepts of democracy that argue that man has the right to legislate law on his own authority -- which is another way of saying that man has the right to assume the sovereignty that allows for the making of his own laws. At the conceptual

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<sup>160</sup> Nyazee, *Ijtihad*, 38.

<sup>161</sup> “The next principle of the utmost importance is *tawhid* or the dogma of the unity of Allah. If there is one thing in which Islam will not temporize or compromise, it is the dogma of the absolute unity of Allah,” Fyze, 13.

level, a disconnect between Islamic and Western theories of sovereignty exists that may not be reconcilable.

Current Approach reinterpretations of the Qur'an based on historical contextualization likewise assume a temporal aspect to Allah's eternally divine revelation that seriously tests dogmatic positions in Islamic law. The following quotations from legal treatises are intended to provide a sense for how Islamic jurists characterize Islamic notions of sovereignty:

- **Known among Islamic jurists to take a more “liberal” view toward Islamic law, Mohammad Hashim Kamali, in his *Principles of Islamic Jurisprudence*, none-the-less comes down four-square on the notion of the absolute sovereignty of Allah that necessarily pre-empts all other forms of sovereignty – including the democratic concept of sovereignty of the people:** “Sovereignty in Islam is the prerogative of Almighty Allah alone. He is the absolute arbiter of values and it is His will that determines good and evil, right and wrong. It is neither the will of the ruler nor of any assembly of men, nor even the community as a whole, that determines the values and the laws which uphold those values. In its capacity as the *vice-regent of Allah, the Muslim community is entrusted with the authority to implement the Shari’ah*, to administer justice and to take all the necessary measures in the interest of good government. *The sovereignty of the people, if the use of the word ‘sovereignty’ is appropriate at all, is a delegated, or executive, sovereignty, (sultan tanfidhi) only.* Although the consensus or *ijma* of the community, or its learned members, is a recognized source of law in Islam, in the final analysis, *ijma* is subservient to divine revelation and can never overrule the explicit injunctions of the Qur’an and *Sunnah*. The role of the ballot box and the sovereignty of the people are thus seen in a different light in Islamic law than they are in Western jurisprudence.<sup>162</sup> (Emphasis added)
- **Doi directly confronts the issue of modifying Allah’s most perfect justice in a question and answer section that specifically addresses changes made in Islamic law that bring it in-line with current jurisprudential norms. It is in this discussion that he rejects such arguments and supports his position with specific reference to the Qur’an. It is in this discussion that Doi reinforces the doctrinal view that the Shari’ah is ultimately timeless in its application:** The Holy Qur’an has warned those who fail to apply the Shari’ah in the following strong words:

*And if any fail to judge by the light of what Allah has revealed, they are not better than those who rebel. (5:50)*

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<sup>162</sup> Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3d rev. ed., (Cambridge, UK: The Islamic Text Society, 2003), 8.

*And if any fail to judge by the light of what Allah has revealed, they are no better than wrong-doers. (5:48)*

*And if any fail to judge by the light of what Allah has revealed, they are no better than unbelievers. (5:47)*

As we noted before, the Shari'ah was not revealed for limited application for a specific age. It will suit every age and time. It will remain valid and shall continue to be, till the end of this life on earth. Its injunctions were coined in such a manner that they are not affected by the lapse of time. They do not become obsolete, nor do their general principles and basic theories need to be changed or renovated.<sup>163</sup>

- **While initial reaction to such language may be to discount it as “extreme,” “fundamentalist” or to otherwise characterize it as out of the mainstream (it is not, it is doctrine), it should be pointed out that this concept is also taught to contemporary 7th grade level American Muslim students:** “Muslims know that Allah is the Supreme Being in the universe, therefore, His laws and commandments must form the basis for all human affairs. If we didn’t follow Allah’s commandments, but then still called ourselves Muslims, we would be hypocrites like the followers of many other religions today.”<sup>164</sup>

There is no doubt that Islamic law understands Allah to be the exclusive Sovereign legally, politically and theologically. Current Approach arguments that draw analysts and decisionmakers into “moderate” ideations of Islamic law based on a “temporalities-based” deconstruction of the Qur’an should have to explain how dramatically that view cuts across mainstream doctrinal concepts of Islamic law. As important, the Islamic theory of sovereignty undercuts Western notions of democracy at the conceptual level. Not understanding this dynamic undermines national security objectives that seek to bring democratic forms of governance to countries whose constitutions state that “no law shall contradict Islamic law.”<sup>165</sup>

Branding Muslims as “extreme” or “fundamentalist” because their views on democracy accurately reflect core Islamic doctrine should be assessed. Accepting

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<sup>163</sup> Doi, 466.

<sup>164</sup> Emerick, 381.

<sup>165</sup> See Afghan & Iraqi Constitutions.

Current Approach arguments that overly depend on contextualizing Quranic interpretations runs the risk of antagonizing those Muslims who choose to accept the plainly stated requirements of Islam. Given the foreseeability of antagonizing Muslims, the question is why Current Approach advocates make such recommendations without briefing the risks associated with the policy options advocated.

### **SACRED ISLAMIC LAW – THE SHARI’A - ALLAH’S SOVEREIGN LAW**

Islamic law defines the complete way of life that reflects Allah’s sovereign law-creating authority. When Islam is a complete way of life, it means both the believer and his community are governed by Islamic law. A principle characteristic of Allah’s sovereignty is His exclusive lawmaking authority:

*The Command is for none but Allah: He hath commanded that ye worship none but Him: that is the right religion, but most men understand not ...* (Qur’an 12:40)

Islamic law is the exclusive source of law for both Muslims and non-Muslims, both *dhimmi* and *harbi*, and embraces all human activities – both personal and communal. Understood as a series of duties and obligations, Islamic law is not severable from Islamic theology and is “totalitarian” in its application:

- **Doi, identifies Islamic law – the Shari’a – with Allah’s sovereign status as exclusive lawmaker:** “In the Shari’ah, there is an explicit emphasis on the fact that Allah is the Lawgiver and the whole *Ummah*, the nation of Islam, is merely His trustee. It is because of this principle that the *Ummah* enjoys a derivative rule-making power and not an absolute law-creating prerogative. The Islamic State, like the whole of what one might call Islamic political psychology, views the *Dar al-Islam* (Abode of Islam) as one vast homogeneous commonwealth of people who have a common ideology in all matters both spiritual and temporal. The entire Muslim *Ummah* lives under the Shari’ah to which every member has to submit, with sovereignty belonging to Allah alone.”<sup>166</sup>

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<sup>166</sup> Doi, 5.

- **In America, contemporary 7th grade Muslims are taught that Islamic law is governing law:** “The basis of the legal and political system is the Shari’ah of Allah. Its main sources are the Qur’an and Sunnah. Muslims dream of establishing the power of Islam in the world.”<sup>167</sup>

### Sources of *Sunni* Islamic Law

Putting the body of Islamic law beyond the reach of man reflects the sacred nature of its primary sources, the Qur’an and hadith. Revisiting the earlier discussion on the Qur’an and hadith, both bodies of law represent a form of binding ordinance when used to support issues of Islamic law. Because the third source of law, scholarly consensus (*ijma*), represents the unanimous acceptance of laws immediately derived from the Qur’an and hadith, it too operates beyond the reach of judicial review. Fyzee explains the three primary sources of Islamic law:

- The Koran according to this theory is the first source of law. Its importance is religious and spiritual, no less than legal, as it is, in Muslim belief, the Word of Allah. When a verse of the Koran is cited, the Muslim authors say: “Allah says, Mighty and Glorious is He’ or “Says Allah, the Blessed and Exalted.” It is for this reason that the verse of the Koran (*ayat*), although only a few of them deal specifically with legal questions, are held to be of paramount authority. In interpreting the Koranic verses, one important principle has to be observed. *Some verses are deemed to be the abrogating (nasikh) verses and some to be the abrogated (mansukh) ones. Generally speaking the earlier verses are deemed to be repealed by the latter ones.* The textbooks on Islamic law give a good deal of attention to problems of interpretation and discuss exhaustively the question of how the rule of law is to be deduced when several Koranic verses deal with the same or a similar problem, or when one verse affects another, directly or indirectly.
- The second source of law is the *sunna*, the practice of the Prophet. The word *sunna* was used in pre-Islamic times for an ancient and continuous usage, well established in the community (*sunnat al-umma*); later, the term was applied to the practice of the Prophet (*sunna al-nabi*). The word *sunna* must be distinguished from the word hadith, for a promiscuous use of the two terms leads sometimes to confusion of thought. Hadith is the story of a particular occurrence; *sunna*, the rule of law deduced from it is the ‘practice’ of the Prophet, his model behavior. The two sources, Koran and *sunna*, are often called *nass* (binding ordinance) and represent direct and indirect revelation.

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<sup>167</sup> Emerick, 377.

- The third source of law is *ijma*, consensus of opinion among the learned of the community. Although the Muslim legists give it the third place in descending order, *modern critics consider it to be the most important element in Islamic law*, and an examination of the corpus of the *fiqh* reveals that a major portion of the law consists of the concurrent opinions of scholars on legal questions.<sup>168</sup> (Emphasis added)

Because Islamic law is a mandatory component of Islam, the notion that law and politics should be based on Islamic law is taught to contemporary American Muslim students at the 7th grade level: “The basis of the legal and political system is the Shari’ah of Allah. Its main sources are the Qur’an and Sunnah.<sup>169</sup> The *law of the land* is the Shari’ah of Allah.”<sup>170</sup> (Emphasis added)

Because Islamic law is a real non-severable element of Islam, it cannot be left out of the analytical process. The Current Approach does not account for doctrinal concepts in Islam that effect both Muslim behavior and decisionmaking. When explaining Islamic motivations without reference to its defining doctrines, Western audiences may end up conceptualizing them against Western default understandings that may lead to erroneous conclusions. The ability to generate predictive models of “extremist” behavior requires an actual understanding of the enemy’s stated doctrine. Current Approach methodologies that avoid references to Islamic law by playing to Western preferences should be disfavored.

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<sup>168</sup> Fyzee, 19-20.

<sup>169</sup> Emerick, 381.

<sup>170</sup> Emerick, 376.

### **The “Fixed” and the “Flexible” in Islamic Law**

The primary and secondary sources of Islamic law, the Qur’an and authoritative (*mutawatir*) hadith, are the products of divine revelation and hence cannot be overruled or changed. The third source of law represents those areas where consensus has been reached on a given point of law, which, as will be discussed, is also beyond man’s ability to change. As the *‘Umdat al-Salik* states, “the four *Sunni* schools of Islamic law, Hanafi, Maliki, Shafi’i, and Hanbali are identical in approximately 75 percent of their legal conclusions.”<sup>171</sup> This paper will align its arguments to reflect those commonly held positions in Islamic law that are beyond the scope of being overruled. Hence, this paper seeks out what the U.S. legal system calls settled issues of law. In establishing the line separating the permanent body of law from the amendable, this paper relies on Imran Khan Nyazee’s “Fixed and Flexible Spheres” metaphor that separates Islamic law into two spheres -- the permanently “fixed” and the mutably “flexible:”

The two spheres of the law, which we may, for the sake of convenience call the “fixed” and the “flexible” spheres, are linked to each other through an organic relationship. They are not mutually dependant. In fact, it is the flexible sphere that is dependant on the fixed and unchangeable sphere, and may be said to revolve around it, changing its complexion in each age. The relationship is best described through our example of a tree. The fixed part is firmly planted in the ground, while the changing part is like the branches that spread out and keep changing their shape and appearance in different times and seasons.<sup>172</sup>

This duality in Islamic law reflects the twin requirements to conform to an eternal body of law and yet remain relevant to the times and cultures in which Islam finds itself being practiced. As Nyazee explains:

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<sup>171</sup> al-Misri, vii.

<sup>172</sup> Nyazee, *Ijtihad*, 116.

The word evolution when used with Islamic law is likely to evoke different reactions. Those who feel that the *shari'ah* was laid down once and for all may reject the idea of evolution in Islamic law. Their objections are partly justified. But, as Islamic law is meant to apply to every aspect of a Muslim's life in all ages, it follows that it has to evolve and grow like any other legal system so that it may be able to cater to the demands of the changing times. That is exactly what it does and is designed to do. *The shari'ah may be fixed and immutable at its central core, as is claimed by some, but is not so in its extensions. ... The laws in the Qur'an and the Sunnah of the Prophet, it is true, have been determined and fixed for all times to come. These comprise the core legal concepts, the genetic code, so to say. As Muhammad was the last of the prophets, there is no chance of mutation in these laws.* Calls for *ijtihad* in the present age, if they are meant to alter such fixed laws, are futile and unnecessary.<sup>173</sup> (Emphasis added)

Nyazee's analogy to genetic coding is on point. No matter how hard Western decisionmakers and analysts talk about Islamic law as if it was just like Western notions of law, an idea flatly rejected by Islamic jurists, the genetic coding, in the form of Islamic doctrine, will always force a reversion to the Islamic legal norm. With the Qur'an and *Sunna* representing the "fixed" inner sphere of Islamic law, the two spheres are not equally weighted. The "fixed" inner sphere represents either the rights of Allah or rights of individuals specifically fixed in the Qur'an or hadith that, for that reason, cannot be modified, amended or suspended.<sup>174</sup> For this reason, the fixed inner sphere of Islamic

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<sup>173</sup> Nyazee, *Ijtihad*, 111.

<sup>174</sup> Nyazee, *Ijtihad*, 115-116. "The right of Allah (*haqq Allah*) is owed by the Muslim community to Allah, and is not owed by individuals to the community or to the state. This is the crucial point. The right of Allah is fixed by Allah, once and for all and is not subject to legal or judicial review, that is, it is outside the purview of the law. It can never be altered. ... All laws that are related to the right of Allah are part of the fixed sphere of the law. All laws that are not related to the right of Allah, that is, those that are the right of the individual or the right of the *saltanah* and have not been expressly stated in the texts are liable to change. In fact, they should change in each age to adapt to new conditions. This statement needs to be qualified though: Any laws that involve the right of the individual, but have been specifically fixed in the Qur'an or the Sunnah belong to the fixed sphere and are to be considered as rights granted by Allah and as boundaries fixed by Him. ... Such rights are to be considered together with other basis and inalienable rights that have been explicitly granted by Allah to individuals. They may not be changed or even suspended temporarily, whatever the emergency. They are outside the pale of legal review."

law represents the primary law that controls the larger body of Islamic law in both spheres through a series of functions that reflect its controlling authority:

- The first function is to provide the basic law on which the foundations of Muslim society are laid.
- It lays down the limits or outer boundaries within which the flexible part is to be developed or evolved. These boundaries are never to be crossed. ... *All laws laid down as boundaries shall forever remain unaltered and fixed.* The flexible or changing law will have to grow and develop within these boundaries, but will never be able to affect or alter the nature of the fixed law.
- Another function of the fixed part is that it furnishes the principles of Islamic law. ... The sources for the principles of Islamic law are the Qur'an and the *Sunnah*. These principles may be explicitly stated in the sources or may be derived from them and then unanimously accepted through consensus (*ijma*), which is a judicial function.<sup>175</sup> (Emphasis added)

Hence, when citing to laws that are known to be fixed in the Qur'an and hadith, or which represents scholarly consensus (*ijma*) in support of positions being asserted, the presumption will be that the fixed law represents either the exclusive or ultimate position in Islamic law that can preempt lesser understandings of the same concept. When a law is successfully fixed in the inner sphere, it overcomes Current Approach claims that there are thousands of different interpretations in Islamic law to any given point of law. When successfully asserted, dissenting views should have to demonstrate either that the grounding was erroneous, that the law did not apply, or that the translated authority relied on was incorrect in a material way. Dissenting views that fail to overcome this presumption should be disfavored.

This gives rise to a firm rule of interpretation: If a position is stated that reflects consensus – *ijma*, the hadith or the Qur'an, then short of establishing error in the interpretation, dissenting Current Approach arguments will have to demonstrate the

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<sup>175</sup> Nyazee, *Ijtihad*, 116-118.

validity of their competing views at the same level of law. Specifically excluded from consideration in this process are views that cannot establish a nexus to the fixed law or which reflect the aspirational ideals of “moderates” who confuse the law as it is with the law as they would like it to be -- and in so doing confuse those who rely on their assessments. It is through the fixed sphere metaphor that a hard rule emerges: *At no time can a theory of law that relies solely on the flexible ever be used to defeat a doctrine grounded in the fixed.* Current Approach advocates who proffer flexible arguments against fixed doctrines without disclosing their structural weakness create an assumption of malleability in Islamic law where none exist causing analysts and decisionmakers to miscalculate. When evaluating Current Approach arguments, a sense for their grounding in the fixed sphere should be undertaken.

## **RULES OF INTERPRETATION**

As with all major legal systems, Islam developed its own set of rules of interpretation that range from elective to non-optional. Some rules become so fixed in doctrine, hardwired even, that the reading of a text without reference to the rule becomes impermissible. Two mandatory rules in need of discussion relate to the concepts of *ijma* and abrogation as both have a powerful influence on the interpretation and meaning of the Qur’an and hadith -- especially as they relate to the topic of *jihad*. Textual analysis with reference to these twin doctrines can paint a dramatically different understanding of the Qur’an and hadith that raises serious questions about whether “extremist” Muslims really are as deliberately deceptive or arbitrary in their use and interpretation of the

Qur'an and hadith as Current Approach advocates would have us believe. Both *ijma* and abrogation establish a firm basis to be able to assess when a law is fixed in the inner sphere.

### On Scholarly Consensus – *ijma*

When reading Islamic law, the terms “scholar” and “scholarship” have meanings that extend beyond the conventional scholastic understanding. As a translated Islamic term of art, “scholar” takes the meaning of one “qualified to issue legal opinions” when a scholar is a *mujtahid*.<sup>176</sup> Islamic law requires those not capable of issuing expert legal opinion (*ijtihad*) to follow qualified scholarship (*taqlid*) on matters of law.<sup>177</sup> As the *‘Umdat al-Salik* notes, the specific basis in Islamic law for the status of scholars comes from the Qur’an:

#### b2.0. THE KORANIC EVIDENCE FOR FOLLOWING SCHOLARS

b2.1 (Muhammad Sa’id Buti:) The first aspect of it is the work of Allah the Majestic, “*Ask those who recall if you know not*” (Qur’an 16:43) By *consensus of all the scholars* (*ijma*), this verse is an imperative for someone who does not know a ruling in Sacred Law or the evidence for it to follow someone who does. *Virtually all scholars of*

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<sup>176</sup> al-Misri, Book B “The Validity of Following Qualified Leadership,” at § b1.2; from al-Misri, Book O “Justice,” at § o22.1(d): Mujtahid as defined: “To possess knowledge (O: of the rulings of Sacred Law, meaning by way of personal legal reasoning (*ijtihad*) (A: from primary texts), not (*taqlid*) (A: i.e. if he follows qualified scholarship, he must know and agree with how the rulings are derived, not merely report them). Being qualified to perform legal reasoning (*ijtihad*) requires knowledge of the rules and principles of the Koran, the *sunna* (A: in this context meaning the hadith, not the sunna as opposed to the *obligatory*), (N: as well as knowledge of scholarly consensus (*ijma*, def: b7)), and analogy (def: III below), together with knowing the types of each of these. (A: The knowledge of each “type” below implies familiarity with subtypes and kinds, but the commentator has deemed the mention of the category as a whole sufficient to readers a general idea.)”

At o22.1(d)(III) “He must know the reliability ratings of hadith narrators in strength and weakness. When two primary texts seem to contend, he gives precedence to: (5) those which supercede previous rulings. ... He must likewise know the position of the scholars of Sacred Law regarding their consensus and differences, and not contradict their consensus (A: which is unlawful (dis: b7.2)) with his own reasoning.

<sup>177</sup> al-Misri, Book B, at § b1.1.

fundamental Islamic law have made this verse their principle evidence that it is obligatory for the ordinary person to follow the scholar who is a *mujtahid*.<sup>178</sup> (Emphasis added)

As a term of art in Islamic law, a “scholar” is a person of real stature with actual authority to compel. Given the precise nature of the term “scholar,” its generic use in discussions on Islamic law and doctrine can lead to ambiguity. When moderates refer to scholars in a discussion that contrasts academicians and Islamic authorities (whose opinions are presumed correct), the imputed equivalency, even when unintended, is erroneous and misleading. This is even truer when the academic scholarship comes from non-Muslims:

*And judge between them according to what Allah has revealed, and do not follow their opinions, and beware of them lest they confuse you in matters which Allah has revealed to you.* (Qur'an 5:49)

The importance of understanding the status of scholars is that it serves as the basis for a legal doctrine in Islamic law referred to as “consensus among the scholars,” or “scholarly consensus,” or “*ijma*.” Scholarly consensus exists when there is agreement among all the scholars who are *mujtahids* in a given period on a single matter or event.<sup>179</sup> The consequence of consensus on a given rule of law is dramatic because once a rule reflects the consensus position; it becomes a permanently fixed element of Sacred Law that is obligatory to obey and not lawful to disobey from that point forward. When a point of law rises to the level of scholarly consensus, it becomes a part of the “fixed”

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<sup>178</sup> al-Misri, Book B, at § b2.1.

<sup>179</sup> From al-Misri, Book B, at § b7.1: (‘Abd al-Wahhab Khallaf:) Scholarly consensus (*ijma*) is the agreement of all the *mujtahids* of the Muslims existing at one particular period after the Prophets death (Allah bless him and give him peace) about a particular ruling regarding a matter or event.

element of Islamic law. Nyazee affirms the continuing status *ijma* enjoys in Islamic law to this day:

The majority of the jurists agreed upon the rule that explicit *ijma* is a definitive source and it is obligatory to act upon it; its opposition is prohibited. Thus, if explicit *ijma* occurs on an issue and is published, then, the *hukm* (rule) upon which agreement is found stands established definitively (*qat'an*) and it is not permitted to oppose it. Further, the issue that has been settled through such *ijma* can no longer be opened up again and be subjected to *ijtihad*.<sup>180</sup>

This is why *mujtahids* cannot contradict scholarly consensus from earlier periods.

There is no American legal equivalent to the concept of scholarly consensus because it reflects law that cannot be changed. The '*Umdat al-Salik* confirms the current status of scholarly consensus in Islam law:

§ b7.2 When the ... necessary integrals of consensus exist, the ruling agreed upon is an authoritative part of Sacred Law that is obligatory to obey and not lawful to disobey. Nor can *mujtahids* of a succeeding era make the thing an object of new *ijtihad*, because the ruling on it, verified by scholarly consensus, is an absolute ruling which does not admit of being contravened or annulled.<sup>181</sup>

Arguments in Islamic law that succeed at establishing scholarly consensus take on a status approaching irrefutable. This is what Albert Hourani, author of *A History of the Arab Peoples*, meant when he said: "When there was general agreement as a result of an exercise of reason, then this consensus (*ijma*) would be regarded as having the status of certain and unquestionable truth."<sup>182</sup> Regarding the relevant authority for establishing scholarly consensus, orthodox Islamic law only recognizes rulings from the four doctrinal *Sunni* schools of Islamic law (Hanafi, Maliki, Shafi'i and Hanbali). For purposes of

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<sup>180</sup> Imran Asham Khan Nyazee, *Islamic Jurisprudence*, (Kuala Lumpur: The Other Press, 2003), 187. Cited hereafter as Nyazee, *Jurisprudence*.

<sup>181</sup> al-Misri, Book B, at § b7.2.

<sup>182</sup> Albert Hourani, 68.

establishing scholarly consensus, it is unlawful to follow the rulings from other schools.<sup>183</sup>

For this reason, Current Approach advocates who are not Islamic jurists or who are but not formally aligned with one of the four schools lack standing to argue for new rulings on Islamic law.

There are consequences to a finding that scholarly consensus exists on a point of Islamic law. First, as a matter of law, arguments challenging positions that reflect scholarly consensus could not themselves be based on Islamic law or doctrine. The legal proofs in the Qur'an and hadith for the doctrine of scholarly consensus are firmly established and agreed upon (as a matter of that same consensus) as are the harsh consequences for those who choose not to conform to them.<sup>184</sup> Furthermore, scholarly

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<sup>183</sup> al-Misri, Book B “The Validity of Following Qualified Scholarship,” b.7 “Scholarly Consensus (ijma), at b7.6. Reads: (n: In addition to its general interest as a formal legal opinion, the following serves in the present context to clarify why other than the four Sunni schools of jurisprudence do not necessarily play a role in scholarly consensus.)

(‘Abd al-Rahman Ba’alawi:) Ibn Salah reports that there is scholarly consensus on its being unlawful to follow rulings from schools other than those of the four Imams, meaning in one’s personal works, let alone give court verdicts or formal legal opinions to people from them, because of the untrustworthiness of the ascription of such rulings to the scholars who reportedly gave them, there being no channels of transmission which obviate the possibility of textual corruption and spurious substitutions.

The Zaydis, for example, who trace themselves to Zayd ibn Husayn (n: son of ‘Ali and Fatima), the beatitude of Allah be upon them, despite the fact that Zayd was on of the Imams of the religion and a renowned figure well qualified to give guidance to those seeking it, his followers identify him with extreme permissiveness on many questions, ascriptions based on failure to check as to what his positions actually were (n: by naming the intermediate transmitters and establishing their reliability). It is quite otherwise with the four schools, whose Imams (Allah reward them) have spent themselves in checking the positions of their schools, explaining what could be rigorously authenticated as the position of the person is was attributed to, and what could not be. Their scholars have thus achieved safety from textual corruption and have been able to discern the genuine from the poorly authenticated.

<sup>184</sup> From al-Misri, Book B, at § b7.3-4: The proof of the legal authority of scholarly consensus is that just as Allah Most Glorious has ordered the believers, in the Koran, to obey Him and His messenger, so too He has ordered them to obey those of authority (*ulu al-amr*) among them saying, “*Oh you who believe, obey Allah and obey the Prophet and those in authority among you*” (Qur’an 4:59), such that when those of authority in legal expertise, the *mujtahids*, agree upon a ruling, it is obligatory in the very words of the Koran to follow them and carry out

consensus is not limited to the ossified interpretations of medieval scholars as Current Approach advocates often assert. In a modern legal treatise on scholarly consensus titled *The Doctrine of Ijma in Islam: A Study of the Judicial Principle of Consensus*, Ahmad Hasan gave a thorough explanation of how Islamic law accounts for the status it affords scholarly consensus. When reading Hasan's explanation, the perspective should be that of one who is Muslim and believes in the fixed nature of the underlying sacred law:

Now if *ijma* runs contrary to the revealed text, such an *ijma* would be erroneous. But *ijma* of the community can never be erroneous. Hence it cannot be abrogated by the Qur'an or the *Sunnah*. Similarly, it cannot be repealed by a subsequent *ijma* because the latter is either based on an evidence contrary to the evidence of the former or it has no evidence. If the subsequent *ijma* is not based on evidence, it would be erroneous. But that would be impossible. If it is based on some evidence, that evidence would either be a text of the Qur'an or the *Sunnah*, or it would be an analogy. The evidence cannot be a text of the Qur'an or the *Sunnah* because it precedes *ijma*. Now if *ijma* contradicts the text, it is impossible. The evidence cannot be an analogy because it requires an original basis. The original basis would again be a clear injunction from the Qur'an or the *Sunnah* or that would be an *ijma* or *qiyas* (analogy). In the case of *ijma*, it again requires supporting evidence from the Qur'an or the *Sunnah* or analogical extension. In both cases, an original basis is again required, and the reasoning goes on as infinitum. ... Hence, the abrogation of *ijma* by any other authority is not allowed. Conversely, *ijma* cannot abrogate any rule of law based on the Qur'an, *Sunnah*, *ijma*, or *qiyas*. Hence the injunctions enunciated in the Qur'an on the rules ordained by the Prophet could only be repealed in his lifetime, and not by *ijma* after him. This view is agreed upon by the scholars in general. Further, no rule of law can be repealed by *ijma* during the time of the Prophet, for the *ijma* established in his time must have his approval. If he abrogates a rule expressly, his statement will count and not the *ijma*. Hence *ijma* in his time carries no value.<sup>185</sup> (Emphasis added)

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their judgment. And Allah threatens those who oppose the Messenger and follow other than the believers' way, saying, "*Whoever controverts the Messenger after guidance has become clear to him and follows other than the believers' way, We shall give him over to what he has turned to and roast him in hell, and how evil an outcome*" (Qur'an 4:115)

§ b7.4 A second evidentiary aspect is that a ruling *agreed upon by all the mujtahids in the Islamic Community (Umma)* is in fact the ruling of the Community, represented by its mujtahids, and there many hadiths that have come from the Prophet (Allah bless him and give him peace), as well as quotes from the Companions, which indicate that the Community is divinely protected from error, including his saying (Allah bless him and give him peace):

- (1) "*My Community shall not agree on an error.*"
- (2) "*Allah is not wont to make my Community concur on misguidance.*"
- (3) "*That which the Muslims consider good, Allah considers good.*"

<sup>185</sup> Hasan, 154-154.

Of note in Hasan's explanation is the close relationship between scholarly consensus and abrogation. Though Islamic scholars still retain some latitude to reason to conclusion (*ijtihad*) by applying Islamic law to particular new fact patterns or ethical situations in the flexible sphere of law, the days of "absolute *ijtihad*" on doctrinal issues of Islam in the fixed sphere have, since the days of Malik, Hanafi, Shafi'i and Hanbal, effectively passed -- and is barred where existing consensus already exists. As a practical matter, this constrains new scholarly consensus, which, in any event, can never serve as a basis to overrule legal positions where *ijma* has already been established.<sup>186</sup>

For this reason, whenever the ideological screen in the IPB methodology determines that an element of the enemy's doctrinal template accurately reflects scholarly consensus, it means that there can be no doctrinal basis to any Current Approach argument that counters it. When such challenges occur, they serve as examples of the ungrounded flexible challenging the fixed. This leads to a general rule: when an "extremist" position is found to be grounded in consensus, the ideological screen must assess the "extremist" position to be presumptively correct (and hence not extreme).

An IPB process organized to account for the enemy's doctrine in the WOT would quickly identify the Islamic doctrine of scholarly consensus and realize that it establishes certain absolute rules that can be used to assess the relative strength of "extremist's" claims when compared to the Current Approach's. When "extremists" claim scholarly

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<sup>186</sup> From al-Misri, Book B, at § b1.2: No age of history is totally lacking people who are competent in *ijtihad* on particular questions which are new, and this is an important aspect of Sacred Law, to provide solutions to new ethical problems by means of sound Islamic legal methodology in applying the Koranic and hadith primary texts. But while in this specific sense the door of *ijtihad* is not and cannot be closed, Islamic scholarship has not accepted anyone's claim to absolute *ijtihad* since Imams Abu Hanifa, Malik, Shafi'i, and Ahmad.

consensus for a position asserted, all the IPB analyst should have to do is determine whether the claim was properly asserted. For example, while generally accepted that those calling for a return of the Caliphate project utopian visions exhibiting “extremist” tendencies; a cursory review of Islamic law would reveal that “the investiture of someone from the Islamic community (*Umma*) able to fulfill the duties of the Caliphate is obligatory by scholarly consensus.”<sup>187</sup> Once scholarly consensus is established, the “extremist” is understood to be correct as a matter of law and no further discussion is required. As part of an ongoing collection cycle, a list of Islamic rules that reflect scholarly consensus could be collected for quick reference. The ability to come to an early assessment on the claims of scholarly consensus would facilitate an ability to come to a timely appreciation of the relative strength of the enemy in the WOT.

As a fact book is assembled of rules that have attained scholarly consensus, a pattern will emerge that shows that while Current Approach advocates struggle with the concept, both the Afghan<sup>188</sup> and Iraqi<sup>189</sup> constitutions specifically defer to Islam’s absolute rules<sup>190</sup> while “extremists” frequently structure their arguments to claim scholarly consensus.<sup>191</sup> The Current Approach is silent on scholarly consensus. Because scholarly consensus has an influence in the Muslim world that “extremists” leverage, it should be accounted for in the IPB methodology.

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<sup>187</sup> al-Misri, Book O “Justice,” o25.0 “The Caliphate,” at § o25.1.

<sup>188</sup> Afghanistan Constitution.

<sup>189</sup> Iraq Constitution.

<sup>190</sup> al-Misri, Book B, at § b7.2.

<sup>191</sup> “Al-Zarqawi Lecture Urges Use of Shari’ah Idioms, Views ‘Concept of Jihad,” FBIS Document ID GMP20051007534002, accessed on DNI Open Source, 07 October 2005.

## Bid'a

Islamic law does not appear to provide a legal basis for new interpretations of law capable of overwriting existing rules where scholarly consensus exists. In contemporary scholarship on the topic, Ahmad Hasan cites Abu Dawud, one of the “sacred six” hadith authorities, to remind Muslim legal practitioners of the dangers of violating scholarly consensus:

The following tradition emphasizes obedience to the first four Caliphs: “*I (Muhammad) advise you to fear Allah and to obey the leader, even if he is a negro slave. One who survives me shall see profound disagreement. You should then follow my Sunnah and the Sunnah of the rightly-guided Caliphs. Hold fast to it and follow it to the last letter. You should desist from following new practices, because every new practice is innovation (heresy) and every innovation is error.*”<sup>192</sup>

From Abu Dawud, the strength of the *Salafi* view emerges. When Hasan makes reference to “innovation” as heresy, he is referring to the Islamic concept of *bid'a*. Whereas scholarly consensus is concerned with the concept of doctrinal belief, *bid'a* serves as the other bookend by excluding new ideas that conflict with established principles.<sup>193</sup> ‘Abdur Rahman I. Doi, in his treatise *Shari'ah: The Islamic Law*, asserts scholarly consensus on the concept of *bid'a*.<sup>194</sup> *Bid'a* stems from the doctrine that the

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<sup>192</sup> Hasan, 10.

<sup>193</sup> al-Misri, Book W, at § w29.0 (2).

<sup>194</sup> Doi, 39, citing to ‘Abdul Qadir ‘Audah, *Islam Between Ignorant Followers and Incapable Scholars*, (Kuwait: I.I.F.S.O., 1971), 48: It is the consensus opinion that the interpreters of the Qur’an and Muslim jurists that any Muslim who legislatively innovates, or enacts laws inconsistent with what *Allah* has revealed, enforcing his own laws while renouncing the revealed ones – unless he believes that his innovated or self-imposed laws are a correct interpretation of *Allah*’s revelation – would be *classified* under one of the categories of either *Fasidun*, *Fasiqun*, *Zalimun*, and finally *Kafirun*. For example, if a ruler does not apply the Islamic penalty for theft or slander or adultery, preferring the judgments of man-made law, such a ruler would be considered definitely an unbeliever. If a ruler fails to apply *Islamic jurisprudence* for reasons other than disbelief, he is considered a wrongdoer, and if, as a result of neglecting *Islamic jurisprudence* he violates a human right or overlooks a principle justice and equality, he is considered a rebel.”

message (*deen*) of Islam “is totally complete, there being no need to add to it, just as it is not permitted to take anything away from it.”<sup>195</sup> Representing the wrong way, *bid’a* is understood to be the opposite of the *Sunna* – the right way.<sup>196</sup> Hence, when arguments run afoul of hadith or established scholarly consensus, they become vulnerable to accusations of *bid’a*. This remains true even when such accusations come from groups classified as “extreme:”

So for everything that is used to claim that there exists a good *bid’ah*, then the answer for it is all the above. Thus there can be no room for the People of Innovation to claim that their innovations are good while we have in our hand the sharp sword that Allaah’s Messenger gave us – i.e., his saying that “... *every innovation leads astray.*” Indeed, this sharp sword was forged in the steel-works of Prophethood and Messengership. It was not forged in some second rate iron-mill, rather in the steel-works of the Prophet and he forged it so eloquently, that anyone who has the likes of this sharp sword in his hand would never be dumb-founded by someone claiming that *bid’ah* is good, for the Messenger of Allaah said that, “... *every bid’ah leads astray.*”<sup>197</sup>

Quranic support for the concept of *bid’a* come from such verses as:

- *This day have I perfected your religion for you, completed My favour upon you and have chosen for you Islam as your religion.* (5:3)
- *Nothing have we omitted from the Book.* (6:38)
- *And We have sent down to thee, a Book explaining all things.* (16:89)
- *So take what the Messenger assigns to you, and deny yourselves that which he withholds from you. And fear Allah; for Allah is strict in Punishment.* (59:7)

Given the status Islamic law affords scholarly consensus and, to a lesser degree, *bid’a*, those advocating innovative views should be under some obligation to disclose

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<sup>195</sup> Saalih Muhammad al-Uthaymeen, *Bid’ah: The Unique Nature of the Perfection Found in Islaam and the Grave Danger of Innovating into it*, (Birmingham (UK): Salafi Publications, 1999), 5. Cited hereafter as al-Uthaymeen. Note: As the publisher is “Salafi Publications,” it stands to reason that al-Uthaymeen is a Salafist reflecting a Salafist perspective.

<sup>196</sup> al-Misri, Book W, at § w29.2.

<sup>197</sup> al-Uthaymeen, 13.

their inherent weakness when used to challenge established Islamic doctrines. The assumption must be that *bona fide* Islamic authorities will recognize *faux* interpretations and associate them with notions of *bid'a*. Alternatively, when those *bona fide* Islamic authorities remain silent concerning arguments understood to be *faux*, the question to ask is why they remain silent. When *faux* arguments are Western facing and not directed toward the *Ummah*, no harm is committed. But if those arguments gain currency in the West, the opportunity cost will be failure to address the enemy's actual threat doctrine.

Scholarly consensus cannot be denied. With comments like “there are thousands of different interpretations of Islamic law,” many Current Approach advocates block discussions on topics like scholarly consensus by insisting that there are no absolute rules in Islam. If Islamic law is the standard, this position is not sustainable. Scholarly consensus undermines the basis on which the Current Approach grounds competing views of Islam that are not fixed in the inner sphere.

### **IJMA EVERYWHERE**

#### **In Friendly Constitutions the United States Helped Draft**

**The Constitutions of both Iraq and Afghanistan are formally subordinated to Islamic law through the mechanism of *ijma* (scholarly consensus)**

**From Iraqi Constitution, Section One, Article 2 (1):** No law can be passed that contradicts the undisputed rules of Islam

**From the Afghanistan Constitution, Article 3:** In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam

## **IJMA EVERYWHERE**

### **From “Extremists”**

#### **From Al-Zarqawi Group’s First Legal Council Statement Condemning Aiding ‘Polytheists,’ Participating in Writing the Iraqi Constitution – from one page alone:**

- As for obstacles that prevent ruling with Islamic laws, ... the *scholars have agreed upon and approved only 10.*
- Those who seek mediums [idols or a person] between them and God who they ask to intercede on their behalf and have committed blasphemy *as agreed upon among scholars.*
- Those who do not curse the polytheists or those who associate with God has some doubts about their blasphemy or attempted to correct them have committed blasphemy *as agreed upon among the scholars.*
- Those who abhor any teachings of the Prophet, may God’s peace and prayers be upon him, even if they follow it, have committed blasphemy, *as agreed upon among the scholars.*

Al-Zarqawi Group’s Legal Council Issues Statements Condemning Aiding ‘Polytheists’ Participating in Writing Iraqi Constitution, FBIS 12 AUG 05 GMP20050812371008

### **From Prominent Islamic Organizations**

**On 21 October 2006, the Organization of the Islamic Conference (OIC) promulgated the “Mecca Declaration.” Prior to the event, an OIC press release aligned the Declaration with scholarly consensus.**

- Its objective is to put an end to the sectarian infighting and its religious background is founded on a unified Islamic perception, on the texts of the holy Qur’an, its public rulings, the tradition of the Prophet, and *the common agreement of the Islamic Ummah with all its sects and affiliations, both Shia and Sunna -- They are all agreed, without any shadow of doubt,*
- These are all general principles, which are the *subject of common agreement among all Muslims* without exception.
- Yes. This initiative is founded on a mechanism that calls for this “Makkah Document” to be given the broadest possible circulation, *to be endorsed and confirmed publicly by all religious bodies and references,*

OIC Press Release dated 12 October 2006

## Scholarly Consensus on Jihad

The most immediate relevance of scholarly consensus to *jihad* is that there is scholarly consensus on the requirements of *jihad*. Answering the question “why wage war” in his treatise on Islamic law, ibn Rushd, the 12th century Andalusian Qadi, relied on Verse 9:29 to state that the requirement of *jihad* in Islamic law reflects scholarly consensus:

Why wage war? The *Muslim jurists agree* that the purpose of fighting the People of the Book, excluding the (Qurayshite) People of the Book and the Christian Arabs, is one of two things: it is either for the conversion to Islam or the payment of the *jizya*. The payment of the *jizya* is because of the words of the Exalted, “*Fight against such as those who have been given the Scripture as believe not in Allah or the Last Day, and forbid not that which Allah and His Messenger hath forbidden, and follow not the religion of truth, until they pay the tribute readily being brought low.*”<sup>198</sup> (Emphasis added)

Ibn Rushd also confirmed that there is scholarly consensus that *jizya* is to be “imposed” on “non-Arab People of the Book” who are male, have reached puberty and are free.<sup>199</sup> Nyazee, a competent contemporary Pakistani Hanafi jurist, confirms this point in his book on *The Methodology of Ijtihad*. Relying on ibn Rushd,<sup>200</sup> Nyazee used ibn Rushd’s “Why wage war?” discussion to confirm the Quranic basis for the requirement of *jihad*:

The general implication is, in the words of the Exalted, “*And fight them until persecution is no more, and religion is for Allah,*” [Verse 8:39] and in the saying of the Prophet, “I have been commanded to fight mankind until they say, “*There is not god but Allah.*” *If they say this, their lives and wealth are protected from me, unless there is another claim on them, and their reckoning is with Allah.*” The specific meaning is in the meaning of the Prophet to commanders of troops when he sent them to Arab polytheists who, it is known, were not People of the Book, “*When you come to face your enemy, the polytheists, invite them to opt for three choices,*” and he mentioned *jizyah* as one of them. The tradition has preceded.<sup>201</sup>

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<sup>198</sup> ibn Rushd 1, 464.

<sup>199</sup> ibn Rushd 2, 483.

<sup>200</sup> Nyazee, *Ijtihad*, 250.

<sup>201</sup> Nyazee, 251 citing Ibn Rushd 1, 284.

From this, Nyazee concludes that there is scholarly consensus on the requirements of *jihad*:

*This leaves no doubt that the primary goal of the Muslim community, in the eyes of its jurists, is to spread the word of Allah through jihad, and the option of poll tax is to be exercised only after subjugation.*<sup>202</sup>

When saying there is “no doubt” among the “Muslim community, in the eyes of the jurists,” Nyazee is saying that scholarly consensus is in effect on what remains a doctrinal point of Islamic law. Because the legal definition of *jihad* is the controlling definition in Islam, this has far reaching consequences for the status of *jihad*.

### **Abrogation**

Abrogation is based on the Islamic doctrine that revelations that came in the later periods of Quranic revelation overruled, superseded or abrogated revelations from earlier periods where there is conflict among verses. Abrogation also applies to the sacred hadith. In the American legal system, *Black’s Law Dictionary*, defines abrogation as:

The destruction or annulling of a former law, by an act of the legislative power, by constitutional authority, or by usage. It stands opposed to rogation; and is distinguished from derogation, which implies the taking away only some part of a law; from subrogation, which denotes the substitution of a clause; from dispensation, which only sets it aside in a particular instance; and from antiquation, which is the refusing to pass a law. Implied abrogation takes place when the new law contains provisions which are positively contrary to former laws, without expressly abrogating such laws; and also when the order of things for which the law has been made no longer exists.<sup>203</sup>

While the Islamic concepts of abrogation includes the ability to overrule earlier laws as, for example, when the United States Supreme Court overrules earlier cases, it

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<sup>202</sup> Nyazee, at 252.

<sup>203</sup> *Black’s*, under the term “abrogation.”

also includes lesser concepts of controlling<sup>204</sup> authority<sup>205</sup> in which a legal determination on a point of law controls the interpretation of earlier statements of law on the same point. Because the doctrinal basis for abrogation comes from the Qur'an and hadith, interpretations that do not account for its effect can run afoul of doctrinal interpretations that range from inconsequential, to erroneous, to blasphemous. Because Current Approach arguments stake out popular positions among Westernized Muslims, Western academics and others that all but ignore abrogation's influence, a discussion is in order.

**Abrogation: Progressive Revelation and the Qur'an.** Of the controversial issues raised in this paper, the most contentious has been the Islamic concept of abrogation, a legal doctrine that is associated with a related concept known as progressive revelation. Authority for progressive revelation comes from the Qur'an and was revealed in stages beginning in the Middle Meccan Period with Qur'an Verse 17:106:

*It is a Qur'an which We have divided into parts from time to time, in order that though mightest recite it to men at intervals: We have **Revealed it by stages.***<sup>2317</sup> (Qur'an 17:106)

2317. [Qur'an Commentator Yusuf Ali] The marvel is that these parts, revealed at different times and in different circumstances, should fit together so closely and consistently as they do. *All revelation is progressive.* The previous revelations were also progressive. Each of them marked a stage in the world's spiritual history. Man's mind does not take in more than his spiritual state will have prepared him for. Allah's revelation comes as a light to illuminate our difficulties and show us the way in actual situations that arise.<sup>206</sup> (Emphasis added)

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<sup>204</sup> *Black's* defines **Control** as: "Power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something."

<sup>205</sup> *Black's* defines **Authority** as: "Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction. ... Refers to the precedential value to be accorded an opinion of a judicial or administrative body. A court's opinion is binding on authority other courts directly below it in the judicial hierarchy. ... Legal power; a right to command or act."

<sup>206</sup> Yusuf Ali, 704.

This was followed in the Late Meccan period when the concept of “staged revelation” expanded to take on a replacement quality that included the ability to substitute one revelation with that of another.

*When We substitute one revelation<sup>2140</sup> for another - and Allah knows best what He reveals in stages – They say, “Thou art but a forger”: But most of them understand not. (Qur’an 16:101)*

2140. [Qur’an Commentator Yusuf Ali] See 2:106, and n. 107. The doctrine of *progressive revelation* from age to age and time to time does not mean that Allah’s fundamental Law changes. It is not fair to charge a Prophet of Allah with forgery because the Message, as revealed to him, is in a different form from that revealed before, when the core of the Truth is the same, for it comes from Allah.<sup>207</sup> (Emphasis added)

As Qur’an commentator Yusuf Ali indicates, “revelation in stages” is understood in terms of progressive revelation. As important, Ali makes it clear that substitution is a function of the relevant stage of revelation and does not reflect a change in the universal message. With the advent of the Medinan period, major changes took place in the Muslim community that brought it into alignment with the final stage of revelation that explicitly states that substitution of one verse with another includes the outright “abrogation” of earlier verses by later ones:

*None of Our revelations do we **abrogate** or cause to be forgotten, but we substitute something better or similar; knowest thou not that Allah hath power over all things? (Qur’an 2:106)*

With the Qur’an itself expressing a preference for verses from the later periods of revelation, “extremist” arguments that rely on later verses for their authority have merit. This point is worth remembering when hearing Current Approach advocates accuse “extremists” of cherry picking their authority from the back of the Qur’an. While the purpose of introducing abrogation is to demonstrate that it procedurally favors

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<sup>207</sup> Yusuf Ali, 664.

“extremist” arguments on the requirements of *jihad*, the concept of progressive revelation is important for a second reason: progressive revelation underpins the operational architecture that drives “extremist” ideology. Failure to understand progressive revelation’s influence represents a failure to appreciate how “extremist” ideology is able to ground itself in Islamic doctrine. (For a detailed discussion on the role of Progressive Revelation and its nexus to “extremist” doctrines, see APPENDIX C - “Abrogation and Progressive Revelation”)

**Abrogation of Previously Valid Religions.** Islam’s orientation to other religions has already been established in the fixed sphere of Islamic law. The rule in Islamic law is that Allah sent Muhammad to deliver His message to the entire world “superseding and abrogating all previous religious systems.”<sup>208</sup> Doctrinal authority for the abrogation of other religions comes from the Qur’an and hadith and is stated in Islamic law. Form the ‘*Umdat al-Salik*:

§ w4.3 (Imam Baghawi:) The Prophet (Allah bless him and give him peace) said: “*By Him in whose hand is the soul of Muhammad, any person of this Community, any Jew, or any Christian who hears of me and dies without believing in what I have been sent with will be an inhabitant of hell.*” This is a rigorously authenticated (*sahih*) hadith that was recorded by Muslim. “*Whoever seeks a religion other than Islam will never have it accepted of him, and he will be of those who have truly failed in the hereafter*” (Qur’an 3:85)<sup>209</sup>

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<sup>208</sup> From al-Misri, Book V, at § v2.1: Allah Most High sent Muhammad (Allah bless him and give him peace), the Qurayshite unlettered prophet, to deliver His inspired message to the entire world, Arabs and non-Arabs, jinn and mankind, *superceding and abrogating all previous religious systems* with the Prophet’s Sacred Law, except for provisions of them that the new revelation explicitly reconfirmed. Allah has favored him above all the other prophets and made him the highest of mankind, rejecting anyone’s attesting to the divine oneness by saying “There is no god but Allah,” unless they also attest to the Prophet by saying “Muhammad is the Messenger of Allah.”

<sup>209</sup> al-Misri, Book W, at § w4.3.

If this rule of law holds, religious reconciliation may be beyond Islam's capability since, as noted, doing so would be to treat as equal non-Muslims who are going to hell.

*O Prophet! Strive hard against the Unbelievers and the Hypocrites, and be firm against them. Their abode is Hell – an evil refuge indeed.* (Qur'an 9:73 & 66:9)

Broken into its elements, the rule of law is that 1) previously revealed religions are invalid as abrogated; 2) Judaism and Christianity were relegated to the status of remnant cults; 3) treating formerly valid religions as acceptable to Allah is apostasy; and 4) this rule reflects scholarly consensus.<sup>210</sup> The 14th century Maliki judge ibn Khaldun confirms the abrogated status of "formerly valid religions" when stating that Christianity is a form of unbelief.<sup>211</sup>

As demonstrated, Islamic law uses authority from the Qur'an, hadith and scholarly consensus to assert the rule. It was based on his understanding Islamic law's hard rules of interpretation that lead Pope Benedict XVI to conclude:

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<sup>210</sup> al-Misri, Book W, at §w 4.1 (2). "Previously revealed religions were valid in their own eras, as is attested to by many verses in the Holy Koran, but were *abrogated* by the universal message of Islam, as is equally attested to by many verses of the Koran. Both points are worthy of attention from English speaking Muslims, who are occasionally exposed to erroneous theories advanced by some teachers and Koran translators affirming these religions' validity but denying or not mentioning their *abrogation*, or that it is *unbelief (kufr)* to hold that the remnant cults now bearing the names of formerly valid religions, such as "Christianity" or "Judaism," are acceptable to Allah Most High after He sent the final Messenger (Allah bless him and give him peace) to the entire world. This is a matter over which there is *no disagreement among Islamic scholars*, and if English speaking Muslims at times discuss it as if there were some questions about it, the only reason can be that no one has yet offered them a translation of a scholarly Koranic exegesis (*tafsir*) to explain the accord between the various Koranic verses, and their agreement with the sunna." (Emphasis added)

<sup>211</sup> Ibn Khaldun, 188. "Thereafter, there were dissensions among the Christians with regard to their religion and to Christology. They split into groups and sects, which secured the support of the various Christian rulers against each other. At different times there appeared different sects. Finally, these sects crystallized into three groups which constitute the Christian sects. Others have no significance. These are the Melchites, the Jacobites, and the Nestorians. *We do not think that we should blacken the pages of this book with discussion of their dogmas of unbelief.* In general, they are well known. *All of them are unbelief. This is clearly stated in the noble Qur'an. To discuss or argue those things with them is not up to us. It is for them to choose between conversions to Islam, payment of the poll tax, or death.*" (Emphasis added)

In the Islamic tradition, God has given His word to Mohammed, but it's an eternal word. It's not Mohammed's word. It's there for eternity the way it is. There's no possibility of adapting it or interpreting it.<sup>212</sup>

Since reconciliation requires recognition of the validity of other belief systems as well as their relative social parity, peer-to-peer outreach may be impermissible as antithetical to doctrinal Islam. While other religions may likewise hold theological views on the exclusive nature of their faith, what separates them from Islam in this discussion is that Islamic theology is by its nature also doctrinal as law. Because the rule that “previously revealed religions” were abrogated reflects scholarly consensus, it is an absolute rule of Islam incapable of being changed. For U.S. Government elements seeking to build bridges between faiths, understanding this rule of Islamic law is paramount.

While Current Approach advocates frown when non-Muslims use Islamic law to discuss Islam-specific issues, the consensus position on the abrogation of formerly valid religions has broad support in the Qur'an. From his explanation of Qur'an Verse 9:29, ibn Kathir explains the reasoning for the abrogation of other religions:

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### **The Order to fight People of the Scriptures until They give the *Jizyah***

*Fight those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah and His Messenger, and those who acknowledge not the religion of truth among the People of the Scripture, until they pay the Jizyah with willing submission, and feel themselves subdued.*

Therefore, when People of the Scriptures disbelieved in Muhammad they had no beneficial faith in any Messenger or what the Messengers brought. Rather, they followed their religions because this conformed to their ideas, lusts and the ways their forefathers, not because they are Allah's Law and religion. Had they been true

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<sup>212</sup> Spengler, “When Even the Pope has to Whisper,” *AsiaTimesOnline*, January 10, 2006, URL: [http://atimes01.atimes.com/atimes/Middle\\_East/HA10Ak01.html](http://atimes01.atimes.com/atimes/Middle_East/HA10Ak01.html) >, accessed 14 January 2006.

believers in their religions, that faith would have directed them to believe in Muhammad, because all Prophets gave the good news of Muhammad's advent and commanded them to obey and follow him. Yet when he was sent, they disbelieved in him, even though he is the mightiest of all Messengers. Therefore, they do not follow the religion of earlier Prophets because these religions came from Allah, but because these suit their desires and lusts. Therefore, their claimed faith in an earlier Prophet will not benefit them because they disbelieved in the master, the mightiest, the last and most perfect of all Prophets.<sup>213</sup>

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Having begun his explanation of Verse 9:29 by explaining why formerly valid religions were abrogated, it was for the purpose of setting up a discussion on the verses main point of law:

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### **The Order was given to fight People of the Scriptures until they give the *Jizyah***

This honorable *Ayah* [verse 9:29] was revealed with the order to fight the People of the Book, after the pagans were defeated, the people entered Allah's religion in large numbers, and the Arabian Peninsula was secured under the Muslims' control. *Allah commanded His Messenger to fight the People of the Scriptures, Jews and Christians*, on the ninth year of Hijrah, and he prepared his army to fight the Romans and called the people to *Jihad* announcing his intent and destination.<sup>214</sup> (Emphasis added)

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Hence, when one's religion is abrogated by Islamic law, one becomes the lawful object of *jihad*. While this finding may surprise, it is not new. Ibn Khaldun also made this point when stating that Christianity is unbelief thus making Christians the object of *jihad* as stated in Verse 9:29.<sup>215</sup> Additional Quranic authority for the abrogation of

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<sup>213</sup> ibn Kathir 4, 404-405.

<sup>214</sup> ibn Kathir 4, 405.

<sup>215</sup> See Footnote 210.

“previously valid religions” illustrates the replacement nature of Islam over previous valid religions:

*It is He who hath sent His Messenger with Guidance and the Religion of Truth, to prevail it over all religion, even though the Pagans may detest it. (Qur’an 9:33)*

*It is He Who has sent His Messenger with Guidance and the Religion of Truth, to prevail it over all religion: and enough is Allah for a Witness.<sup>4912</sup> (Qur’an 48:28)*

*Their intention is to extinguish Allah’s Light by blowing with their mouths: but Allah will complete the revelation of His light, even though unbelievers may detest it. It is He who has sent His Messenger with Guidance and the Religion of Truth, that he may proclaim it over all religion,<sup>5442</sup> even though the Pagans may detest it. (Qur’an 61:8-9)*

**Note 5442 by Commentator Yusuf ‘Ali:** Over all religions: in the singular: not in the plural. *There is really only one true Religion, the Messenger of Allah, submission to the Will of Allah: this is called Islam. It was the religion preached by Moses and Jesus; it was the religion of Abraham, Noah, and all the prophets, by whatever name it may be called. If people corrupt the pure light, and call their religion by different names, we must bear with them, and we may allow the names for convenience. But the truth must prevail over all. See also 9:33, n. 1290, and 48:28, n. 4912.<sup>216</sup> (Emphasis added)*

While abrogation of previously valid religions may be antithetical to diversity interests in multicultural societies, it is taught to contemporary 7th grade American Muslims:

Islam is the way of life that Allah will make prevail over all other ways of life. (61:9)<sup>217</sup>

*It is He Who has sent His Messenger with Guidance and the Religion of Truth, that he may proclaim it over all religion, even though the pagans may detest it. (Qur’an 61:9)*

**Abrogation of Previously Valid Religions Undermines Outreach.** When assessing the impact of Islamic law on programs like outreach, the assumption should be that Muslim authorities on the other side of the outreach debate understand the requirements of their own faith. This includes an understanding that committed Muslims

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<sup>216</sup> Yusuf Ali at 9:33, 48:28 & 61: 8-9 (including Note #5442).

<sup>217</sup> Emerick, 52.

cannot both maintain their Islamic *bona fides* and accept formerly valid religions as valid. This understanding should make an assessment of the motivations of all parties to the outreach debate a necessity. While Islamic objections to previously valid religions may cause problems with Western concepts of interfaith tolerance, from an Islamic context Jews and Christians can be tolerated by simply submitting to Islamic law, accepting submission, and paying the *jizyah* as stated in the Qur'an at Verse 9:29. This may not be the interfaith tolerance outreach member had in mind, but it may be the only kind Islamic law recognizes.

**Building Bridges: How “Extremists” View Religious Outreach**  
**(Extremist Yes! But is it Doctrinally Aligned?)**

**Sayyid Qutb in *Milestones***

Qutb believed that all societies that are not Muslim societies are *Jahili*:

- The Jahili society is any society other than the Muslim society ... All Jewish and Christian societies today are also *Jahili* societies. They have distorted the original beliefs and ascribe certain attributes of Allah to other beings. This association with Allah has taken many forms, such as the Sonship of Allah or the Trinity; sometimes it is expressed in a concept of Allah which is remote from the true reality of Allah. (149, 150)

For this reason, contact with *Jahili* societies are to be limited:

- The correct procedure is to mix with discretion, give and take with dignity, speak truth with love, and show the superiority of the Faith with humility. After all this, we must realize the fact that we live in the midst of *Jahiliyyah*, and that the change from *Jahiliyyah* to Islam is vast and far reaching. (262, 263)

With Bridges between *Jahili* and Muslim societies running in only one direction:

- The chasm between Islam and *Jahiliyyah* is great, and a bridge is not to be built across it so that the people on the two sides may mix with each other, but only so that the people of *Jahiliyyah* may come over to Islam... (263)

Qutb, Sayyid, *Milestones*, Salimiah, Kuwait: International Islamic Federation of Student Organizations. 1978 [Written in prison pending execution, 1966].

**Building Bridges: How “Extremists” View Religious Outreach**  
**(Extremist Yes! But is it Doctrinally Aligned?)**

**Shamim Siddiqi in *Dawah Ilallah in American Perspective***

Siddiqi Agreed with Qutb that all societies that are not Muslim are *Jahili*. He makes this case concerning America by providing a laundry list of reasons:

- America is a predominantly secular cum permissive society. Religion is a personal affair between God and individual. ... The concept of God is shrouded with partnership both in His person and attributes. The Judeo-Christian God is powerless, keeps away from the people’s lives and has nothing to do with their social, economic and political activities. For all practical purposes America is a Godless society and purely materialistic in every walk of life. ... In a nutshell, American society resembles the society of ignorance (*Jahiliyah*) where Prophet Muhammad (PBUH) was appointed as Messenger of Allah to call the people to the fold of the Creator. (117-18)

Siddiqi retains the “one-way” direction of outreach where the goal of interaction is the subversion of other beliefs – specifically Judaism and Christianity:

- Man’s greatest need is for Guidance which comes only from the Creator. Making partners with God is totally in-conceivable and wrong. The concept of Trinity appears unreasonable and self-contradictory. We have to advance convincing arguments both verbally and in writing to fight against the dogma of the “human-God” of Christendom, innovated by the Jewish conspiracy against Prophet Jesus. The concept of Tawheed will make inroads to their minds and hearts only when the centuries-old dogma of the “human-God” is shattered and demolished. (120)
- The Christian community of America will need a special approach to make them understand their misguided concept about Jesus (PBUH). Prophet Jesus (PBUH) was also a messenger of God, as others were. (123)

In undertaking dialogue with Churches and Synagogues, the “one God/three faiths” paradigm will be used. Engagement in such dialogues can have the effect of suppressing resistance to Islamic *Dawah*:

- Through Contacts With Churches, Synagogues, Colleges and Universities ... The I.M.O.A. [Islamic Movement of America] will open dialogues with dignitaries of the religious institutions, presenting Islam as the common legacy of Judeo-Christian religions and as the only Guidance now available to mankind in its most perfect form for its Falah (Deliverance and Salvation). ... The religious dignitaries and learned teachers of Universities and colleges will also be invited to speak in the arranged open *Dawah* programs of the Movement on various issues and topics of common interest. ... This will give an opportunity to the Da’ee to thrash out the issue and bring the discussion to the desired conclusion. These dialogues, speeches and discussions will pave the way in reducing their hard-line stand against Islam. (136-37)

Siddiqi, Shamim A. *Methodology of Dawah Ilallah in American Perspective*. Brooklyn: The Forum for Islamic Works, 1989.

There is nothing in the *‘Umdat al-Salik’*’s statement of law on the abrogated status of previously valid religions that can be shown to be out of step with other elements of Islamic doctrine. For example, rejecting the religions of Jews and Christian, the Qur’an ends up also objecting to Jews and Christians as friends:

*Oh ye who believe! Take not the Jews and the Christians for your friends and protectors; they are but friends and protectors to each other. And he amongst you that turns to them for friendship) is of them. Verily Allah guideth not the unjust. (5:51)*<sup>218</sup>

“Extremists” seeking to strike a hard line in the Muslim community by prohibiting association with non-Muslims have a powerful doctrinal arsenal to support their position that is anchored in the Qur’an, hadith, and consensus. Yet both Current Approach and religious outreach advocates project a picture of Islamic tolerance that does not account for the restrictive language of Islamic law that can be neither minimized nor ignored. These differences are significant enough to lead mainstream theologians like Mark Durie to conclude:

These differences are deep and significant enough to make it reasonable to reject the claim that Christians and Muslims worship the same God or honour the same Christ. ... Islam regards itself as the true Christianity and the true Judaism, so that Allah as he is revealed in the Quran must be the true God of the Christians and Jews. Thus the claim that Muslims and Christians worship the same God and honour the same prophets serves the supersessionist program of Islam. To put ‘we worship the same God’ and ‘we reverence your prophets’ forward as the basis for interfaith dialogue masks a profound denial of the work of Christ, and rejection of the saving attributes of the God of the Bible. These principles undermine the very foundations of the Christian faith.<sup>219</sup>

Some may question the appropriateness of the religious overtones of this discussion. If such theological discussions cause unease, it should be remembered that when choosing to engage in religious outreach, comparative theology becomes a required

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<sup>218</sup> For an explanation of how the “Seat of the Caliph” explains the requirements associated with Qur’an Verse 5:51, see **APPENDIX D** – “The Caliphate Explains Verse 5:51 to the *Ummah*.”

<sup>219</sup> Durie, *Same God*, 76.

competency for those involved in its undertaking. Because it is doctrine, the primacy of Islam is taught to 7th grade American Muslim students today:

*“The Jews and Christians are invited by Allah to examine and accept His last revelation”. (5:15) “If any do so, they will be fulfilling the ultimate purpose of all the Prophets.” (4:172-175) “If they reject it arrogantly and say Allah only sent revelation to them, then they close their hearts and invite destruction upon themselves.” (5:18) “Those whom Allah wills to guide, He opens their hearts to Islam. Those whom He wills to leave straying, He makes their hearts closed and constricted as if they were climbing up into the skies. Allah (increases) the penalty on those who refuse to believe.” (6:125)<sup>220</sup>*

Abrogation of previously valid religions is a doctrinal fact of Islam. Islamic law re-enforces the non-optional aspect of this policy through scholarly consensus and language that expressly states that it is disbelief (*kufir*)<sup>221</sup> to deny that Allah intended Islam to be the exclusively recognized religion for the entire world to the exclusion of all others. When a religion loses its status as valid, it makes its members the object of *jihad*. When engaged in religious outreach, it must be assumed that Muslim leaders are aware of the doctrines of the faith they represent. This means understanding that qualified Muslims can never actually build the bridge that is the objective of the outreach program. (For a presentation on how Muslim Brotherhood seeks to manipulate outreach, see APPENDIX E – “Goals of Muslim Brotherhood Outreach to Clergy, Educators and Leaders”)

Current Approach advocates are often quick to attack “extremists” for their selective reliance on Quranic verses along with selective application of Islamic rules of

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<sup>220</sup> Emerick, 82.

<sup>221</sup> From al-Misri, Book O “Justice,” o8.0 “APOSTACY FROM ISLAM (*RIDDA*) ACTS THAT ENTAIL LEAVING ISLAM,” at § o8.7(20): (O: Among the things that entail apostasy from Islam (may Allah protect us from them) are: (20) to deny that Allah intended the Prophet’s message (Allah bless him and give him peace) to be the religion followed by the entire world.

interpretation. As the discussion on abrogation of formerly valid religions indicates, a review on the merits demonstrates the opposite; that “extremists” do not misrepresent the Qur’an while Current Approach arguments do. “Extremists” do not have to misrepresent anything. The Current Approach misrepresent whenever competing models are postulated that neither disclose nor account for the pre-emptive strength of the “extremist” position.

### **Abrogation in the Qur’an – *Nasikh* and *Mansukh***

Abrogation in the Qur’an and hadith is the most controversial element of abrogation doctrine. As the discussion on progressive revelation indicated, the controversy does not lie with the rule itself but rather with its affects. Abrogation in this context is the doctrine whereby verses of the Qur’an and hadith that came later in the period of Muhammad’s revelation either overruled or established controlling authority over the meaning of verses revealed earlier in time that conflict on a given issue. An indication of abrogation’s doctrinal status is that Islamic legal scholars are required to master the science of understanding abrogating and abrogated texts as a prerequisite to becoming a judge -- *qadi*. Discussing the list of qualifications required for one to become an Islamic judge, the ‘*Umdat al-Salik*, in the “Book of Justice,” states that one must know the abrogating (*nasikh*) verses that supersede previously revealed Quranic verses as well the abrogated (*mansukh*) verses that were superseded.<sup>222</sup> Not only is a knowledge of abrogation a requirement for those seeking judgeship, but not knowing the abrogating

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<sup>222</sup> From al-Misri, Book O “Justice,” o22.0 “The Judge and the Court,” at o22(I) (9 & 10): The necessary qualifications for being an Islamic judge (*qadi*) are: (I) The types of Koranic Rules include, for example: (9) those (*nasikh*) which supersede previously revealed Koranic verses; (10) and those (*mansukh*) which are superseded by later verses.

and abrogated verses gives rise to a prohibition against explaining the Qur'an through personal opinion.<sup>223</sup>

While the doctrine of abrogation has broad application in Islamic law, this discussion will limit its focus to abrogation in the context of *jihad* and associated issues. In his Witness Statement to an Australian Court, Mark Durie gave a succinct overview of the dynamic behind abrogation:

The classical consensus was that the revelations regulating relations with non-Muslims evolved in accordance with the development of Muhammad's prophetic career. At the beginning, when Muhammad was weaker and his followers few, the revelations encouraged peaceful relations and avoidance of conflict. Then, after persecution and emigration to Medina in the first year of the Islamic calendar, authority was given to engage in warfare for defensive purposes only. As the Muslim community steadily grew stronger, and conflict with its neighbours did not abate, further revelations expanded the license for waging war. Finally, in Sura 9, regarded as the last to be revealed, it was concluded that war against non-Muslims could be waged, virtually at any time and in any place, to extend the dominance of Islam. This resulted in an aggressive theory of *jihad* which is well documented in medieval manuals of shari'ah law.<sup>224</sup>

Because Surah Nine is the last of the surahs to speak to the requirements of *jihad*,<sup>225</sup> abrogation holds them to be the most authoritative. Surah Nine is also the most forceful in its treatment of *jihad*. This is why Surah Nine verses are referred to as the "Sword Verses." Form Surah Nine, Verses 9:5 and 9:29 are among the most authoritative:

*But when the forbidden months are past, then fight and slay the pagans wherever ye find them, and seize them and beleaguer them, and lie in wait for them in every stratagem of war; but if they repent, and establish regular prayers and practice regular charity, then open the way for them. (Qur'an 9:5)*

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<sup>223</sup> From al-Misri, Book R "Holding One's Tongue," r14.0 "Explaining the Koran by Personal Opinion, at r14.2: The generality of the prohibition also entails that whoever does not know which verses abrogate others and which are abrogated, the points upon which there is scholarly consensus and the tenets of faith of *Ahl al-Sunna*, is not safe from error if he interprets the Koran with nothing beyond the implications of the Arabic.

<sup>224</sup> Durie, Statement, 23, 7.

<sup>225</sup> Yusuf Ali, 435.

*Fight those who do not believe in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the Religion of Truth from among the People of the Book, until they pay the jizyah with willing submission, and feel themselves subdued. (Qur'an 9:29)<sup>226</sup>*

Uncompromising when simply read, these two verses become more so when doctrinal interpretations are applied. By leaving the sword verses of Surah Nine in control of issues relating to war, peace, *jihad* and submission, abrogation's effect is that it skews Quranic interpretation to the militant side. This undercuts the ability to argue as if verses from all the surahs of the Qur'an are equally weighted in terms of their legal validity. Current Approach advocates are slow to discuss abrogation because of its crippling effect on moderate concepts of Islam that tend to deny abrogation's doctrinal authority. The roots of abrogation run deep.

**Al-Shafi'i on Abrogation.** After references from the Qur'an and hadith, doctrinal writings on abrogation can be traced back to Imam Muhammad ibn Idris al-

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<sup>226</sup> Other relevant later Quranic verses are:

*“Those who believe fight in the cause of Allah, and those who reject faith fight in the cause of Evil: So fight ye against the friends of Satan: feeble indeed is the cunning of Satan”. (Qur'an 4:76)*

*“When at length the order of fighting was issued to them, behold! A section of them feared men as – or even more than – they should have feared Allah: They said: “Our Lord! Why hast Thou ordered us to fight? Wouldst Thou not grant us respite to our (natural) term, near (enough)?” Say: “Short is the enjoyment of this world: The Hereafter is the best for those who do right; never will ye be dealt with unjustly in the very least!” (Qur'an 4:77)*

*“Fighting is prescribed upon you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth, and ye know not.” (Qur'an 2:116)*

*“And fight them on until there is no more tumult or oppression, and there prevails justice and faith in Allah altogether and everywhere; but if they cease, verily Allah doth see all that they do. (Qur'an 8:39)*

Shafi’i, “the first jurist to formulate the principles of the science of which verses abrogate others and which are abrogated (*‘ilm al-nasikh wa al-mansukh*).”<sup>227</sup> The “Imam of the World, the *mujtahid* of his time,” and founder of the Shafi’i School of Islamic law, al-Shafi’i remains a towering figure in Islamic jurisprudence.<sup>228</sup> In his *Risala*, “the first work in the history of mankind to investigate the theory and practical basis of jurisprudence,”<sup>229</sup> al-Shafi’i said: “God has declared that He abrogated communications of the Book only by means of other communications in it; that the *Sunna* cannot abrogate text in the Book but that it should only follow what is laid down in the Book, and that the sunna is intended to explain the meaning of communication of general nature set forth in the Book.”<sup>230</sup> Al-Shafi’i then explained the Quranic basis for abrogation:

Since God is the originator of His own commands, He alone can repeal or confirm whatever of it He wills – glorious be His praise – but no one of His creatures may do so. For He also said: *God repeals what He wills, or confirms; with Him is the mother of the Book* [Q. XIII, 39].

It is held that God’s saying: “*Allah will repeal what He wills,*” means that He repeals and confirms the duties which He wills. This resembles the meaning in the foregoing statement; but God knows best. However, the evidence against it is in the Book of God, in which He said: *For what ever We abrogate or cast into oblivion to forget, We bring to a better or the like of it. Knowest thou not that Allah is powerful over everything?* [Q. II, 106].

Thus God has informed men that the abrogation or the deferment of any communication cannot be made valid save by another Quranic communication. For He said: *When we substitute one communication for another – Allah knoweth best what He sendeth down – they say: ‘Thou Muhammad art only a forger’* [Q. XVI, 101].<sup>231</sup>

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<sup>227</sup> al-Misri, Book X “Biographical Note,” at § x324.

<sup>228</sup> al-Misri, Book X, at § x324.

<sup>229</sup> al-Misri, Book X “Biographical Note,” at § x324.

<sup>230</sup> al-Shafi’i, at ¶101, 123,124.

<sup>231</sup> al-Shafi’i, at ¶101, 124,125.

In line with other authorities, al Shafi'i derived Quranic authority for abrogation from Verse 2:106, among others. Al-Shafi'i's formulation of abrogation influenced the development of prophetic hadith scholarship. Many of the greatest Imams in hadith scholarship were students of al-Shafi'i including Ahmad Hanbal, whose name is associated with the fourth and final orthodox school of *Sunni* jurisprudence as well as all six collectors of the "Six Canonical Collections" (the *Sahih Sittah*) of sacred hadith: Bukhari, Muslim, Abu Dawud, Tirmidhi, ibn Maja, and Nasa'i.<sup>232</sup> Hence, abrogation doctrine and hadith scholarship share a history that reaches back to the same legal theories and authorities.

**Current Status of Abrogation.** Since al-Shafi'i first formulation of the doctrine, abrogation remains an active part of Islamic law with only slight variations (none of which affect *jihad*). Two contemporary Islamic jurists, Imam Ahsan Khan Nyazee, in his *Islamic Jurisprudence*, and Mohammad Hashim Kamali, in his *Principles of Islamic Jurisprudence*, dedicate entire chapters to the treatment of abrogation (*naskh*). When referring to the legal concept of abrogation, the principle terms of art are *naskh* and *mansukh*. Stating that *naskh* literally means "obliterate," Kamali defines it "as the suspension or replacement of one *Shari'ah* ruling by another, provided that the latter is of

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<sup>232</sup> al-Misri, Book X "Biographical Note," at § x324. al-Shafi'i paved the way for the enormous importance attached by subsequent generations of Muslims to the study of prophetic hadith, as reflected in the fact that most of the Imams in the field were of his school, including Bukhari, Muslim, Abu Dawud, Tirmidhi, Nasa'i, Ibn Majah, Bayhaqi, al-Hakim, Abu Nu'aym, Ibn Hibban, Daraqutni, Ibn Khuzayma, Ibn Salah, al-'Iraqi, Suyuti, Dhahabi, Ibn Kathir, Nur al-Din Haythami, Mundhiri, Nawawi, Taqi al-Din Subki, and others.

a subsequent origin and the two rulings are enacted separately from one another.”<sup>233</sup> For Nyazee:

The literal meaning of *naskh* is canceling or transferring. In its technical sense it is used to mean the “lifting (*raf*)” of a legal rule through a legal evidence of a later date.” The abrogating text or evidence is called *nasikh*, while the repealed rule is called the *mansukh*.<sup>234</sup>

Kamali goes on to explain that *naskh* “applies almost exclusively to the Qur’an and *Sunnah*” and “is confined, in terms of time, to only one period -- the lifetime of the Prophet.”<sup>235</sup> As noted, while Shafi’i held that only the subsequent verses in the Qur’an could abrogate earlier verses in the Qur’an and only later hadith (of equal or greater authority) could abrogate earlier hadith, the general rule evolved so that “Qur’anic *nass* or *mutawatir* hadith cannot be abrogated by a weaker hadith, *ijma* or by *qiyas*.”<sup>236</sup>

Nyazee is sensitive to the fact that layman have difficulty accepting that verses from the Qur’an -- the “uncreated Word of Allah” -- can be abrogated, especially through hadith.<sup>237</sup> Nyazee relies on the doctrine of progressive revelation to explain the point:

It is generally acknowledged that Islamic law works for the Interest (*maslahah*) of human beings. Interests may keep on shifting with a change in circumstances, and the law adjusts accordingly. The law was laid down in the period of the Prophet (peace be unto him) gradually and in stages. The aim was to bring a society steeped in immorality to observe the highest standards of morality. This could not be done abruptly. *It was done in stages*, and doing so necessitated repeal and abrogation of certain laws.<sup>238</sup> (Emphasis added)

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<sup>233</sup> Kamali, 202.

<sup>234</sup> Nyazee, *Jurisprudence*, 318.

<sup>235</sup> Kamali, 202-203.

<sup>236</sup> Kamali, 204.

<sup>237</sup> Nyazee, *Jurisprudence*, 317.

<sup>238</sup> Nyazee, *Jurisprudence*, 319.

Kamali concurs in this explanation:

There is, in other words, no *naskh* after the demise of the Prophet. But during his lifetime, there were instances when some of the rulings of the Qur'an and Sunnah were either totally or partially repealed by subsequent rulings. This was due mainly to the change in circumstances in the life of the community and the fact that revelations of the Qur'an spanned a period of twenty three years.<sup>239</sup>

Qur'an commentator Yusuf Ali also uses this line of reasoning when stating that "there is nothing derogatory in this if we believe in progressive revelation."<sup>240</sup> Kamali and Nyazee both understand abrogation to be a contentious issue that Kamali personally opposes. In a series of comments at the end of his chapter on abrogation, Kamali states his personal belief that the doctrine is "due for a revision" and "should consequently be discarded" as a historical relic.<sup>241</sup> Yet, by personalizing these comments ("My General Comments") and separating them from his treatment in main, Kamali indicates that he is speaking off-doctrine and giving voice to a personal view. Further, by saying that the doctrine is "due for a revision" and "should consequently be discarded,"<sup>242</sup> Kamali accepts that abrogation doctrine is still the legal standard. The distinction between personal opinion and statements of doctrine appears to be lost on those who would have readers believe that abrogation is more elective than it is. Kamali's personal desire to revise Islamic law is certainly understandable as abrogation unbalances what would otherwise be a more equally weighted distribution of verses from the Qur'an. Yet

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<sup>239</sup> Kamali, 204.

<sup>240</sup> Yusuf Ali, Note #107, 46.

<sup>241</sup> Kamali, 225.

<sup>242</sup> Kamali, 225.

Kamali does not mislead the reader. Even as he believes that “abrogation was primarily a historical rather than a judicial phenomenon,” he never-the-less teaches the rule of law:

Now, instead of understanding *naskh* as a circumstance of history, the ‘*ulama* turned it into a judicial doctrine of permanent validity. This classical concept of permanent abrogation is oblivious of the space-time element.<sup>243</sup>

As a Muslim of moderate temperament, Kamali’s frustration is real. Kamali realizes the impact abrogation has on the law of *jihad*:

Although scholars are not in agreement on the exact number of *ayat* [verses] that were abrogated as a result, Mustafa Abu Zayd has found that the *ayah* of the sword abrogated no less than 140 *ayat* in the Holy Book. Jurists who were inclined to stress the aggressive aspect of *jihad* could only do so by applying abrogation to a large number of Quranic *ayat*, and ‘using abrogation in this manner has’, Abu Sulayman contests, ‘indeed narrowed the Quranic experience’ and undermined the egalitarian substance of its teachings.<sup>244</sup>

The problem for moderates like Kamali is that if abrogation is grounded in the Qur’an, then the only thing “undermined” is the illusion of “egalitarian substance.” Yet the tendency among Current Approach advocates is to characterize *jihad* as if the full body of the Qur’an were equally weighted. An example can be found in Sohail Hashmi’s comments in “A Conservative Legacy” from el-Fadl’s *The Place of Tolerance in Islam*:<sup>245</sup>

A second means of circumscribing the verse’s universality, which reinforces the first, is to argue that it has been abrogated by subsequent revelation, including Q. 3:85: “*If anyone desires a religion other than Islam, never will it be accepted of him, and in the hereafter he will be among the losers.*” Instead of attempting to reconcile the verses by contextualizing in time and in the full Qur’anic text, many exegetes have employed the principle of abrogation as a blunt instrument. Hundreds of verses could, in this manner, be labeled “no longer relevant.”<sup>246</sup>

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<sup>243</sup> Kamali, 223.

<sup>244</sup> Kamali, 223.

<sup>245</sup> Khlaled Abou El Fadl, *The Place of Tolerance in Islam*, eds. Joshua Cohen and Ian Lague, (Boston: Beacon Press, 2002), back cover. Cited hereafter as El Fadl.

<sup>246</sup> Sohail H. Hashmi in El Fadl, 33-34.

Couched in offsetting terms *as if* abrogation's status in law was in question, Hashmi's comment ends up being doctrinally accurate: "many exegetes have employed the principle of abrogation as a blunt instrument" because they can argue that early verses were "abrogated by subsequent revelation."<sup>247</sup> Abrogation is the "blunt instrument" that the "extremists" have that the moderates can neither match nor defend against. Hence, for Current Approach advocates to maintain the appearance of parity when debating with their "extremist" counterparts, they must either proceed *as if* Kamali's aspirational restatements on abrogation have a real legal basis or *as if* abrogation did not have a doctrinal basis at all. Either way, the perception created is not genuine. This helps explain the Current Approach's relative silence on abrogation. Because abrogation has such a decisive effect on doctrinal interpretations of *jihad*, decisionmakers and analysts can ill afford not to familiarize themselves with its presence.

Nyazee does not share Kamali's revisionist angst. While Nyazee and Kamali's treatment on abrogation generally run parallel when addressing the doctrine, Nyazee adds two additional points minimized by Kamali: first, that there is unanimous agreement among the four *Sunni* schools of law on the doctrinal status of abrogation; and, second that the position represents an orthodox view of *Sunni* Islamic law that approaches scholarly consensus. Given the contentious nature of the debate,<sup>248</sup> Nyazee reiterates the point:

All four *Sunni* schools unanimously accept the doctrine of abrogation, though they may disagree on the details. Most of the independent jurists also accepted this doctrine. It

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<sup>247</sup> Sohail H. Hashmi in El Fadl, 33-34.

<sup>248</sup> Nyazee, 317.

may, therefore, be assumed to be a *kind of consensus*. The concept of “repeal” and “overriding laws” is a necessity in a legal system and Islamic law acknowledges it. Such repeal in the texts, though, could only occur during the lifetime of the Prophet (peace be unto him), that is, abrogation where claimed comes from the Lawgiver, it is not the work of the jurists.<sup>249</sup> (Emphasis added)

Hence, Kamali’s “general rules” on abrogation are Nyazee’s “orthodox” and “consensus” rules. Furthermore, what Nyazee calls “a kind of consensus,” the *‘Umdat al-Salik*, as discussed earlier, classifies as the necessary threshold for establishing scholarly consensus since Islamic law requires agreement among the four *Sunni* schools (Hanafi, Maliki, Shafi’i and Hanbali) as the minimum threshold.<sup>250</sup>

The interlocking effects of scholarly consensus and abrogation begin to take hold. For Current Approach advocates to succeed at de-emphasizing abrogation, they would first have to successfully abrogate the concept of scholarly consensus and then downgrade the doctrinal status of the four orthodox schools at both the individual and collective levels. This cannot happen. Even Kamali acknowledges that “the *‘ulama* have arrived at the general rule that *ijma* (scholarly consensus) can neither abrogate or be abrogated.”<sup>251</sup> It is difficult to see how arguments that are properly grounded in abrogation and supported by consensus can be labeled “extreme.” Current Approach advocates should be required to explain the legal basis for their competing views when challenging “extremist” positions that demonstrably conform to doctrine. In theory, such an explanation should not be possible.

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<sup>249</sup> Nyazee, 318.

<sup>250</sup> al-Misri, Book B “The Validity of Following Qualified Scholarship,” b.7 “Scholarly Consensus (*ijma*), at b7.6. [See End Note 157 & 161 for detailed notation.]

<sup>251</sup> Kamali, 204-205.

Finally, when the liberal Kamali discussed the necessary conditions for abrogation, he identified specific types of Quranic verses that can never be abrogated.

One example concerned the permanent validity of *jihad*:

No abrogation can take place unless the following conditions are satisfied. First, that the text itself does not preclude the possibility of abrogation. An example of this is ... the *hadith* which proclaims that '*jihad* shall remain valid till the day of resurrection' obviously precludes the possibility of abrogating the permanent validity of *jihad*. (from Abu Dawud, , II, 702, *hadith* no. 2826; Abu Zahrah, *Usul*, p. 150)<sup>252</sup>

**Abrogation and the Current Approach.** Abrogation's effect on *jihad* is neither random nor neutral. The dual concepts of scholarly consensus and abrogation have a compounding effect on the interpretation of Islamic law that undermines the Current Approach position. On the few occasions that the Current Approach concedes a Quranic basis for *jihad*, it relies on verses from the earlier periods of revelation to support their argument, even though the later ones control. Hence, Current Approach treatments of *jihad* that limit their focus to verses from the earlier period of Quranic revelation should be viewed as suspect. An IPB methodology calibrated to account for abrogation would recognize this tendency.

### ***Jihadis* Control the Key Terrain**

Chapter Four's treatment of "Principles of *Sunni* Islamic Law" is intended to provide the reader with enough background to be able to assess Islamic concepts of *jihad* against the Islamic framework that defines it. Contrary to Western notions of "separation of church and state," Islam defines itself in unitary global terms as a complete way of life governed by a single body of law that comes from Allah who alone retains all aspects of

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<sup>252</sup> Kamali, 207.

sovereignty. Laws drawing their authority directly from the Qur'an or hadith are a part of the fixed body of law that remains eternal and are not subject to change. This concept is strictly construed. From the fixed realm of Islamic law emerge certain rules of interpretation that directly influence the definition and status of *jihad*. One of these doctrines is scholarly consensus. When scholarly consensus on an issue exists, it becomes an absolute rule that cannot be modified or denied. The other doctrine is abrogation. It holds that verses from later surahs in the Qur'an abrogate (overrule, amend, control) earlier ones where conflict exists. Whereas earlier surahs in the period of revelation tended to be more peaceful and accommodating to non-Muslims, the later surahs were progressively more militant and less tolerant. This evolution reflects the revelation in stages language in the Qur'an that underpins the doctrine of progressive revelation.

Owing to the effects of scholarly consensus and abrogation on Islamic doctrine, "extremist" claims can be sustained to the exclusion of competing moderate views. Given the Current Approach's substantial investment in cultural experts to help explain events, it is remarkable how little is really known of the enemy's stated threat doctrine. An IPB methodology tailored to account for the "extremist's" doctrine would determine that doctrines like scholarly consensus, abrogation and progressive revelation are powerful legitimizing tools in the enemy's arsenal. In reference to scholarly consensus and abrogation, a sober threat assessment would also indicate that we are fighting an enemy that controls the key terrain in the information battle space. As part of that control, the enemy cannot only force doctrinal arguments of *jihad* that cut decisively in its favor, it can also preclude Current Approach advocates from establishing any real

footholds. Hence, even before addressing the substantive issues of *jihad*, “extremists” have already established their dominance in the debate. Decisionmakers need to know this.

## CHAPTER 5

### REVIEW OF CORE ISLAMIC LAW RELATING TO JIHAD

“The Prophet Muhammad foretold in a hadith that ‘Judgment Day would come only when the Muslims fight the Jews, and the Muslims would kill the Jews, and the stone and tree would say: ‘Oh Muslim, servant of Allah, there is a Jew’ – ‘of course he was referring to the occupying Zionist Jew – ‘there is a Jew behind me, come and kill him,’ except for the Gharqad tree.

**Sheikh Muhammad Ali**  
**Palestinian Clerics Association Deputy Director Hizballah’s Al-Manar TV**  
**23 August 2005**

“The Day of Judgment will not come about until Muslims fight the Jews (killing the Jews), when the Jew will hide behind the stones and trees. The stones and trees will say O Muslims, O Abdullah, there is a Jew behind me, come and kill him. Only the Gharqad tree, (evidently a certain kind of tree) would not do it because it is one of the trees of the Jews.”

**The Hamas Covenant of 1988**  
**The Covenant of the Islamic Resistance Movement**  
**18 August 1988**

Abu Huraira reported Allah’s Messenger (may peace be upon him) as saying: *The last hour would not come unless the Muslims will fight against the Jews and the Muslims would kill them until the Jews would hide themselves behind a stone or a tree and a stone or a tree would say: Muslim, O servant of Allah, there is a Jew behind me; come and kill him; but the tree Gharqad would not say, for it is the tree of the Jews.*

**The Prophet Muhammad**  
**From Bukhari Book 041, Number 6985**

### JIHAD IN ISLAM

Hardly a day goes by without there being some story on *jihad*. Against claims that *jihad* does not mean holy war comes a website that defines *jihad* as “attacks

committed by determined Muslims in the name of their faith”<sup>253</sup> that provides an itemized list of over 8,905 “deadly acts of terrorism” since 11 September 2001.<sup>254</sup> Because public discourse on *jihad* is so contentious, the need for a controlling definition capable of preempting lesser understandings of the term needs to be identified. Because Islam is a complete way of life governed by Islamic law, the legal definition of *jihad* will be used. Because Islamic law comes from Allah who is alone sovereign, the legal definition will also be the controlling definition. Islamic law is the legal system “extremists” emulate and seek to impose when fighting jihad.

## JIHAD

This analysis will start with a contemporary Hanafi Islamic legal explanation of *jihad* to establish a baseline understanding. The focus will then shift to more traditional concepts as explained by grand foundational authorities like Imam al-Shafi’i and Imam Malik ibn Anas, both founders of doctrinal schools of *Sunni* Islamic law. From there, a review of Sacred Islamic law will be undertaken to demonstrate the continuity of Islamic law through time that reflects the consensus position on *jihad*. The focus will be to identify broadly accepted doctrines that are reasonably fixed in the inner sphere of Islamic law.

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<sup>253</sup> The Religion of Peace, URL: <<http://www.thereligionofpeace.com>>, assessed 17 July 2006.

<sup>254</sup> The Religion of Peace, URL: <<http://www.thereligionofpeace.com>>, accessed 15 July 2007.

## The Modern Legal Classification of *Jihad*

**Jihad is a Requirement.** In his book *Theories of Islamic Law: The Methodology of Ijtihad*, Imran Ashan Khan Nyazee<sup>255</sup> discusses how the methodology of *ijtihad* can be used to extend Islamic law as the basis for all law in the Muslim state. Although a Hanafi<sup>256</sup> jurist and Pakistani law professor, Nyazee relies on a methodology developed by Abu Hamid Muhammad al-Ghazali, a pre-eminent 11<sup>th</sup> century Shafi'i (and *sufi*) authority, to develop concepts of *ijtihad* tailored to meet the daily needs of governance in a contemporary Islamic society under Hanafi Islamic law.<sup>257</sup> A serious legal treatise written by an Islamic legal scholar, Nyazee positions *jihad* as part of his larger overall treatment of Islamic governance:

What are the goals of the Muslim community? The moment the *maqasid* are viewed as the goals of the Muslim community, the interest of *Din* moves up and represents its external goals. The positive aspect of this interest conveys a single goal: to spread the message of Islam in the whole world. The instrument utilized for attaining this goal is *da'wah* in conjunction with *jihad*. There are numerous opinions on the meaning and role of *jihad* in the modern age. These however, are not relevant for the present study as we are looking for the traditional point of view. What is relevant is the opinion of the jurists, and hence the law on this point.<sup>258</sup>

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<sup>255</sup> Nyazee, *Ijtihad*, back cover. **NOTE:** Professor Nyazee is both a credentialed expert in Islamic law as a Professor at the Faculty of Shari'ah and Law, International Islamic University, Islamabad, Pakistan and, with an LLM from the University of Michigan, has substantive understanding of Western, specifically U.S. jurisprudence. He is also author of *Islamic Jurisprudence* and translator of ibn Rushd's *The Distinguished Jurist's Primer*, both cited in this paper.

<sup>256</sup> al-Misri, Book X "Biographical Notes," at § x37. (Imam) **Abu Hanifa** (b1.2) is Abu Hanifa al-Nu'man ibn Thabit, the Greatest Imam born, born in A.H. 80 in Kufa. He was the Scholar of Iraq and the foremost representative and exemplar of the school of juridical opinion (*ra'y*). The Hanafi school, which he founded, has decided court cases in the majority of Islamic lands for the greater part of Islam's history, including the Abbasid and Ottoman periods, and maintains its preeminence in the Islamic courts today. Abu Hanifa was the first to analyze Islamic jurisprudence, divide it into subjects, distinguish its issues, and determine the range and criteria for analogical reasoning (*qiyas*) therein.

<sup>257</sup> Nyazee, *Ijtihad*, 189.

<sup>258</sup> Nyazee, *Ijtihad*, 250-251.

Noting the irrelevance of contemporary non-legal characterizations of *jihad*, Nyazee explains that Islamic law controls the terms definition. When deferring to “traditional points of view,” Nyazee does not mean some hoary past but rather is making explicit reference to the sacred hadith. The term “tradition” to refer to hadith has a long history that al-Shafi’i explained in his classic legal treatise *Risala*:

The sunna which the Apostle has laid down on matters for which a text is to be found in the Book of Allah is always in full agreement with that text and clarifying on Allah’s behalf a general text; the Apostle’s specification is more explicit than the text. But as for the sunna which he laid down on matters for which a text is not found in the Book of Allah, the obligation to accept them rests upon us by virtue of the duty imposed by Allah to obey the Prophet’s orders.<sup>259</sup>

The requirement to follow “tradition” comes from the duty to accept the hadith.

In a legal treatise, Nyazee cannot entertain frivolous discussions of *jihad* that operate outside the doctrinal footprint. When a legal term adopts a strict definition or mandatory rule of construction, the jurist must apply it. Where such definitions and rules exist, like any legal system, Islamic law requires Muslim jurists to confine their discussions of terms to their legal framework. To explain the requirements of *jihad*, Nyazee relies on Abu al-Walid Muhammad ibn Ahmad ibn Rushd, the famous 12<sup>th</sup> century Andalusian *qadi* (judge) of Cordova and author of *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (*The Distinguished Jurist’s Primer*).<sup>260</sup> Limiting his analysis of *jihad* to the fixed elements of Islamic law, Nyazee finds:

- That this leaves no doubt that the primary goal of the Muslim community, in the eyes of its jurists, is to spread the word of Allah through *jihad*, and the option of poll-tax [*jizyah*] is to be exercised only after subjugation.

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<sup>259</sup> al-Shafi’i, ¶182, 180.

<sup>260</sup> See End Note 249.

- That the aggressive propagation of Islam and the activity of *jihad* can be suspended with or without necessity in the opinion of some jurists, but it is only a transitory phase, for which some jurists fix a specified period, while others do not.
- That Professor W. Montgomery Watt maintains that the expansion of Muhammad’s city-state into an empire raised the expectation that the Islamic empire would ultimately include the whole human race. We would agree with Professor Watt on this point with a slight qualification. The idea that Islam (not the Islamic Empire) would ultimately include the whole human race is not based on early conquests alone, *but is an acknowledged goal of the Muslim community*, and it arises from the texts of the Qur’an as well as the *Sunnah*, as quoted by ibn Rushd above. *According to such reasoning, the Muslim community may be considered to be passing through a period of truce. In its present state of weakness, there is nothing much it can do about it.*
- Will this community annul this truce, if tomorrow, *it were to gain its strength*? Perhaps, this is what Watt has in mind when he says that that intentions of ultimate world domination are not so much a cause of worry for the non-Muslim states as are the treaties signed by the Muslim states, for *“the division of the world into the sphere of Islam and the sphere of war” is by no means a thing of the past*. In so far as traditional Islam grows in strength it could come into the forefront of world politics. Debating this point would be futile, as much depends on how far the world has progressed in terms of justice, fair-play, mutual cooperation, and freedom from exploitation, by the time the Muslim community gains in strength. It is to be hoped that in this modern world, where religion has been given a back seat in the general scheme of things and where other problems will continue to maintain the truce and agreements in a spirit of cooperation and focus more on the institution of *da’wah* (invitation) than on the instrument of *jihad* (holy war), especially when there are legal opinions supporting truce.<sup>261</sup> (Emphasis added)

Hence, contemporary Hanafi law understands *jihad* to be fixed in Islamic law because it is grounded in the Qur’an, hadith and scholarly consensus (*ijma*) as a requirement that can only be put off for reasons of inability (weakness) on the one hand or by treaty along Islamic lines on the other. In fact, truces are disfavored “because it entails the nonperformance of *jihad*.”<sup>262</sup> Relying on Qur’an Verse 47:35 for its authority (“*So do*

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<sup>261</sup> Nyazee, *Ijtihad*, 252-254.

<sup>262</sup> al-Misri, Book O “Justice,” at o9.0 “Jihad,” at o9.16: “Truces.”

(O: As for truces, the author does not mention them. In Sacred Law truce means a peace treaty with those hostile to Islam, involving a cessation of fighting for a specified period, whether for payment or something else. The scriptural basis for them includes such Quranic verses as: “*An acquittal from Allah and His Messenger...*” (9:1) and “*If they incline towards peace, then incline towards it also*” (8:61) as well as the truce which the Prophet (Allah bless him and give him peace) made with the Quraysh in the year of Hdaybiya, as related by Bukhari and Muslim.

*not be fainthearted and call for peace, when it is you who are the uppermost*”), Islamic law states that the maintenance of a peaceful status quo cannot serve as the basis for a truce when the milestones favor Islamic success in *jihad*. When Nyazee states that the “Muslim community may be considered to be passing through a period of truce,” and then associates it with Islam’s “present state of weakness,”<sup>263</sup> he faithfully reflects the legal standard that truces with the *dar al harb* are defensive, time limited, and inappropriate once Islam reclaims its strength.<sup>264</sup> Nyazee also recognizes the classic eight century Islamic division of the world into two spheres, the *dar al-Islam dar al-Harb*, an actual distinction first established by Abu Hanifa as recorded by Muhammad ibn al-Hasan al-Shaybani in his *Siyar*.<sup>265</sup> Explaining early Islamic law on treaties, *Siyar*

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Truces are permissible, not obligatory. The only one who may effect a truce is the Muslim ruler of a region (or his representative) with a segment of the non-Muslims of the region, or the caliph (o22) (or his representative). When made with other than a *portion* of the non-Muslims, or when made with all of them, or with all in a particular region such as India or Asia Minor, then only the caliph (or his representative) may effect it, *for it is a matter of the gravest consequence because it entails the nonperformance of jihad, whether globally or in a given locality, and our interest must be looked after therein*, which is why it is best left to the caliph under any circumstances, or to someone he delegates to see to the interests of the various regions.

<sup>263</sup> Nyazee, *Ijtihad*, 252-254.

<sup>264</sup> al-Misri, Book O “Justice,” at o9.0: “Jihad,” at o9.16 “Truces.” There must be some interest served in making a truce other than mere preservation of the status quo. Allah most high says, “*So do not be fainthearted and call for peace, when it is you who are the uppermost*” (Qur’an 47:35). *Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or material*, or the hope of an enemy becoming Muslim, for the Prophet (Allah bless him and give him peace) made a truce in the year Mecca was liberated with Safwan ibn Umayya for four months in hope that he would become Muslim, and he entered Islam before its time was up. *If the Muslims are weak, a truce may be made for ten years if necessary*, for the Prophet (Allah bless him and grant him Peace) made a truce with Quraysh for that long, as it related by Abu Dawud. It is not permissible to stipulate longer than that, save by means of new truces, each of which does not exceed ten years.

<sup>265</sup> Nyazee, *Ijtihad*, 172.

translator Majid Khadduri confirms Nyazee's restatement of the law that Muslim rulers can only resort to peace treaties out of necessity:

Muslim authorities concluded peace treaties with the enemy only when it was to the advantage of Islam, whether because it found itself in a state of temporary weakness following a military defeat or because of engagement in war in another area.<sup>266</sup>

Finally, this rule is reflected in Islamic law where the '*Umdat al-Salik* states:

Interests that justify making a truce are such things as Muslim weakness because of lack of numbers or material, or the hope of an enemy becoming Muslim.<sup>267</sup>

**The Specifics of Hanafi Law.** How does Hanafi law characterize *jihad*? Hanafi law recognizes a series of primary rules (*hukm taklifi*<sup>268</sup>) that create obligations that impose duties. These primary rules (*hukm taklifi*) are based on a series of rights. Hanafi law recognizes three basic sets of rights and a fourth composite set: the rights of Allah, the rights of the individual, and the rights of individuals collectively (or of the state), and a fourth composite set of rights of Allah lying side by side with the individual – with the two cases of predominance of one or the other. From a hierarchical perspective, the rights of Allah (*haqq Allah*) take primacy of position.<sup>269</sup>

Divided into the four categories, al-Sarakhsi,<sup>270</sup> a pre-eminent 11<sup>th</sup> century Hanafi Imam, *mujtahid* and judge explained that the rules (*ahkam*<sup>271</sup>) in each category are further

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<sup>266</sup> al-Shaybani, 54.

<sup>267</sup> al-Misri, Book O "Justice," at o9.0 "Jihad," at o9.16 "Truces."

<sup>268</sup> Nyazee, *Ijtihad*, 318. *Hukm taklifi* defined: The obligation-creating rule. The primary rule of the legal system.

<sup>269</sup> Nyazee, *Ijtihad*, 58,59.

<sup>270</sup> al-Misri, at Book X "Biographical Note," at § x319: (Imam) **Sarakhsi** (w43.3) is Muhammad ibn Ahmad ibn Sahl, Abu Bakr Shams al-A'imma al-Sarakhsi of Serakhs (in present-day Turkmen S.S.R.). He was a great Hanafi Imam, mujtahid, judge, and the author of the

subdivided into a series of rights. Regarding the rights of Allah, eight were identified in priority order, with the first two being the “Right of Pure Worship” followed by the “Right of Pure Punishment:”

- **Pure Worship.** The first of these is belief in Allah or *iman*. The second is prayer. The third is *zakah*. The fourth is fasting (*sawm*). The fifth is *hajj*. The sixth is *jihad*.
- **Pure Punishment.** These are the *hudud* penalties that have been instituted as deterrents, as a pure right of Allah.<sup>272</sup> (Emphasis added)

As indicated, *jihad* holds a prominent status in Hanafi law as a right of Allah that is the 6<sup>th</sup> right of pure worship. Hence:

- *Jihad* belongs to that group of rules having the highest classification of rights -
  - The rights of Allah.
- Among the rights of Allah, it belongs to the highest classification of rights -
  - A “Right of Pure Worship.”
- As a Right of Pure Worship, it is number six in the ordering –
  - Following only the Five Pillars of Islam – and of a kind with them.

A principle characteristic of the “Rights of Allah” is that they concern Allah’s absolute sovereign status. It is Islamic law’s status as part of Allah’s most perfect justice that allows “extremists” to claim that democratic forms of governance are incompatible with Islam. The divine status of the “rights of Allah” carries with it substantive weight inside the Muslim community. Executed for his participation in the assassination of Anwar Sadat, Muslim Brotherhood (*Ikhwan*) member and Islamic law student,

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encyclopedic al-Mabsut [The Extensive], whose thirty volumes he dictated to students from an underground cell where he was imprisoned in Uzjand near Fergana (in present-day Uzbek S.S.R.) for advising a local chief in the matter of religion. He wrote a number of outstanding works in Hanafi jurisprudence and methodological principles of Sacred Law, and died in Fergana in 483/1090.

<sup>271</sup> Nyazee, *Ijtihad*, 313, 318. *Ahkam* defined: Plural of hukm (rule). *Hukm* defined: Rule, injunction, prescription.

<sup>272</sup> Nyazee, *Ijtihad*, 60.

Muhammad ‘Abd al-Salam Faraj, in his treatise *The Neglected Duty*, went so far as describe *jihad* as one of the Pillars of Islam:

Whoever really wants to be occupied with the highest degrees of obedience and wants to reach the peak of devotion must commit himself to *jihad* for the cause of Allah, without, however, neglecting the other (prescribed) pillars of Islam.<sup>273</sup>

Faraj’s characterization of *jihad* as a pillar of Islam is procedurally accurate if not technically correct.<sup>274</sup> Unlike laws coming from man or government, a rule (*hukm*) qualified with the term *shar’i* means it belongs to Islamic law. Islamic law coming from the *hukm shar’i* is understood to be a communication from Allah relating to the acts of the subjects through a demand, option or declaration.<sup>275</sup> Hence, when Allah created an obligation on believers, it became *hukm shari*. Because they are *hukm shari*, rights of Allah create legally binding obligations. Being a right of Allah, *jihad* is a *hukm shari* constituting a communication from Allah creating an obligation on man. Because man cannot overrule a communication from Allah, man can never overrule the obligation of *jihad*:

The first point to notice about this definition is that (*shari’a*) *hukm* or a rule of law is a communication from Allah. This means that it is not treated merely as a command. It also means that a communication from anyone else cannot be considered as a *hukm*, be he a ruler or someone else.<sup>276</sup>

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<sup>273</sup> Jansen, 183.

<sup>274</sup> An explanation for why *jihad* cannot be a “Sixth Pillar of Islam” is that the Pillars, being the “five main practices,” are permanent requirements of Islam whereas *jihad*, in theory, is to end when the world, having been converted entirely to the *dar al-Islam*, has been claimed for Islam.

<sup>275</sup> Nyazee, *Ijtihad*, 64.

<sup>276</sup> Nyazee, *Ijtihad*, 64.

The same theories of Islamic law that designate Allah as the exclusive lawgiver also define *jihad* as a right of Allah that is a right of pure worship creating obligations for all Muslims. For Hanafi jurists, *jihad* is “fixed” in the inner sphere as a non-optional rule of Islam. Elements of the rule of Islamic law (*hukm shar’i*) interact with each other to give rise to liabilities and obligations to obey laws divinely created and hence, immutable. The resulting logic string brings the four elements of the rule of law together in the Islamic legal system: the Lawgiver (*Hakim*); the relevant law (*hukm*); the act to which the legal rule is related; and the subject who performs the act and who is under an obligation to conform.<sup>277</sup> As it relates to *jihad*: 1) The lawgiver, Allah, 2) creates the requirement of *jihad*, 3) in order that *jihad* be undertaken, 4) by the Muslim community, joint and severable, when under a legal obligation to do so. Hence, if “extremists” like Faraj, in his *Neglected Duty*, can establish *jihad* as an obligation that is a “Right of Allah’s,” then he can assert that its non-performance is, as a matter of law, a neglected duty.

This legal explanation for the duty of *jihad*<sup>278</sup> is taught to contemporary American Muslim students. When teaching that *jihad* is a duty of Islam arising out of a direct command from Allah, Emerick is simply teaching the established doctrines in Islamic law:

There are seven main beliefs, five main practices and three main duties to Islam. ... The three duties are extra things which Muslims do based on the commandments of Allah in the Qur’an. They are: 1) *Da’wah*, (Calling others to Islam) 2) *Jihad* (Striving in Allah’s Cause) and finally, 3) Encouraging the good while forbidding wrong. (3:110)<sup>279</sup>

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<sup>277</sup> Nyazee, *Ijtihad*, 71.

<sup>279</sup> Emerick, 50-51.

If a real *jihad* was declared, then we, as Muslims, must obey and follow the rules of Islam in our conduct. (9:38-41)<sup>280</sup>

Majid Khadduri reconciles the earlier discussion on the temporary nature of truces with the current discussion on the duty to conduct *jihad*:

Peace does not supersede the state of war, for the *jihad* is a legal duty prescribed by the law; peace means the grant of security or protection to non-Muslims for certain specified purposes, and the achievement of them brings the grant of peace to an end.<sup>281</sup>

### ***Jihad in the Schools: Beyond the Madrassa & Not Just About Poverty***

While Emerick's *What Islam is All About* is more opaque in its treatment of *jihad* than school book treatments in predominantly Muslim countries, where comparisons exist, references to *jihad* as warfare remains a consistent theme. The fact that such treatments of *jihad* are a mandatory part of the school curricula in so many Muslim countries, the question is how is it that so many from those countries insist that *jihad* does not mean "holy war." Three countries provide an example: Pakistan, Saudi Arabia and Egypt:

**Pakistani Curricula** - As the news release indicates, Pakistan will continue to teach *jihad* in all schools – not just the underprivileged in Madrassas. Remembering what Pakistani Brigadier S. K. Malik wrote of the *Quranic Concept of War* (discussed later), it should be noted that the chapters he focuses on are the same ones identified below – including Surah 8 and 9 (the Surah of the Sword). Of note, all Chapters listed are from the Medinan Period.

- The concept of *jihad* is not being deleted from the new national curriculum developed by Pakistan, the federal minister for education has declared. "*Jihad* will stay in the text books because it is an integral part of Islamic teachings and Muslim beliefs," Lt Gen (retired) Javed Ashraf Qazi said.

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<sup>280</sup> Emerick, 164. The small letters in parenthesis are verses from the Qur'an that Emerick uses to provide authority for the position stated. As this is a lesson on the duty of *jihad*, this particular reference to the Qur'an is included here (9:38, 39 & 41 with 9:40 excluded due to length). (Note: "lightly or heavily" refers to being armed lightly or heavily):

*O ye who believe! What is the matter with you, that when ye are asked to go forth in the cause of Allah, ye cling very heavily to the earth? Do ye prefer the life of this world to the Hereafter? But little is the comfort of this life, as compared with the hereafter.*(9:38)

*Unless ye go forth, He will punish you with a grievous penalty, and put others in your place; But Him ye would not harm in the least. For Allah hath power over all things.*(9:39)

*Go ye forth, (whether equipped) lightly or heavily, and strive and struggle, with your goods and your persons, in the Cause of Allah. That is best for you, if ye (but) knew.*(9:41)

<sup>281</sup> al-Shaybani, 54.

- According to him Al Anfal (Surah 8) and other chapters of Qur'an "over which certain Western countries have" reservations with regard to *jihad*, are still part of the Islamiat curriculum. Students of Grades IX and X would be taught 20 selected verses from Chapter Baqara (S-2), Al Nisa (S-4), Al Medina, Al Tauba (Surah 9) and Al Haj (S-22) with translation and interpretation.

“*Jihad* Will Stay in Text Books, Says Minister,” *Gulf Times* (Qatar)  
Published: Wednesday, 26 July 2006

### ***Jihad in the Schools: Beyond the Madrassa & Not Just About Poverty*** (Continued)

#### **Saudi Arabian 12<sup>th</sup> Grade Text – (After the Intolerant Language Removed)**

- Muslim scholars have agreed that jihad to spread the faith of God is an obligation ...
- Jihad in the path of God -- which consists of battling against unbelief, oppression, injustice, and those who perpetrate it -- is the summit of Islam. This religion arose through jihad and through jihad was its banner raised high. It is one of the noblest acts, which brings one closer to God, and one of the most magnificent acts of obedience to God. Jihad was decreed under Islamic law to raise up the word of God and carry the call to the faith to all people.
- Battle can only pursue two aims:
  1. To fulfill an order from God, sacrifice in His path, spread the creed of monotheism, defend the realms of Islam and Muslims, and raise up the word of God. This is jihad in the path of God.
  2. He said, "He who fights so that the word of God is supreme is fighting in the path of God."
- Jihad continues until the Day of Resurrection – It is part of God's wisdom that he made the clash between truth and falsehood continue until the Day of Resurrection. As long as this clash endures, jihad continues. It is not limited to a specific time. As long as there is falsehood, error, and unbelief, the jihad continues. Its virtue endures in accordance with each time and place. God said, "Nor will they cease fighting you until they turn you back from your faith if they can..."

*Excerpts from Saudi Ministry of Education Textbooks for Islamic Studies: Arabic with English Translation, Center for Religious Freedom of Freedom House (Freedom House: Washington, DC, 2006), 103-105 citing Hadith and Islamic Culture - 12<sup>th</sup> Grade, Education Development (Education Ministry, Kingdom of Saudi Arabia: Riyadh, 2005), 57- 59.*

#### **Egyptian 11<sup>th</sup> Grade School Text**

- *Studies in Theology: Tradition and Morals*, Grade 11, (2001) pp. 291-92. This noble [Qur'anic] Surah [Surat Muhammad] ... deals with questions of which the most important are as follows: 'Encouraging the faithful to perform jihad in God's cause, to behead the infidels, take them prisoner, break their power, and make their souls humble - all that in a style which contains the highest examples of urging to fight. You see that in His words: "When you meet the unbelievers in the battlefield strike off their heads and, when you have laid them low, bind your captives firmly. Then grant them their freedom or take a ransom from them, until war shall lay down its burdens."'

*Center for Monitoring the Impact of Peace, Jews, Christians, War and Peace in Egyptian School Textbooks, ed., comp. & trans. Arnon Groiss (New York: CMIP, 2003), 146.*

**A Note on Ijtihad and Jihad.** As the purpose of Nyazee’s monograph is to explore ways *ijtihad* can be used to apply Islamic law to all aspects of modern Islamic society, his conclusion that the rights of Allah<sup>282</sup> are beyond the scope of *ijtihad*<sup>283</sup> has consequences for Current Approach advocates who claim *ijtihad* as a tool to modify *jihad*’s status. This is true not only because “rights of Allah” are a part of the fixed inner sphere of Islamic law, but also because *jihad* is beyond the reasoning of man and hence substantially outside the scope of *ijtihad*.<sup>284</sup> Hence, the general rule on *ijtihad* is that it can be used to “reason to a conclusion” in the flexible realm of man-made<sup>285</sup> law but cannot do so in the fixed sphere of Allah’s.<sup>286</sup> To do so would be to put the reasoning of man ahead of the rights of Allah. This is impermissible. When “extremists” accurately cite Islamic law on *jihad*, they are referencing a body of law that is beyond the jurisdiction of man and hence outside the scope of *ijtihad*. This should be borne in mind

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<sup>282</sup> Nyazee, *Ijtihad*, 123. “All this leads us to the conclusion that there are two spheres of Islamic law (and should be two in the law of crimes also), one fixed, existing as the right of Allah, while the other is flexible and changing.”

<sup>283</sup> Nyazee, *Ijtihad*, 125, 126. “It also becomes obvious that what is binding upon us is the fixed part of the law. Nothing is binding upon us from the flexible sphere that changes with the times unless we consciously follow a system of precedents. ... Finally, the two spheres tell us that our *ijtihad* today is to be directed more towards the flexible sphere rather than the fixed sphere. The fixed sphere has been developed to its limits and a rich treasure of opinions exists within the established schools.”

<sup>284</sup> Nyazee, *Ijtihad*, 287. “*Ijtihad* is not a source of law; the sources in the true sense of the term are the texts of the Qur’an and the *Sunnah*. ... The first restriction that is placed on this activity is: There is no *ijtihad* within an explicit rule in the texts (*la ijthada ma’al-nass*). This implies that when the rule stated in the texts is so clear that more than one meaning cannot be derived from it, the jurist is prohibited from undertaking *ijtihad* in it.”

<sup>285</sup> Nyazee, *Ijtihad*, 126. “The only way the law in the flexible sphere can be developed is through reasoning from general principles arising from the fixed part of the law.”

<sup>286</sup> Nyazee, *Ijtihad*, 289. “Calls for *ijtihad*, therefore, must focus upon the area of the law that falls within the domain of the rulers (i.e. the flexible) and this pertains to the bulk of the law obtaining in countries like Pakistan.”

when assessing the validity of Current Approach arguments that claim *ijtihad* can counter the legal claims of the *jihadis*.

**Why focus on Hanafi law?** This analysis has relied on current Hanafi Islamic law because it is the most broadly practiced in the Islamic world in terms of both total numbers of people and territory under its jurisdiction. It includes Iraq, Afghanistan, Turkey, Pakistan, India and Indonesia. Established by Abu Hanifa in the eight century, Hanafi law is also the oldest school of Islamic law and the first of the four doctrinal schools. As indicated, Hanafi Islamic law fully recognizes *jihad* as a requirement of Islam in precisely the way “extremists” claim. Yet, just as with Suleyman Ahmad’s (Steven Schwartz) *The Two Faces of Islam*,<sup>287</sup> the conventional wisdom of the Current Approach is that “extremists” abuse *jihad* by taking strained positions on Islamic law to arrive at concepts permissive of terrorism yet outside the scope of Islamic traditions and doctrine. When Current Approach advocates accuse “extremists” of manipulating mainstream traditions, they assert that such positioning is based on the mistreatment or mistranslation of texts, usually by Hanbalis, Saudis, *Salafis*, *jihadis* or *Wahhabis*. As the argument goes, Hanbali law, the official law of Saudi Arabia, is known for notables like Shaykh ul-Islam Ahmed ibn Taymiya<sup>288</sup> and Imam Muhammad ibn ‘Abd al-Wahhab<sup>289</sup> --

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<sup>287</sup> Schwartz, i.

<sup>288</sup> al-Misri, Book X “Biographical Notes,” at § x178: **Ibn Taymiya** (p75.23) is Ahmad ibn ‘Abd al-Halim inb ‘Abd al-Salam ibn ‘Abdullah, Abu al-‘Abbas Taqi al-Din Inb Taymiya Ibn Taymiya al-Harrani, born in Harran, east of Damascus, in 661/1263. A famous Hanbali scholar in Koranic exegesis, hadith, and jurisprudence, Ibn Taymiya was a voracious reader and author of great personal courage who was endowed with a compelling writing style and a keen memory. Dhahabi wrote of him, “I never saw anyone faster at recalling the Koranic verses dealing with subjects he was discussing, or anyone who could remember hadith texts more

one associated with *takfirism* and the other the *Muwahhidun*, better known as Wahhabism

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vividly.” Dhahabi estimates that his legal opinions on various subjects amount to three-hundred or more volumes.

He was imprisoned during much of his life in Cairo, Alexandria, and Damascus for his writings, scholars of his time accusing him of believing Allah to be a corporeal entity because of what he mentioned in his *al-'Aqida al-Hamawiyya*, and *al-Wasitiyya* and other works such that Allah's 'hadn', 'foot', 'shin', and 'face', are literal (*haqiqi*) attributes, and the He is upon the Throne in person. The error in this, as mentioned above at x174, is that suggesting such attributes are literal is an innovation and unjustifiable inference from the Koranic and hadith texts that mention them, for the way of the early Muslims was mere acceptance of such expressions on faith without saying how they are meant, and without additions subtractions, or substituting meanings imagined to be synonyms, while acknowledging Allah's absolute transcendence beyond the characteristics of created things, in conformity with the Quranic verse, “There s nothing whatsoever like unto Him” (Qur'an 42:11). As for figurative interpretations that preserve the divine transcendence, scholars of tenets of faith have only had recourse to them in times when men of reprehensible innovations (*bid'a*), quoting hadiths and Quranic verses, have caused confusion in the minds of common Muslims as the whether Allah has attributes like those of His creation or whether He is transcendentally beyond any image conceivable to the minds of men. Scholars' firmness in condemning those who have raised such confusions has traditionally been very uncompromising, and this is no doubt the reason that a number of the Imams of the Shafi'i school, among them Taqi al-Din Subki, Ibn Hajar Haytami, and al-Izz Ibn Jama'a, gave formal legal opinions that Ibn Taymiya was misguided and misleading in tenets of faith, and warned people from accepting his theories. The Hanafi scholar Muhammad Zahid al-Kawthari has written, “Whoever thinks that all the scholars of his time joined in a single conspiracy against him from personal envy should rather impugn their own intelligence and understanding, after studying the repugnance of his deviations in belief and works, for which he was asked to repent time after time and moved from prison to prison until he passed on to what he'd sent ahead.”

While few deny the Ibn Taymiya was a copious and eloquent writer and hadith scholar, his career, like that of others, demonstrates that a man may be outstanding in one field and yet suffer from radical deficiencies in another, the most reliable index of which is how a field's Imams regard his work in it. By this measure, indeed, by the standard of all previous Ahl al-Sunna scholars, it is clear that despite a voluminous and influential written legacy, Ibn Taymiya cannot be considered an authority on tenets of faith, a field which he made mistakes profoundly incompatible with the belief of Islam, as also with a number of his legal views that violated the **scholarly consensus** (*ijma*) of Sunni Muslims. It should be remembered that such matters are not the province of personal reasoning (*ijtihad*), whether Ibn Taymiya considered them to be so out of sincere conviction, or whether simply because, as Imam Subki said, “**his learning exceeded his intelligence.**” He died in Damascus in 728/1328. **Note:** The entire biographical note on Ibn Taymiyya was included, among other reasons, to demonstrate that his disfavored status in Islamic law is attributed to theological lapses that have little to do with his “extreme” interpretations on the topics of jihad, dhimmi status or the Taymiyyan concept of *takfir*.

<sup>289</sup> Imam Muhammad Ibn Abdul Wahhab, *Kitab at-Tawheed Explained*, (Riyadh, Saudi Arabia: International Islamic Publishing House, 1998), i. This cites to Wahhab's book. Given the harsh treatment given Ibn Taymiya in his “Biographical Note” at x178 (above), he is still recognized in the *Umdat al-Salik*. This is not so for Ibn Abdul Wahhab, who is unrecognized. While the reason for this omission is not given, speculation could be that while Ibn Taymiya was deficient, Ibn Abdul Wahhab was arrested, tried, and executed by the Caliph in Istanbul as a heretic and hence goes unrecognized in Islamic law.

(those who strictly adhere to the concept of Allah’s absolute “Oneness” -- or *tawhid*).

Continuing the argument, because al-Qaeda is a terrorist organization grounded in Wahhabism, itself rooted in Hanbalism,<sup>290</sup> Islam should not be blamed for the terrorist acts of those “extremists” erroneously claiming violent *jihād* in Islam’s name.

Popular with Current Approach advocates, there is less to the “but for Wahhabism” argument than appears. Critics of the “blame everything on Wahhabism” argument caustically refer to it as the “Mamma mea, its ibn Taymiya” distraction and argue in the alternative that the “extremist” view enjoys substantial support from Islamic law. While it is certainly true that Hanbalis have ibn Taymiya, ibn Wahhab, Osama bin

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<sup>290</sup> al-Misri, Book X “Biographical Notes,” at § x72: **(Imam) Ahmad** (b1.2) is Ahmad ibn Muhammad ibn **Hanbal** ibn Hilal ibn Asad, Abu ‘Abdullah al-Shaybani, **Imam of Ahl al-Sunna**, born in 164/780 in Baghdad, where he grew up an orphan. For sixteen years he traveled in pursuit of the knowledge of hadith, to Kufa, Basra, Mecca, Medina, Yemen, Damascus, Morocco, Algeria, Persia, and Khurasan, memorizing on hundred thousand hadiths, thirty thousand of which he recorded in his *Musnad* [*Ascribed Traditions*]. Imam Ahmad was among the most outstanding students of Shafi’i, who when he left Baghdad for Egypt, said, “In departing from Baghdad, I have left no-one in it more god-fearing, learned in Sacred Law, abstinent, pious, or knowledgeable than Ibn Hanbal.”

Out of piety, Imam Ahmad never gave a formal legal opinion (*fatwa*) while Shafi’i was in Iraq, and then he later formulated his school of jurisprudence, he mainly drew on explicit texts from the Koran, hadith, and scholarly consensus, with relatively little expansion from analogical reasoning (*qiyas*). He is probably the most learned in the science of the hadith of the four great Imams of Sacred Law, and his students include many of the foremost scholars of hadith. Abu Dawud said of him: “Ahmad’s gatherings were of the afterlife: nothing of this world was mentioned. Never once did I hear him mention this-worldly things.” And Abu Zuhra said: “Ahmad was even greater than Ishaq [Rahawayh] and more knowledgeable in jurisprudence. I never saw anyone more perfect than Ahmad.” He never once missed praying in the night, and used to recite the entire Koran daily. He said, “I saw the Lord of Power in my sleep, and said, ‘O Lord, what is the best act through which those near to You draw nearer?’ and He answered, ‘Through [reciting] My word, O Ahmad.’ I asked, ‘With understanding or without?’ and He answered, ‘With understanding and without.’” Ibrahim al-Harbi noted of Ahmad, “It is as though Allah gathered in him the combined knowledge of the first and the last.”

Ahmad was imprisoned and tortured for twenty-eight months under the Abbasid caliph al-Mu’tasim in an effort to force him to publicly espouse the Mu’tazilite position that the Holy Koran was created, but the Imam bore up unflinchingly under the persecution and refused to renounce the belief of Ahl al-Sunna that the Koran is the uncreated word of Allah, after which Allah delivered and vindicated him. When Ahmad died in 241/855, he was accompanied to his resting place by a funeral procession of eight hundred thousand men and sixty thousand women, marking the departure of the last of the four great *mujtahid* Imams of Islam.

Laden, al-Qaeda and Saudi Arabia, it should not be forgotten that the Hanafis have Sayyid Qutb, Muhammad ‘Abd al-Salam Faraj, Eaman al-Zawahiri, the Muslim Brotherhood (the *Ikhwan*), the Islamic *Jihad* and both Egypt and Pakistan. While Hanbalis only number in the low tens of millions (primarily from Saudi Arabia), Hanafis number in the hundreds of millions.

### **Al-Shafi’i and Malik ibn Anas on *Jihad***

Indicating consensus among the scholars on the concept of *jihad*,<sup>291</sup> Nyazee stressed that genuine analysis must be grounded on established legal norms that draw their authority from tradition. Al-Shafi’i was among the early authorities to establish a firm legal basis for *jihad* in the Qur’an and hadith (tradition).

**Al-Shafi’i.** What a 21<sup>st</sup> century Hanafi legal scholar calls an obligation, the ninth century *Mujtahid* referred to as a duty. In his classic legal treatise *Risala*, al-Shafi’i discussed the status of *jihad* in a chapter titled “On Legal Knowledge,” where a basic legal proposition was offered that a legal duty arises when one gains knowledge of it. With *jihad* as the exemplar, Shafi’i explained that where legal knowledge of *jihad* exists, it creates a specific duty that must be obeyed. Shafi’i constructed his argument exclusively from legal principles arising from the Qur’an and hadith. Hence, his discussion begins with a general statement that Allah created a legal duty followed by a string of citations, first to the Qur’an to affirm the duty’s divine basis and then to hadith citations that established that Muhammad understood the nature of the duty created:

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<sup>291</sup> Nyazee, *Ijtihad*, 251.

40. Shafi'i replied: God has imposed the duty of *jihad* as laid down in His Book and uttered by His Prophet's tongue. He stressed the calling of men to fulfill the *jihad* duty as follows: *God had bought from the believers their selves and their possessions against the gift of Paradise. They fight in the way of God; they kill, and are killed; that is a promise binding upon God in the Torah and Gospel and the Qur'an; and who fulfils his covenant better than God? So rejoice in the bargain you have made with Him. That is the mighty triumph.* [Q. IX, 112]

And He said: *Fight polytheists totally as they fight you totally; and know that God is with the godfearing.* [Q. IX, 36]

And He said: *Slay the polytheists wherever you find them, and take them and confine them, and lie in ambush for them everywhere. But if they repent and perform the prayer and pay the zakat, then set them free. God is All-forgiving, All-compassionate.* [Q. IX, 5]

And He said: *Fight those who do not believe in God nor in the Last Day, who do not forbid what God and His Apostle have made forbidden, and who do not practice the religion of truth, of those who have been given the Book, until they pay the jizya out of hand and have been humbled.* [Q. IX, 29]

41. 'Abd al-'Aziz b. Muhammad al-Darawardi told us from Muhammad b. 'Amr b. 'Alqama from Abu Salama b. 'Abd al-Rahman from Abu Hurayra, who said the Apostle of God said: *I shall continue to fight the unbelievers until they say: 'There is no God but God,' if they make this pronouncement they shall be secured in their blood and property, unless taken for its price, and their reward shall be given by God.*

And God, glorified be His praise, said: *O believers, what is the matter with you, that when it is said to you: 'Go forth in the way of God,' you sink down to the ground? Are you so content with this present life as to neglect the Hereafter? The enjoyment of this life is little in comparison with the Hereafter. If you do not go forth, He will inflict upon you a painful punishment, and instead of you He will substitute another people; and you will not hurt Him at all, for God is powerful over everything.* [Q. IX, 38-39]

And He said: *Go forth, light and heavy! Struggle in God's way with your possessions and yourselves! That is better for you, did you but know.* [Q. IX, 41]<sup>292</sup>

Grounding his authority in the Qur'an, Al-Shafi'i relied exclusively on verses from Surah Nine, thereby recognizing its pre-eminent status on issues of *jihad* and, by implication, that of the doctrine of abrogation as well. Shafi'i supported his Quranic authority with sacred hadith. By establishing *jihad* as a duty from the Qur'an, al-Shafi'i

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<sup>292</sup> al-Shafi'i, 40, 41, 81,83.

fixed it in the inner sphere of Islamic law in just the way the 21<sup>st</sup> century Hanafi jurist explained.

Shafi'i relied on Qur'an verses that took a particularly aggressive posture to *jihad*: "*Slaying polytheists where you find them,*" "*lie in ambush for them everywhere*" and "*Fight those who do not believe in Allah nor in the Last Day...*" etc. Also noteworthy is the reinforcing interaction between Verse 9:29 and the cited hadith, so that knowledge of a requirement from Allah to "*Fight those who do not believe*" is understood by Muhammad to be a duty "*to continue to fight the unbelievers until*" (the world has been brought under the control of Islam). As the model to be emulated by all Muslims, Muhammad's understanding that *jihad* is to continue until the world submits to Islam confirms its status as a duty for all Muslims.<sup>293</sup> The aggressive tone of *jihad* found in al-Shafi'i's selection of hadith is reflected by other *sahih* hadith as well. From Bukhari:

*Muhammad said, "Know that Paradise is under the shade of swords." (Bukhari 4:73)*

*Umair said, "Um Haram informed us that she heard the Prophet saying, 'Paradise is granted to the first batch of my followers who will undertake a naval expedition.' Um Haram added, 'I said, O Allah's Apostle! Will I be amongst them?' He replied, 'You are amongst them.' The Prophet then said, 'The first army amongst my followers who will invade Caesar's city will be forgiven their sins.' I asked, 'Will I be one of them, O Allah's Apostle?' He replied in the negative." (Bukhari 4:175)*

*Muhammad said, "The hour will not be established until you fight with the Turks; people with small eyes, red faces, and flat noses. Their faces will look like shields coated with leather. The hour will not be established till you fight with people whose shoes are made of hair." (Bukhari 4:179)*

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<sup>293</sup> *"A time will come when groups of people will go for Jihad and it will be asked, 'Is there anyone amongst you who has enjoyed the company of the Prophet?' The answer will be 'Yes.' Then they will be given victory by Allah. Then a time will come when it will be asked, 'Is there anyone amongst you who has enjoyed the company of the companions of the Prophet?' It will be said, 'Yes,' and they will be given the victory by Allah. Then a time will come when it will be said, 'Is there anyone amongst you who has enjoyed the company of the companions of the companions of the Prophet?' It will be said, 'Yes,' and they will be given victory by Allah." (Bukhari 4:146)*

*Anas said, "The Prophet set out for Khaibar [a Jewish village attacked and subjugated in 628] and reached it at night. He used not to attack if he reached the people at night, till the day broke. So, when the day dawned, the Jews came out with their bags and spades. When they saw the Prophet they said, 'Muhammad and his army!' The Prophet said, 'Allahu-Akbar! (Allah is Greater) and Khaibar is ruined, for whenever we approach a nation (i.e. enemy to fight) then it will be a miserable morning for those who have been warned.'" (Bukhari 4:195)*

Additionally, al-Shafi'i used Verse 9:38 to remind Muslims of the obligatory nature of *jihad*:

*O believers, what is the matter with you, that when it is said to you: 'Go forth in the way of God,' you sink down to the ground? (Qur'an 9:38)*

There are powerful consequences that come from establishing *jihad* as a legal duty. Arguably, if "extremists" succeed at establishing the *bona fides* of the duty of *jihad*, they can take steps to enforce compliance:

*Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth, and ye know not. (Qur'an 2:216)*

Once established in the fixed law, the subjective understanding of individual believers can be subordinated to the objective requirements of a legal system that provides for enforcement. Individual and communal obligations associated with *jihad* apply to "all able bodied believers, exempting no-one." Al-Shafi'i equated these individual requirements to the individual requirement to pray, do the *hajj*, and pay the *zakat*. In other words, Shafi'i positioned the obligation of *jihad* at parity with the same "Five Pillars" as do contemporary Hanafi jurists. In fact, those who actually fight in *jihad* are promised a higher status in paradise because of the higher esteem promised them in the Qur'an. Communal failure to supply *mujahids* for *jihad* brings harsh consequences:

42. Shafi'i said: These communications mean that the *jihad*, and rising up in arms in particular, is obligatory for all able-bodied believers, exempting no one, just as prayer,

pilgrimage and payment of alms are performed, and no person is permitted to perform the duty of another, since performance by one will not fulfill the duty of another.

They may also mean that the duty of *jihad* is a collective (*kifaya*) duty different from that of prayer: Those who perform it in the war against the polytheists will fulfill the duty and receive the supererogatory merit, thereby preventing those who have stayed behind from falling into terror.

But God has not put the two categories of men on an equal footing, for He said:  
*Such believers who sit at home – unless they have an injury – are not the equals of those who fight in the path of God with their possessions and their selves. God has given precedence to those who fight with their possessions and their selves over those who sit at home. God has promised the best of things to both, and He has preferred those who fight over those who sit at home by granting them a mighty reward.* [Q. IV, 97]<sup>294</sup>

If all men failed to perform the duty so that no able-bodied man went forth to battle, all, I am afraid, would fall into error (although I am certain that this would never happen) in accordance with [Allah's] saying: *If you do not go forth, He will inflict upon you a painful punishment.* [Q. IX, 39].<sup>295</sup>

**Malik.** Al-Shafi'i's views on *jihad* represent the majority view among early authorities -- including the founders of the other three doctrinal schools. For example, Imam Malik ibn Anas,<sup>296</sup> founder of the second doctrinal school of Islamic law said that *jihadis* have the highest rank among believers;<sup>297</sup> that Muhammad himself stated a preference for martyrs and martyrdom in *jihad*;<sup>298</sup> that martyrdom is valued in itself,<sup>299</sup>

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<sup>294</sup> al-Shafi'i, 42, 83, 84.

<sup>295</sup> al-Shafi'i, 49, 85.

<sup>296</sup> al-Misri, Book X "Biographical Note," at § x228.

<sup>297</sup> Malik, ¶21.1.4,173. "Yahya related to me from 'Abdullah ibn 'Abd ar-Rahman ibn Ma'mar al-Ansari that 'Ata' ibn Yasar said that the Messenger of Allah, may Allah bless him and grant him peace, "*Shall I tell you who has the best degree among people? A man who takes the rein of his horse to do jihad in the way of Allah.*"

<sup>298</sup> Malik, ¶21.14.33,180. "Yahya related to me from Malik that Yahya ibn Sa'id said, "*The Messenger of Allah, may Allah bless him and grant him peace, was sitting by a grave which was being dug at Madina. A man looked into the grave and said, 'An awful bed for the believer.' The Messenger of Allah, may Allah bless him and grant him peace, said, 'Evil? What you have said is absolutely wrong.'*"

*The man said, 'I didn't mean that, Messenger of Allah. I meant being killed in the way of Allah.'* The Messenger of Allah, may Allah bless him and grant him peace, said, "*Being killed in*

and that offensive *jihad* was waged against towns that were subsequently destroyed when the inhabitants refused to convert -- under compulsion -- to Islam:

Yahya related to me from Malik from Humayd at-Tawil from Anas ibn Malik that *the Messenger of Allah, may Allah bless him and grant him peace, went out to Khaybar, he arrived there at night, and when he came upon a people by night, he did not attack until morning. In the morning, the Jews came out with their spades and baskets. When they saw him, they said, "Muhammad! By Allah, Muhammad and his army!" The Messenger of Allah, may Allah bless him and grant him peace, said, "Allah is greater! Khaybar is destroyed. When we come to a people, it is an evil morning for those who have been warned."*<sup>300</sup> (Emphasis added)

Malik's warning in the above citation is the invitation to join Islam given prior to the initiation of hostilities.<sup>301</sup> Also from the *Muwatta*, one finds Muhammad standing for the proposition that seeking martyrdom in its own right is an exceptionally praiseworthy undertaking.<sup>302</sup> Current Approach arguments suggesting that modern day martyrdom operations violate Islamic concepts of intent (*Niyah*) should be assessed against their

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*the way of Allah has no like! There is no place on earth where I would prefer my grave to be than here (meaning Madina). He repeated it three times."*

<sup>299</sup> Malik, ¶21.18.42,182, ¶21.19.48,183. Yahya related to me this from Malik from Abu'z-Zinad from al-A'raj from Abu Hurayra that the Messenger of Allah, may Allah bless him and grant him peace, said, "*By He in whose hand my self is! I would like to fight in the way of Allah and be killed, then be brought to life again so I could be killed and then be brought back to life again so I could be killed.*" Abu Hurayra said three times, "I testify to it by Allah!"

Yahya related to me from Malik from Yahya ibn Sa'id that the Messenger of Allah, may Allah bless him and grant him peace, was stimulating people to do *jihad*, mentioning the Garden. *One of the Ansar was eating some dates he had in his hand, and said, "Am I so desirous of this world that I should sit until I finish them?" He threw aside what was in his hand and took his sword and fought until he was slain.*

<sup>300</sup> Malik, xxx

<sup>301</sup> al-Shaybani, 76-77.

<sup>302</sup> "*Muhammad said, 'The person who participates in (holy battles) in Allah's cause and nothing compels him to do so except belief in Allah and His Apostles, will be recompensed by Allah either with a reward, or booty (if he survives) or will be admitted to Paradise (if he is killed in the battle as a martyr). Had I not found it difficult for my followers, then I would not remain behind any sariya [army unit] going for Jihad and I would have loved to be martyred in Allah's cause and then made alive, and then martyred and then made alive and then again martyred in His cause.'*" (Bukhari 1:35)

inability to displace Islamic commentaries based on authoritative hadith that “extremists” use to legitimize their claims.<sup>303</sup> On martyrdom, Malik’s eighth century statement of law finds resonance among 20<sup>th</sup> century Hanafi jurists. Written in 1941, Indian (later Pakistani) jurist Maulana Muhammad Ali, in his *A Manual of Hadith*, relied on Bukhari for his comment that “the Holy Prophet’s own soul yearned after martyrdom in defense of the truth and if possible, to come back to life and die again defending the Truth, and such should, therefore, be the desire of every Muslim.”<sup>304</sup> From Bukhari:

Abu Hurairah said, I heard the Prophet, peace and blessings of Allah be on him, say: “*By Him in Whose hand is my soul, were it not that there are men among the believers who cannot bear to remain behind me – and I do not find that on which to carry them – I would not remain behind an army that fights in the way of Allah; and by Him in Whose hand is my soul, I love that I should be killed in the way of Allah then brought to life, then killed again then brought back to life, then killed again then brought to life, then killed again.*” (Bukhari 56:7)<sup>305</sup>

The simple truth is that martyrdom operations enjoy considerable support because they conform to Islamic norms that draw their authority from Muhammad.

A properly oriented IPB process would show that the classical authorities cannot be relied on to constrain the enemy’s doctrine. This may explain why the Current Approach is silent on those authorities. From early authorities to contemporary jurists, a consistent pattern is emerging on the legal characterization of *jihad* that warrants a direct comparison to *jihad*’s current legal status in Islamic law.

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<sup>303</sup> Aboul-Enein, 14, 15.

<sup>304</sup> Maulana Muhammad Ali, *A Manual of Hadith*, 2<sup>nd</sup> ed., (Lahore: Ahmadiyya Anjuman Ishaat Islam, 2001), 206.

<sup>305</sup> Ali, 213.

## A Basis Suicide Bombing – Even for Children

As recently as 15 June 2006, Egyptian cleric Sheik Muhammad Nassar of the Egyptian Ministry of Religious Endowment praised the virtues of childhood martyrdom to children on children's programming that aired on [Egyptian] *Al-Nas* TV. By way of example, Sheik Nassar made the following comments to the target audience - children:

Let's listen to a very beautiful story to learn about the courage of a child, and how, when a child is brought up in a good home, and receives proper education in faith, *he loves martyrdom*, which becomes like an instinct for him.

A woman said to him: "Abu Qudama, I have a boy. I will give him to you. Take him with you to war." He asked: "Is he still a boy?" She said: "He is 15 years old, and his father was martyred in the previous war. Since his father's martyrdom, *he sits day and night, praying that Allah grant him martyrdom.*"

He said to her: "Bring me the boy." When the boy came, and asked him: "What's your name?" and the boy answered: "Sa'id." He said: "Son, your mother said that you want to join me in war. Tell me, son, did your mother make you come here, or do you really want to be martyred?" He said: "*By Allah, the only thing I have wished for, since my father's martyrdom, is to become a martyr.*"<sup>1</sup>

Numerous examples of such children's programming could be given from other Middle Eastern venues. When friendly Islamic governments allow state sponsored clerics to broadcast through state funded programming into the homes of children in order to exhort them to childhood martyrdom for its own sake, it is difficult to argue against the notion that Islamic doctrines support the notion of martyrdom in its own right. It is also difficult to argue that such doctrines are "extreme" from an Islamic community perspective. Contrary to Western desires to see the Egyptian state cleric's lesson to children as aberrant, it is consistent with Islamic law that the Egyptian Constitution says forms the basis of Egyptian constitutional law. Yet, constrained by the Current Approach, members of the national security community and national media continue to programmatically discount such language as "extremist" rhetoric. This is why Franz Rosenthal, in his 1946 article "On Suicide in Islam," made a clear distinction between suicide in Islamic law and "suicidal" missions in jihad:

While the Quranic attitude toward suicide remains uncertain, the great authorities of the *hadith* leave no doubt as to the official attitude of Islam. In their opinion suicide is an unlawful act.<sup>2</sup>

On the other hand, death as the result of "suicidal" missions and of the desire of martyrdom occurs not infrequently, since death is considered highly commendable according to Muslim religious concepts. *However, such cases are no[t] suicides in the proper sense of the term.*<sup>3</sup>

<sup>1</sup> MEMRI TV Clip No. 1185, "Egyptian Cleric Sheik Muhammad Nassar Tells a Group of Children about Child Martyrdom in the Early Days of Islam," 15 June 2006, URL: <  
<http://memritv.org/Transcript.asp?P1=1185>>, accessed 16 July 2006.

<sup>2</sup> Franz Rosenthal, "On Suicide in Islam," *Journal of the American Oriental Society* 66, (1946), 243. Hereafter Rosenthal.

## ***Jihad* and Sacred Islamic Law**

The *Umdat al-Salik* dedicates seven pages to *jihad* at Chapter Nine, Book O: “Justice.” This discussion will concern itself with the controlling definition of *jihad* explained in “Book O Justice,” Section o9.0 “*Jihad*,” which is cited in its entirety below:

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### **Book O: “Justice,” at o9.0: “*Jihad*”**

*Jihad* means to wage war against non-Muslims, and is etymologically derived from the word *mujahada*, signifying warfare to establish the religion. And it is the lesser *jihad*. As for the greater *jihad*, it is spiritual warfare against the lower self (*nafs*), which is why the Prophet (Allah bless him and give him peace) said as he was returning from *jihad*,

*“We have returned from the lesser jihad to the greater jihad.”*

The scriptural basis for *jihad*, prior to scholarly consensus (def: b7) is such Qur’anic verses as:

- (1) *“Fighting is prescribed for you”* (2:216)
- (2) *“Slay them wherever you find them”* (4:89)
- (3) *“Fight the idolaters utterly”* (9:36)

and such hadiths as the one related by Bukhari and Muslim that the Prophet (Allah bless him and give him peace) said:

*“I have been commanded to fight people until they testify that there is no god but Allah and that Muhammad is the Messenger of Allah, and perform the prayer, and pay the zakat. If they say it, they have saved their blood and possessions from me, except for the rights of Islam over them. And their final reckoning is with Allah”*

and the hadith report by Muslim,

*“To go forth in the morning or evening to fight in the path of Allah is better than the whole world and everything in it.”*

Details concerning *jihad* are found in the accounts of the military expeditions of the Prophet (Allah bless him and give him peace), including his own martial forays and those on which he dispatched others. The former consists of the ones he personally attended, some twenty-seven (others say twenty-nine) of them. He fought in eight of them, and killed only one person with his noble hand, Ubayy ibn Kalaf, at the battle of Uhud. On the latter expeditions he sent others to fight, himself remaining at Medina, and these were forty-seven in number).<sup>306</sup>

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<sup>306</sup> al-Misri, Book O “Justice,” at § o9.0 “*Jihad*.”

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The first observation is that the “Law of *Jihad*” is classified as a subset of “Justice” indicating its close association with Islamic concepts of justice. The rendered definition of *jihad* is particularly strong given that it starts with an assertion of scholarly consensus; followed by Quranic support; backed by strong (*sahih*) hadith. Hence, from the very beginning, Islamic law “fixes” *jihad* in the inner sphere of Islamic law. As the *‘Umdat al-Salik* is laid out in a statutory schema, this analysis will apply statutory construction methodology to explain its language.<sup>307</sup>

**Statutory Definition.** The section on *jihad* begins with a one sentence definition: “*Jihad* means to wage war against non-Muslims, and is etymologically derived from the word *mujahada*, signifying warfare to establish the religion.”<sup>308</sup> Arab linguists and native-speaking Arabs do not agree with the etymological relationship of the term “*jihad*” with the word “*mujahada*.”<sup>309</sup> Of note, however, is that the *‘Umdat al Salik* is not a linguistic’s manual but rather an approved treatment of Islamic law. Hence, the definition of *jihad* is not linguistic but rather legal. When a term of art is assigned a statutory definition, when used in legal discourse, its meaning is controlled by the statutory definition to the exclusion of all other meanings. Applying this principle to the

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<sup>307</sup> *Black’s* defines **statutory construction** as: “That branch of the law dealing with the interpretation of laws enacted by a legislature. A judicial function required when a statute is invoked and different interpretations are in contention.”

<sup>308</sup> al-Misri, Book O “Justice,” at § o9.0 “Jihad.”

<sup>309</sup> *Black’s* defines **term** as: “A word or phrase; an expression; particularly one which possesses a fixed and known meaning in some science, art, or profession.... Word, phrase or condition in a contract, instrument, or agreement which relates to a particular matter.”

‘*Umdat al Salik*, in legal discourse, Islamic law understands “*jihad*” to mean “to wage war against non-Muslims” where the legal association of that term with the word “*mujahada*” means that “to wage war against non-Muslims” should be associated with “warfare to establish the religion.” Hence, the legal definition of *jihad* is “to wage war against non-Muslims to establish the religion.”<sup>310</sup>

**Statutory Construction.** The next two sentences in the definition rely on a “term of inclusion” followed by a “term of exclusion,” to further fix *jihad*’s meaning and usage in Islamic law. Hence, the next sentence states:

And, it is the lesser *jihad*.<sup>311</sup>

This sentence is a statutory “term of inclusion” that positively associates the concept of the lesser *jihad* with the legal definition of *jihad* as “war against non-Muslims to establish the religion.” Hence, the term of inclusion “and it is the lesser *jihad*” should be understood to mean: “As for the legal definition of *jihad*, its meaning is the same as the “lesser *jihad*.” This means that the legal definition of *jihad* in Islamic law is the same as the meaning of the “lesser *jihad*,” when that term is used in non-legal discourse relating to the “lesser and greater *jihad*.”

In statutory usage, “terms of inclusion” are generally used in conjunction with “terms of exclusion.” Whereas a “term of inclusion” positively associates a defined term with a concept, a “term of exclusion” negatively excludes concepts that do not participate

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<sup>310</sup> al-Misri, Book O “Justice,” at § o9.0 “Jihad.”

<sup>311</sup> al-Misri, Book O “Justice,” at § o9.0 “Jihad.”

in a terms definition. The third sentence in the legal definition of *jihad* is a term of exclusion:

As for the greater *jihad*, it is spiritual warfare against the lower self (*nafs*), which is why the Prophet (Allah bless him and give him peace) said as he was returning from *jihad*, “*We have returned from the lesser jihad to the greater jihad.*”

This sentence works to exclude the “greater *jihad*” from the legal definition of *jihad*. Whereas *jihad* means the lesser *jihad* in the second sentence, the greater *jihad* is something else; “it is spiritual warfare against the lower self.” Hence, this exclusionary statement should be read to mean “as for the greater *jihad*, it is not the same as the statutory meaning of *jihad* but rather it is something else; it is spiritual warfare against the lower self.”

Of particular importance in published law, the sentence transitions to a quotation that had Muhammad saying “*We have returned from the lesser jihad to the greater jihad.*” This quotation is remarkable for what is missing. While the other five quotations in *jihad*’s definition are identified and cited (three to the Qur’an and two to hadith -- specifically Bukhari and Muslim), Muhammad’s lesser and greater *jihad* quotation is neither identified as hadith nor attributed to an authority. In legal writing, a quote only has authority when it is 1) cited 2) to an authority. This means that the ‘*Umdat al-Salik* did not use the “lesser and greater” *jihad* quote for the purpose of offering it as authority. In fact, it did not even recognize it as hadith when referring to it. This is because the definition of *jihad* rendered in the ‘*Umdat al-Salik* is constrained to reflect the consensus opinion in Islamic law and is therefore precluded from incorporating concepts that do not meet minimum consensus standards. Hence, the legal definition of *jihad* is “to wage war against non-Muslims to establish the religion” that does not include concepts of the greater *jihad*.

In his *Tafsir*, ibn Kathir's explanation of Qur'an Verse 9:5 confirms the "warfare to establish the religion" aspect of *jihad* as defined in the '*Umdat al-Salik*. From ibn Kathir:

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*But when the forbidden months are past, then fight and slay the pagans wherever ye find them, and seize them and beleaguer them, and lie in wait for them in every stratagem of war; but if they repent, and establish regular prayers and practice regular charity, then open the way for them. (Qur'an 9:5)*

Mujahid, 'Amr bin Shu'ayb, Muhammad bin Ishaq, Qatadah, As-Suddi and 'Abdur-Rahman bin Zayd Aslam said that the four months mentioned in this *Ayah* are the four months grace period mentioned in earlier *Ayah*,

*So travel freely for four months throughout the land.*

Allah said next,

*So when the Sacred Months have passed ...*

meaning, 'Upon the end of the four months during which We prohibited you from fighting the idolaters, and which is the grace period We gave them, then fight and kill the idolaters wherever you may find them.' Allah's statement next,

*then fight the Mushrikin wherever you find them,*

means, on the earth in general, except for the Sacred Area, for Allah said,

*And fight not with them at Al-Masjid Al-Haram, unless they fight you there. But if they attack you, then fight them [2:191]*

Allah said there,

*And capture them,*

executing some and keeping some as prisoners,

*and besiege them, and lie in wait for them in each and every ambush,*

do not wait until you find them. *Rather, seek and besiege them in their areas and forts, gather intelligence about them in the various roads and fairways so that what is made wide looks ever smaller to them. This way, they have no choice, but to die or embrace Islam.*<sup>312</sup> (Emphasis added)

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The conclusion from ibn Kathir's parsing analysis of Verse 9:5 is that it means exactly what the "extremists" say it does. The take-away is that at least some of the rhetoric from "extremists" that seems uncompromisingly violent can be firmly associated with Quranic verses that are doctrinally understood to call for uncompromising violence. While his commentaries may seem "extreme" to non-believers, ibn Kathir's writings are

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<sup>312</sup> ibn Kathir 4, 376.

recommended to American Muslim students who are told that he is one of the four most important historians on the life of Muhammad.<sup>313</sup>

Returning to the *Umdat al-Salik*'s legal definition of *jihad*, it relies on authority from the Qur'an, *sahih* hadith and scholarly consensus to demonstrate that it fulfills requirements in each of the three spheres of authority individually and in all three in the aggregate. Hence, the legal definition of *jihad* is securely entrenched in the fixed inner sphere of Islamic law in ways that Current Approach arguments cannot displace.

**A Note on the Greater Jihad.** The treatment given the "greater *jihad*" in the *Umdat al-Salik* reflects a controversy regarding the concept of the lesser and greater *jihad* in Islam. While those who recognize the quotation "*We have returned from the lesser jihad to the greater jihad*" as hadith are forced to concede that it only qualifies as the weakest form of hadith (*da'if*), other authorities reject its status outright and claim it to be false hadith. Islamic law does not allow weak (*da'if*) hadith to be used to argue against doctrines firmly grounded in the Qur'an and strong (*mutawatir*) hadith. This may explain why those authorities rejecting the statement "*We have returned from the lesser jihad to the greater jihad*" as hadith also insist that, if it is to be included in texts of Islamic law, that it be done only as an example that removes it from any possibility of improper use.<sup>314</sup>

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<sup>313</sup> Emerick, 15. "History books about the Blessed Prophet are called books of *Seerah*. Below are the names of four of the most important history books about the Blessed Prophet: Ibn Ishaq, Ibn Sa'd, Ibn Kathir and Ibn Hisham."

<sup>314</sup> Abu Fadl. States the rule of quoting without citation: "Al-Hakim and Ibnu Abi Zur'ah state: "We often write statements ... only as an example, and we remove ourselves of responsibility from him."

For the same reason that Nyazee was compelled to reject popular notions of *jihad* in favor of the traditional view, the *‘Umdat al-Salik* must likewise exclude the greater *jihad* from consideration as a part of the body of Islamic law on *jihad*. In fact, with the exception of raising the issue for the purpose of ruling it out, Islamic law is virtually silent on the greater *jihad*. For this reason, an IPB methodology should assess the “greater *jihad*” to be irrelevant to the doctrinal templating of the enemy in the WOT because it does not contribute to our understanding the enemy’s doctrine. (For a detailed analysis of the greater and lesser jihad, see APPENDIX F – “The Lesser and Greater *Jihad*: An Explanation”)

Understanding the practical limitations of teaching doctrinal notions of *jihad* to students in America, it is still taught to contemporary 7th grade Muslims in ways that remain consistent with the legal definition:

If we were called upon to participate in a true *Jihad*, declared by our chosen leader, then we must give our all in the effort. (3:142-143) Allah has promised that those who struggle (make *Jihad*) with strength, property and lives will be rewarded with the highest rank near to Him. (9:20 & 3:195 & 49:15)<sup>315</sup>

*“Did ye think the ye would enter Heaven without Allah testing those of you who fought hard in His Cause and remained steadfast?” (Qur’an 3:142)*

*“Those who believe, and suffer exile and strive with might and main, in Allah’s cause, with their goods and their persons, have the highest rank in the sight of Allah: They are the people who will achieve salvation.” (Qur’an 9:20)*

*“Only those are Believers who have believed in Allah and His Messenger, and have never since doubted, but have striven with their belongings and their persons in the Cause of Allah: Such are the sincere ones.” (Qur’an 49:15)*

**Jihad as Holy War.** While contentious debates continues over whether *jihad* means “holy war,” with the legal definition being “warfare against non-Muslims to

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<sup>315</sup> Emerick, 164.

establish the religion,” such an understanding is not unreasonable. Historic Islamic authorities did not have problems with the designation. For example, ibn Khaldun, the 14th century North African Maliki judge, believed faith to be a factor in the military prowess of the Muslims and said “the secret of it lay in the willingness of the Muslims to die in the *holy war* against their enemies because of their feeling that they had the right religious insight.”<sup>316</sup> Beyond associating holy war with *jihad*, ibn Khaldun’s comments also describe it is a duty that reflects consensus:

*In the Muslim community, the holy war is a religious duty, because of the universalism of the Muslim mission and the obligation to convert everybody to Islam either by persuasion or by force. Therefore, caliphate and royal authority are united in Islam, so that the person in charge can devote the available strength to both of them [religion and politics] at the same time. The other religious groups did not have a universal mission, and the holy war was not a religious duty for them, save only for purposes of defense. ... Among them, royal authority comes to those who have it, by accident and in some way that has nothing to do with religion. It comes to them as the necessary result of group feeling, which by its very nature seeks to obtain royal authority, as we have mentioned before, and not because they are under obligation to gain power over other nations, as is the case with Islam. They are merely required to establish their religion among their own people.*<sup>317</sup> (Emphasis added)

Khaldun’s statement above corroborates ibn Kathir’s statement on the same issue as discussed in Chapter Four (see pages 111-112). The interlocking re-enforcing nature of Islamic law begins to assert its presense.

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<sup>316</sup> ibn Khaldun, 255.

<sup>317</sup> Ibn Khaldun, 183.

While the purpose of this paper is to determine the requirements of *jihad* in Sunni Islamic law, it should be noted that a leading Shia authority concurs on this point:

- Islam makes it incumbent on all adult males, provided they are not disabled or incapacitated, to prepare themselves for the conquest of countries so that the writ of Islam is obeyed in every country in the world.... But those who study Islamic Holy War will understand why Islam wants to conquer the whole world.

*Ayatollah Ruhollah Khomeini*

### **Concluding thoughts on *Jihad***

Starting with Professor Nyazee's contemporary characterization of *jihad* in Hanafi law, then sampling the classical formulations from al-Shafi'i and Malik ibn Anas, two towering icons of Islamic jurisprudence, and then comparing those views to the formal codification of the law of *jihad* as stated in the '*Umdat al-Salik*, a consistent picture emerges that unambiguously identifies *jihad* as a "right of Allah" that creates a duty on man that is defined as "warfare against non-Muslims to establish the religion." This conforms to both the consensus position and the end-state conceptualization of *jihad* resulting from the application of abrogation doctrine. Estimates and policies that do not account for the legal fact of *jihad* when addressing issues relating to the WOT should be re-assessed in light of this information. As the Current Approach sustains outreach strategies built around doctrinal concepts like "Muslim Reformations" or the "greater *jihad*," the "extremists" are left with uncontested access to communicate Islamic doctrines of *jihad* to an increasingly receptive Islamic audience. As "extremists" extend on their reintroduction of the requirements of *jihad* to committed Muslims, it must be assumed that the population will develop a deeper understanding of those duties. At

some point, the dual effect of giving the enemy in the WOT a free run in the Islamic domain while leaving the American intelligence and policy communities blind to this unfolding reality will lead to catastrophic failure.

If Current Approach advocates were correct, this paper could conclude at this point because the research would have established that the ideological screen of the IPB process would have cancelled out the threat doctrine because it would have found that doctrinal Islam does not support the “extremist’s” doctrine. As demonstrated, however, the ideological screen does not cancel out or even constrain “extremist” doctrine. In fact, the Islamic doctrine that serves as the ideological screen in the IPB process fully corroborates the claims of the enemy in the WOT. The “extremists” are correct. At the most basic level, therefore, Current Approach ideations on the status of *jihad* are dangerously disconnected from the doctrinal reality as are the strategies and policies associated with them.

This is a threat doctrine that IPB methodology can be tailored to address. Because “extremists” rely on the legal definition of *jihad* as “warfare against non-Muslims to establish the religion” to justify attacks against the United States, its citizens and allies, it is this form of *jihad* that should be understood in some comprehensive manner by members of the intelligence community responsible for proper threat identification. This remains true even when Current Approach statements are taken at face value such as:

- “There are thousands of different interpretations of Islamic law.”
  - Even if true, it would still not exclude the one interpretation of Islamic law that Islamic terrorists rely on to attack the United States, its citizens, and allies. It is mystifying how often one hears Current Approach advocates make statements like “there are a thousand different

interpretations to Islamic law” that are frequently associated with the summary dismissals of genuine analytical inputs. This statement is typically used in one of two situations: first, when a claim is made regarding Islamic law that does not fit with the preferred Current Approach paradigm but against which there is no effective disputation. Second, when the designated subject matter expert is consistently wrong in his/her analysis and is in search of some basis to relieve him or herself of responsibility for being consistently wrong. If there are a thousand different interpretations to Islamic law, one only needs to be right once every 999 times. Being threat focused, the IPB process is not concerned with the 999 times Islamic law states otherwise; rather, with the one remaining interpretation that does represent risk. In this case, the Current Approach accepts the proposition that it is okay for decisionmakers and analysts to become mired in extraneous issues at the expense of actual identification of the enemy.

- The assessment of *jihad* is “inaccurate and completely misrepresents the true nature of Islam.”
  - Even if it turned out to be true that all the Islamic authorities are wrong and that *jihad* does not mean, for example, *holy war*, it would still be true that “extremists” misrepresent *jihad* along those lines when motivating otherwise faithful Muslims to wage *jihad* against the United States, its citizens, and allies. For the threat doctrine to be true, all that is required is that the enemy be able to recruit large numbers of Muslims to fight and die in furtherance thereof. It is a *holy war* because the enemy says it is a *holy war* and followers agree. This is the sufficient reason for its inclusion in the doctrinal template. The Current Approach has pushed the U.S. off its own threat development doctrine and in-so-doing has derailed the deliberate decisionmaking process.

## **GOING DEEP ON JIHAD: THE ROLE OF SUBMISSION**

### **Beyond Kinetics**

The requirements of *jihad* neither begin nor end with the kinetic aspects of warfare. Flowing from the law of *jihad* is the Islamic concept of submission and the division of the world into the *dar al-Islam* and *dar al-harb*. While Qur’an Verse 9:29

allows “People of the Book”<sup>318</sup> to “*submit and feel themselves subdued,*” rather than be executed if choosing not to convert, the option of servitude is not automatic:

*It is not fitting for a Prophet that he should have prisoners of war until he has thoroughly subdued the land.* (Qur’an 8:67)

Once subdued, non-Muslim subjects of the Islamic State are given certain “protections” that range from the wearing of distinctive clothing, to prohibition against riding horses, to other onerous restrictions calculated to institutionalize their status as submitted *dhimmis*.<sup>319</sup> While the *‘Umdat al-Salik* describes the legal status and rights of submitted “People of the Book,” it was Majid Khadduri who explained the close relationship between *jihad*, the division of the world into two camps, the *dar al-Islam* and the *dar al-harb*, and submission:

Thus the *jihad* may be regarded as Islam’s instrument for carrying out its ultimate objective by turning all people into believers, if not in the Prophethood of Muhammad (as in the case of the *dhimmis*), at least in the belief of Allah. The Prophet Muhammad is reported to have declared “some of my people will continue to fight victoriously for the sake of the truth until the last one of them will combat the anti-Christ.” Until that moment is reached the *jihad*, in one form or another will remain as a permanent obligation upon the entire Muslim community. It follows that the existence of a *dar al-harb* is ultimately

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<sup>318</sup> al-Misri, Book O “Justice,” at o9.0: “Jihad,” at § o9.8: “The Objectives of Jihad.” The caliph (o35) makes war upon Jews, Christians, and Zoroastrians (N: provided he has first invited them to enter Islam in faith and practice, and if they will not, then invited to enter the social order of Islam by paying the non-Muslim poll tax (*jizya*, def: o11.4) – which is the significance of their paying it, not the money itself – while remaining in their ancestral religions) (O: and the war continues) until they become Muslims or else pay the non-Muslim poll tax (O: in accordance with the word of Allah Most High, “*Fight those who do not believe in Allah and the Last Day and who forbid not what Allah and His messenger have forbidden – who do not practice the religion of truth, being those who have been given the Book – until they pay the poll tax out of hand and are humbled*” (Qur’an 9:29), the time and place for which is before the final descent of Jesus (upon whom be peace). After his final coming, nothing but Islam will be accepted from them, for taking the poll tax is only effective until Jesus’ descent (upon him and our Prophet be peace), which is the divinely revealed law of Muhammad. The coming of Jesus does not entail a separate divinely revealed law, for he will rule by the law of Muhammad. As for the Prophet’s saying (Allah bless him and give him peace), “*I am the last, there will be no prophet after me,*” this does not contradict the final coming of Jesus (upon whom be peace), since he will not rule according to the Evangel, but as a follower of our Prophet (Allah bless him and give him peace)).

<sup>319</sup> See Footnotes 335 & 336.

outlawed under the Islamic jural order; that the *dar al-Islam* is permanently under *jihad* obligation until the *dar al-harb* is reduced to non-existence; and that any community accepting certain disabilities - must submit to Islamic rule and reside in the *dar al-Islam* or be bound as clients to the Muslim community. The universality of Islam, in its all embracing creed, is imposed on the believers as a continuous process of warfare, *psychological* and *political* if not strictly military.<sup>320</sup> (Emphasis added)

Khadduri made similar comments in his translator's introduction to the ninth century legal work of Muhammad ibn al-Hasan al-Shaybani,<sup>321</sup> author of *The Islamic Law of Nations: Shaybani's Siyar*,<sup>322</sup> the earliest writing of Islamic law to discuss the legal concept of *jihad* and submission. From Shaybani:

And the Apostle said:

Fight in the name of Allah and in the "path of Allah [i.e., the truth]. Combat only those who disbelieve in Allah. Whenever you meet your polytheist enemies, invite them first to adopt Islam. If they do so, accept it, and let them alone. You should then invite them to move from their territory to the territory of the émigrés Madina. If they do so, accept it and let them alone. Otherwise, they should be informed that they would be treated like the Muslim nomads (Bedouins) who take no part in the war in that they are subjects of Allah's orders as other Muslims, but they will receive no share in either the *ghanima* (spoils of war) or in the fat. If they refuse to accept Islam, then call upon them to pay the *jizya* (poll tax); if they do, accept it and leave them alone. If you besiege the inhabitants of a fortress or a town and they try to get you to let them surrender on the basis of Allah's judgment, do not do so, since you do not know what Allah's judgment is, but make them surrender to your judgment and then decide their case according to your own view.<sup>323</sup>

Special attention should be given to Khadduri's comment that *jihad* is "a continuous process of warfare, *psychological and political if not strictly military*."<sup>324</sup>

This statement reflects Khadduri's understanding that Islamic concepts of warfare go beyond the kinetic; that *jihad* as "warfare to establish the religion" encompasses the

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<sup>320</sup> Majid Khadduri, *War and Peace in the Law of Islam*, (Baltimore: Johns Hopkins, 1955), 64; reprint in (Clark, NJ: Lawbook Exchange, 2006), 64.

<sup>321</sup> al-Misri, Book X "Biographical Notes," at § x257. Muhammad ibn Hasan Shaybani.

<sup>322</sup> al-Shaybani, 1.

<sup>323</sup> al-Shaybani, 76-77.

<sup>324</sup> Majid Khadduri, *War and Peace in the Law of Islam*, 64.

entire spectrum of warfare including the psychological and political. A detailed description of the individual duty of *jihad* was promulgated in a fatwa from the “Seat of the Caliphate of the Ottoman Empire” written in 1915<sup>325</sup> that called for global *jihad*. Because the 1915 fatwa actually issued from the Seat of the Caliphate, the presumption is that it is a legally sufficient document that accurately states the legal requirements of *jihad* that carried the force of law. In furtherance of this call, the 1915 fatwa listed the various types of *jihad* as well as the requirements associated with them – including those forms of *jihad* associated with “psychological and political” warfare. This section relies on the 1915 fatwa to explain how non-kinetic elements of *jihad* support the larger effort by enabling Islamic concepts of submission that apply to the *dar al-harb*.

This section borrows from Appendix G – Real Islamic Rulings on War. The three forms of *jihad* to be discussed are the “heart war,” the “speech war” and the “individual *jihad*.” Regarding individual *jihad*, although it involves killing, it is included because it generally occurs in support of submission campaigns conducted in all phases of *jihad* – kinetic and non-kinetic. As one reviews the elements of non-kinetic *jihad*, two points should emerge; first, that the Current Approach does not account for it in any coherent fashion; and second, that the heart war, speech war and individual *jihad* can be associated with commonplace events one hears on the news everyday.

**The Heart War.** When issuing a call to *jihad* in 1915, the Caliphate explained key concepts including the Heart War as follows:

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<sup>325</sup> National Society of Defense – The Seat of the Caliphate, “A *Universal Proclamation to All the People of Islam*,” The Seat of the Caliphate: The Ottoman Empire: Muta’at al Hairayet, 1313/1915, trans. American Agency and Consulate, Cairo, in U.S. State Department document 867.4016/57, 10 March 1915, 1. Cited hereafter as 1915 Fatwa.

The heart-war --- and that is the lowest form of the war. *And it is that the Muslim should believe in his heart that the infidels are enemies to him and to his religion, and that he should desire their disappearance and the destruction of their power.* And no Muslim can be imagined who is not under obligation to this degree of the war. *Verily all the people of the Faith are under obligation to this amount without any question whatever, in whatever place they may be and in whatsoever condition they may be found.* And that those concerning whom the exception made in the verse presented in the saying of the Most High holds good (*You should abstain from them completely*) to these it is permitted that they should be satisfied with this degree of the heart-war.<sup>326</sup> (Emphasis added)

The Caliph's first statement on heart-war reflects the continuous nature of *jihad* as noted by Khadduri. For those unable to engage in *jihad*, the requirement of permanent hostility to non-believers remains in effect. Hence, "people of Faith" are obligated to see non-Muslims as "enemies to him and his religion." Comments like "the Muslim should believe in his heart that the infidels are enemies to him and to his religion, and that he should desire their disappearance and the destruction of their power"<sup>327</sup> are difficult to misconstrue. The comment also conforms to the Islamic requirement to fight *jihad* in some capacity until the world comes under Islamic rule. While Current Approach advocates emphasize the spiritual struggle for the inner self, the greater *jihad* has nothing to do with Islamic concepts of heart war which requires that Muslims hate non-Muslims with all their hearts.

**The Speech War.** The 1915 fatwa's discussion of the "War of Speech" explains the role communications play in *jihad*. In today's parlance, "extremists" theories of warfare integrate strategic communication, information operations, public affairs and public diplomacy into one overall warfighting strategy:

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<sup>326</sup> 1915 Fatwa, 22.

<sup>327</sup> 1915 Fatwa, 22.

The war of speech, *and that may be with the tongue and the pen*, and that in the condition of some of the Islamic kingdoms before this date. This applies in times like those of the Muslims of Caucasia which were before in a condition which did not admit of there being under obligations to do more than the war of speech, because their condition did not aid them to do more than this. And if there does not exist an excuse which permits contentment with the heart-war, *the war of speech is strictly enjoined upon all Muslims, and it is the duty of the masters of the pen to dissipate the darkness of the infidels and of infidelity with their pens, and the people of eloquence with their tongues; and the war of speech today is a duty decreed on the Islamic world in its entirety*. No one is excepted from it, *not even the Muslims who dwell in the interior of the land of Russia*. But this kind of war is strictly enjoined upon all of them.<sup>328</sup> (Emphasis added)

Strategic communications is an integrated element in *jihadi* concepts of warfare and have been so for a very long time. Note how communications is embedded within the very meaning of *jihad*. When a fatwa is issued, authority is delegated to communications experts with the skill to succeed; i.e., “masters of the pen and people of eloquence with their tongue.” As the description indicates, war of speech is in furtherance of *jihad* as war. A close reading of the citation on heart war and speech war indicate that the level of commitment to the *jihad* is capabilities based. One is required to fight to one’s ability without exceeding either an individual or collective capability. This is in keeping with Islamic law on *jihad* not to fight beyond one’s ability. As the Qur’an states: “*So fear Allah as far as you are able.*” (Qur’an 64:16)

Speech war can often appear as flowery language or even as positively stated offers of assistance that have the effect of keeping national decisionmakers and analysts from moving beyond the surface of what is said. When assessing such language it should be done in light of the knowledge that speech war exists as a form of *jihad* that the doctrine says must exist in furtherance of the “continuous process of warfare” that, in theory, is ever present. For example, normally taken as a rhetorical flourish, how should

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<sup>328</sup> 1915 Fatwa, 23.

one take Maulana Muhammad Ali's comment in the preface of his monograph *A Manual of Hadith*, when he introduced himself as a "soldier in the literary service of Islam."<sup>329</sup>

**The Individual Jihad.** The "individual *jihad*" involves direct personal action, including targeted acts of assassination and murder that may include indiscriminate acts where non-Muslims are concerned:

First the individual *Jihad*, and it consists of the individual personal deed, and it may be by the use of cutting, killing instruments like the *Jihad* of the late Wurdanee who killed with his "musdis" Peter Galy Pasha the infidel, the English governor, and like the slaying of the chief of the English Police in India by one of our brothers there, *and like the killing of one of the officials arriving from Mecca by Abi Busir (May Allah be pleased with him) in the age of the Prophet (May Allah be gracious to Him and give Him peace!) and in like manner a similar thing took place when the Prophet (May Allah be gracious to Him and give Him peace!) commanded Abdullah the son of Atik that he and four of his companions should go to kill Abi Rafi, the chief of the Jews of Khaibar, ...* O Lord, what is incumbent upon the Muslims today also, if there be found in the Islamic world those who fight like this fight? What will be the event if there shall go out from them some of the deliverers, and kill one of those who belong to the Triple Entente of the infidels who are known by their hostility to Islam, and *so purify the face of the earth from his existence.* O Allah, O our Lord, be a helper to us and cause the spirit to the *jihad* to live in our souls!<sup>330</sup> (Emphasis added)

The 1915 fatwa provides examples that link contemporary assassinations of British colonial officials to specific examples of Muhammad from *sahih* hadith that set the standard of behavior. For example, the killing of abi Rafi can be found in the *Sahih Bukhari* collection:

Al-Bara bin Azib said, *"Allah's Apostle sent a group of Ansari men to kill Abu-Rafi'. One of them set out and entered their (i.e. the enemies') fort. That man said, 'I hid myself ... and came upon Abu Rafi' and said, 'O Abu Rafi'." When he replied me, I proceeded towards the voice and hit him. He shouted and I came out to come back, pretending to be a helper. I said, "O Abu Rafi'," changing the tone of my voice ... I asked him, "What happened to you?" He said, "I don't know who came to me and hit me." Then I drove my sword into his belly and pushed it forcibly till it touched the bone. Then I came out, filled with puzzlement and went towards a ladder of theirs in order to get down but I fell down*

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<sup>329</sup> Ali, iii.

<sup>330</sup> 1915 Fatwa, 25-26.

*and sprained my foot. I came to my companions and said, "I will not leave till I hear the wailing of the women." So, I did not leave till I heard the women bewailing Abu Rafi', the merchant of Hijaz. Then I got up, feeling no ailment, (and we proceeded) till we came upon the Prophet and informed him."* (Bukhari 4:264)

With language like “and so purify the face of the earth from his existence,” individual *jihad* envisions large-scale acts of individual killing that could take on genocidal proportions like the Armenian genocide then or Darfur today. Pondering martyrdom through such acts, one can refer to any number of contemporary news stories for examples of such activities in Iraq that range from targeted assassinations, to purposeful indiscriminate killings, to suicide bombings. As unsettling, the Islamic concept of individual *jihad* raises the prospect of a high volume of independent actors whose actions would be difficult to template and impossible to predict. In the West, examples might include the shoe bomber, the “DC sniper,” the 101<sup>st</sup> fragging, the Van Gogh execution and, most recently, the July 2007 UK bombings and attempted bombings. It is with an eye toward the requirements of individual *jihad* that trainees at Taliban and al-Qaeda training camps should be assessed. Unaccounted for by the Current Approach, individual *jihad* turns out to be a dangerously unbounded variable designed to cause chaos in the *jihadi* enemy’s planning cycle. (For a more extensive analysis of authentic rulings on war in *jihad*, see APPENDIX G - “REAL ISLAMIC RULINGS ON WAR”)

**Holy Rage.** Regarding individual *jihad*, the question is what separates a lone killer who is Muslim from a committed *jihadi* who acts alone? Certainly, both groups exist. For a Muslim to lawfully act in furtherance of *jihad*, one would think that he would have to hear the call, accept it and then act in furtherance thereof. How would an individual *jihadi* hear the call if he is truly separated from the community? A possible

explanation could be found in the rhetoric associated with the Danish Cartoon crisis coming from prominent Muslim leaders. For example, when the crisis was in full bloom, the *Bahrain Tribune* reported that Iranian leader and cleric Hojatoleslam Ahmad Khatami praised Muslims for their “holy rage” against the publication of the Muhammad cartoons: “It is holy rage ... press on with your holy rage until you make them regret.”<sup>331</sup>

Understanding that the penalty for blasphemy against Muhammad is death, what do national and religious leaders mean when referring to holy rage and then calling for those with holy rage to “make them regret?” Does Islam recognize holy rage as a form of rage that is sanctioned by Allah (and therefore holy)? Can acts arising out of rage, officially sanctioned as holy, be crimes in Islamic law? What message would an individual *jihadi* have to hear and how would he choose to act when his rage is publicly recognized as holy by Islamic leaders? Is there a relationship between Islamic leaders declaring holy rage and an individual *jihadi*'s decision to act? Yusuf Qaradawi, Muslim Brotherhood leader and *IslamOnline* Chief also made the case for holy rage in connection with the cartoon crisis in a Friday Sermon in February 2006 that:

*"The nation must rage in anger. It is told that Imam Al-Shafi'i said: 'Whoever was angered and did not rage is a jackass.' We are not a nation of jackasses. We are not jackasses for riding, but lions that roar. We are lions that zealously protect their dens, and avenge affronts to their sanctities. We are not a nation of jackasses. We are a nation that should rage for the sake of Allah, His Prophet, and His book. We are the nation of Muhammad, and we must never accept the degradation of our religion. ... "We must rage, and show our rage to the world." .<sup>332</sup> (Emphasis added)*

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<sup>331</sup> “Scholar Praises ‘Holy Rage’ Over Cartoons,” *Bahrain Tribune*, 11 February 2006. From the U.S. Central Command Regional Media Daily, 11 February 2006.

<sup>332</sup> MEMRI Special Dispatch No. 1089, "Sheikh Al-Qaradhawi Responds to Cartoons of Prophet Muhammad: Whoever is Angered and Does Not Rage in Anger is a Jackass - We are Not a Nation of Jackasses," February 9, 2006, URL: <<http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP108906>>, accessed 17 February 2006. .

There is precedence for holy rage. When a woman wrote satirical verses about Muhammad, he took insult, as did some of his followers:

Asma was the wife of Yazid Ibn Zayd Ibn Hisn al-Khatmi. *She used to revile Islam, offend the prophet and instigated the people against him.* She composed verses. Umayr Ibn Adi came to her in the night and entered her house. Her children were sleeping around her. There was one whom she was suckling. He searched her with his hand because he was blind, and separated the child from her. He thrust his sword in her chest till it pierced up to her back. Then he offered the morning prayers with the prophet at al-Medina. The apostle of Allah said to him: "Have you slain the daughter of Marwan?" He said: "Yes. Is there something more for me to do?"<sup>333</sup> (Emphasis added)

Based in part on this and related events, Islamic law recognizes insults against Islam as a capital crime. For example, non-Muslim subjects of Islamic states can lose their agreement of protection for such insults. The loss of the agreement brings with it substantial personal risk.<sup>334</sup>

When discussing concepts like individual *jihad*, speech war and heart war, it is important to remember that they do not exist in a vacuum and do not draw their meaning from the West. Consistent with the cartoon crisis earlier, subsequent to Pope Benedict's remarks concerning Islam on 12 September 2006, Qatari Islamic scholar Yusuf al-Qaradawi again called for "*Yaum al-Ghadab*" – a "Day of Rage" that led to a weekend of riots and killing that included shooting a nun in the back.<sup>335</sup> Qaradawi's call was

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<sup>333</sup> Ibn Sa'd, *Kitab al-Tabaqat al-Kabir*, vol 2, trans. S. Moinul Haq, (India: Islamic Book Service, 1990), 31.

<sup>334</sup> al-Misri, Book O "Justice," at o11.0 "Non-Muslim Subjects of the Islamic State," at o11.10. "The agreement is also violated with respect to the offender alone if the state has stipulated that any of the following things break it, and one of the subjects does so anyway, though if the state has not stipulated that these break the agreement, then they do not; namely, if one of the subject people: leads a Muslim away from Islam; *or mentions something impermissible about Allah, the Prophet* (Allah bless him and give him peace), *or Islam.*" (Emphasis added)

<sup>335</sup> Mike Lee, "'Day of Rage': Anger Not Jihad – Muslim Leaders Worldwide Call for 'Day of Rage' Over Pope's Comments, Do They Mean Violence?" ABC News, online ed., 18

quickly followed by similar calls from other Muslim leaders worldwide. While the story got the requisite inputs from moderate Islamic elements that assured that calls for “*Yaum al-Ghadab*” did not mean calls for violence, the events of that weekend proved predictably otherwise. Of interest, the news article portrayed the concept of “*Yaum al-Ghadab*” as a culturally understood tradition with a long history. As the events of that weekend revealed, *Ummah*-wide calls for “*Yaum al-Ghadab*” demonstrated the ability of clerics to call for rage and get it -- worldwide. Hence, when listening to fiery language from Muslim authorities, rhetoric that speaks to notions like holy rage and related language must be seen as existing within a common world view with related concepts like heart war and capital punishment for insults to Islam. Because the concept may be more deeply engrained than understood, the question of holy rage, especially as it relates to the Islamic concept of individual *jihad*, should to be assessed. On 19 June 2007, the most recent example concerned Salman Rushdie’s knighthood when a Pakistani Minister, in formula fashion, expressed his rage in terms that anticipated suicide operations. From the AP story:

ISLAMABAD, Pakistan (AP) — Pakistan yesterday condemned Britain's award of a knighthood to author Salman Rushdie, and a Cabinet minister said *the honor provided a justification for suicide attacks*. "This is an occasion for the world's 1.5 billion Muslims to look at the seriousness of this decision," Mohammed Ijaz ul-Haq, religious affairs minister, said in parliament. "The West is accusing Muslims of extremism and terrorism. If someone exploded a bomb on his body, he would be right to do so unless the British government apologizes and withdraws the 'sir' title," Mr. ul-Haq said. ... "The 'sir' title from Britain for blasphemer Salman Rushdie has hurt the sentiments of the Muslims across the world. Every religion should be respected. I demand the British government immediately withdraw the title as it is creating religious hatred," Mr. Niazi told the National Assembly.<sup>336</sup> (Emphasis added)

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September 2006, URLL <<http://www.freerepublic.com/focus/f-news/1703725/posts>>, accessed 22 September 2006.

<sup>336</sup> “Sir Salman Slammed,” *Washington Times*, online ed., 19 June 2007, URL: <<http://www.washingtontimes.com/article/20070619/FOREIGN/106190021&SearchID=73284751953045>>, accessed 19 June 2006.

When members of the Muslim community with some measure of authority and training broadcast such statements, the assumption has to be that they are aware of what they are saying. It is in the context of Khadduri's continuous "psychological and political" warfare that Islamic concepts of heart war, speech war, individual *jihad* and holy rage are best understood.

### **Submission to Tolerance**

Because the non-kinetic elements of *jihad* serve the Islamic goal of submission, they should be associated with message patterns associated with submission. From Qur'an Verse 9:29, the phrase "*with willing submission, and feel themselves subdued*" reflects Islamic subordination criteria that institutionalizes a culture of submission. It is from the language of servitude that a message pattern emerges. Recognizing the language's ability to drift towards submission becomes an important skill to develop as part of an IPB methodology designed to recognize the pattern. When undertaking such assessments, the relevant issue will not be what the language means to the Western ear but rather how it may be understood in the Islamic community when interpreted in the context of Islamic law.

### **The Basis of Submission**

As noted earlier, submission status is not automatic; is not available in all circumstances; and is not guaranteed. A prerequisite qualification for the granting of submission status is that those subdued be People of the Book. For those who are not

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People of the Book, their options are limited to fighting, testifying to Islam or being “put to the sword without leniency.”<sup>337</sup> For those offered submission, the two primary requirements are that the “subject peoples” follow the rules of Islam and pay the *jizyah*.<sup>338</sup> Aside from the submission tax, “subject peoples” must conform to rules calculated to humiliate, thereby confirming their status as disenfranchised subject peoples.<sup>339</sup> In legal terms, the *jizyah* ratifies an annual conditional “formal agreement of

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<sup>337</sup> al-Misri, Book O “Justice,” at o9.0 “Jihad,” at § o9.9 “The Objectives of Jihad.” The caliph fights all other peoples until they become Muslim (O: because they are not a people with a Book, not honored as such, and are not permitted to settle with paying the poll tax (*jizya*)) (n: though, according to the Hanafi school, peoples of all other religions, even idol worshippers, are permitted to live under the protection of the Islamic state if they either become Muslim or agree to pay the poll tax, the sole exception to which are apostates from Islam and idol worshippers who are Arabs, neither of whom has any choice but becoming Muslim (*al-Hidaya sharh Bidaya al-mubtadi*’ (y21), 6.48 – 49)).

<sup>338</sup> al-Misri, Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at § o11.3. Such an agreement is only valid when the subject peoples:

- (a) follow the rules of Islam (A: those mentioned below (o11.5) and those involving public behavior and dress, though in acts of worship and their private lives, the subject communities have their own laws, judges, and courts, enforcing the rules of their own religion among themselves);
- (b) and pay the non-Muslim poll tax (*jizya*).

<sup>339</sup> al-Misri, Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at §§ o11.5 - o11.10.

o11.5 Such non-Muslim subjects are obliged to comply with the Islamic rules that pertain to safety and indemnity of life, reputation, and property. In addition they:

- (1) are penalized for committing adultery or theft, though not for drunkenness
- (2) are distinguished from Muslims in dress by wearing a wide cloth belt (zunnar);
- (3) are not greeted with "*as-Salamu 'alaykum*";
- (4) must keep to the side of the street;
- (5) may not build higher than or as high as the Muslims' buildings, though if they acquire a tall house, it is not razed;
- (6) are forbidden to openly display wine or pork, (A: to ring church bells or display crosses,) recite the Torah or Evangel aloud, or make public display of their funerals and feast days;
- (7) and are forbidden to build new churches.

o11.10 The agreement is also violated (A: with respect to the offender alone) if the state has stipulated that any of the following things break it, and one of the subjects does so anyway, though if the state has not stipulated that these break the agreement, then they do not; namely, if one of the subject people:

- (1) commits adultery with a Muslim woman or marries her;

protection.”<sup>340</sup> As suggested, the *jizyah* payment is for protection *from* the Muslim *Ummah*. In his treatise *Shari’ah: The Islamic Law*, the contemporary Islamic jurist ‘Abdur Rahman I. Doi acknowledges this point when noting that the annual payment of the *jizya* was for the purpose of sparing non-Muslim citizens from verbal and physical abuse at the hands of their Muslim protectors and neighbors.<sup>341</sup> When “subject peoples” fail to conform to the terms and conditions of the treaty, the agreement is violated.<sup>342</sup> The consequences associated with violating the agreement is that the status of the “subject peoples” reverts back to their original status as prisoners<sup>343</sup> thus allowing the Caliph to deal with them according to the four categories (death, slavery, release without paying

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- (2) conceals spies of hostile forces;
  - (3) leads a Muslim away from Islam;
  - (4) kills a Muslim;
  - (5) or mentions something impermissible about Allah, the Prophet (Allah bless him and give him peace), or Islam.

<sup>340</sup> al-Misri, Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at § o11.1. A formal agreement of protection is made with citizens who ...

- <sup>341</sup> Doi, 429. The fundamental rights no non-Muslims in an Islamic State are two kinds:
1. Their protection from all external threats.
  2. Their protection from all internal tyranny and persecutions.

The first Kind of protection is the same as in the case of Muslims. ... The more important protection is to accord to non-Muslim citizens protection from internal high-handedness, persecution, tyranny and injustice. The Muslim citizens are duty bound to spare their hands and tongues from hurting the non-Muslim citizens.

<sup>342</sup> al-Misri, Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at § o11.9. If non-Muslim subjects of the Islamic state refuse to conform to the rules of Islam, or to pay the non-Muslim poll tax, then their agreement with the state has been violated (dis: 011.11)(A: though if only one of them disobeys, it concerns him alone).

<sup>343</sup> al-Misri, Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at § o11.11. “Book O “Justice,” at o11.0 “Non-Muslim Subjects of the Islamic State,” at § o11.11. When a subject's agreement with the state has been violated, the caliph chooses between the four alternatives mentioned above in connection with prisoners of war (see o9.14).”

anything, or ransoming in exchange for money or for a Muslim captive held by the enemy)<sup>344</sup> associated with prisoners of war.

Hence, the legal theory is that those in servitude to Islam come to it as prisoners, retain their status as *dhimmi*s only as long as they conform to the terms and conditions of the agreement, and revert back to prisoner status if the agreement is breached. Doi's discussion on *jizyah* and *dhimmi* status confirms the view that "conquered people" become "*dhimmah*" when they pay the *jizyah* tax and accept Muslim hegemony.<sup>345</sup>

**On Submission and Prisoners.** On rendering *dhimmi* status, the initial surrender is unconditional to the *dar al-Islam*'s right to render judgment on them in their status as prisoners. This explains why Islamic law asserts that non-Muslim subjects who breach the *dhimma* compact revert to the status of prisoners of war. Those who submit have no say in the determination of the outcome of their status, which is based solely on "the interests of Islam and the Muslims."<sup>346</sup> As al-Shaybani recorded, a Jewish tribe known as the Banu Qurayza unconditionally surrendered to Muhammad prior to onset of major hostilities but instead of banishing them or allowing them to submit and pay the *jizyah*, Muhammad ordered all the adult males beheaded:

28. Muhammad [b. al-Hasan] from Abu Yusuf from al-Hajjaj b. Artat from Abu al-Zubayr [Muhammad b. Muslim] from someone who took part in battle, said:

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<sup>344</sup> al-Misri, Book O "Justice," o9.0 "Jihad," at § o9.13 - 14.

<sup>345</sup> Doi, 426-427. The *Dhimmi*s: "These are the *Ahl al-Dhimma* or those who accept the hegemony of a Muslim State whose matters are to be decided with the terms of the appropriate treaty. The '*Conquered People*': These non-Muslims are those who fought against Muslims until they were defeated and they were overpowered. They automatically become the *Dhimmah* or responsibility of the Muslim State. They will pay a fixed amount of *jizyah* tax and their lives, property, honour and places of worship will be protected in lieu thereof."

<sup>346</sup> See Footnote 350.

I heard the Apostle of Allah in the campaign against the Banu Qurayza saying: “He of the enemy who has reached puberty should be killed, but he who has not should be spared.”

He who related this Tradition to Abu al-Zubayr, said that he had not reached puberty, so he was spared.

29. Muhammad [b. al-Hasan] from Abu Yusuf from ‘Asim b. Sulayman [al-Ahwal] from al-Hasan al-Basri] said:

The Apostle of Allah prohibited the killing of women.

30. Muhammad [b. al-Hasan] from Abu Yusuf from al-Hajjaj [b. al-Artat] from Qatada [b. Du’ama al-Sadusi] from al-Hasan [b. al-Hasan al-Basri], who said:

The Apostle of Allah said: “You may kill the adults of the unbelievers, but spare their minors – the youth.”<sup>347</sup>

Because Muhammad presided over the final determination of the Banu Qurayza, Shaybani recognized the lawful status of such beheadings in Islamic law. Hence, when Abu Musab al-Zarqawi beheaded his captives, notwithstanding the short-lived yet genuine shock of many within the broader Islamic community, the obviousness of claims that his actions were *per se* “against Islam” are far from certain. The *Siyar* also reflects the legality of offensive operations in *jihād*:

55. If the army of Islam attacks the territory of war and it is a territory that has *received an invitation to accept Islam*, it is commendable if the army renews the invitation, but if it fails to do so it is not wrong. The army may launch the attack on the enemy by night or by day and it is permissible to *burn the enemy fortifications with fire* or to *inundate them with water*. If the army captures any spoils of war, it should not be divided up in enemy territory until the Muslims have brought it to a place of security and removed it to the territory of Islam.<sup>348</sup> (Emphasis added)

Noteworthy here is Shaybani’s reference to the requirement that the “army of Islam” issue an invitation to accept Islam before the onset of hostilities. Once issued and unheeded, the army can initiate warfare that may extend to the use of the weapons of

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<sup>347</sup> al-Shaybani, 86-87.

<sup>348</sup> al-Shaybani, 95-96.

mass destruction (WMD) tactics of its day (burning and flooding). Iranian President Ahmadinejad's Spring 2006 Letter to President Bush<sup>349</sup> was just such an invitation to join Islam.<sup>350</sup> It is not possible to understand such messages without reference to the Islamic doctrines that define their meaning. Not assessing Ahmadinejad's comments against the Islamic template that frames the message has consequences. Likewise, when analyzing assertions from Current Approach advocates regarding a given communication or event that "Islam does not stand for this" or "there are a thousand different interpretations of Islamic law," do such assertions suggest a futility of looking to Islam for answers that keeps decisionmakers and analysts from ever looking there? Heeding Current Approach advice not to look to the enemy's threat vocabulary that causes hostile communications to be improperly assessed undermines threat identification.

In his *The Methodology of Ijtihad*, Nyazee conforms to Shaybani and Khadduri on the status of prisoners. Relying on ibn Rushd's *The Distinguished Jurist's Primer*, Nyazee made reference to ibn Rushd's "Why wage war?"

The general implication is in the words of the Exalted, "*And fight them until persecution is no more, and religion is for Allah,*" [Verse 8:39] and in the saying of the Prophet, "*I have been commanded to fight mankind until they say, 'There is no god but Allah.' If they say this, their lives and wealth are protected from me, unless there is another claim on them, and their reckoning is with Allah.*" The specific meaning is in the meaning of the Prophet to commanders of troops when he sent them to Arab polytheists who, it is known, were not People of the Book, "*When you come to face your enemy, the polytheists, invite them to opt for three choices,*" and he mentioned *jizyah* as one of them. The tradition has preceded.<sup>351</sup>

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<sup>349</sup> MEMRI TV Clip No. , "Ahmadinejad: In the Footsteps of Ayatollah Khomeini & the Prophet Mohammad," 18 May 2006, URL: < <http://memritv.org/>>, accessed 20 May 2006.

<sup>350</sup> "President Says His Letter to President Bush was an Invitation to Islam," Islamic Republic News Agency (IRNA), 11 May 2006. From U.S. Central Command Regional Media Daily.

<sup>351</sup> Nyazee, *Ijtihad*, 251, citing ibn Rushd, 284.

From this Nyazee concluded:

This leaves no doubt that the primary goal of the Muslim community, in the eyes of its jurists, is to spread the word of Allah through *jihad*, and the option of poll tax is to be exercised only after subjugation.<sup>352</sup> (Emphasis added)

When a Muslim jurist states that there is “no doubt” about an issue in Islamic law, he is asserting scholarly consensus on a currently valid doctrine. The two rules of law that emerge from this survey are that the status of prisoners can only be determined after the land has been subdued and one has to be in the status of prisoner before one can be designated a submitted *dhimmi*. The *‘Umdat al-Salik* confirms this:

o9.13 When a child or woman is taken captive, they become slaves by the fact of capture, and the woman’s previous marriage is immediately annulled.

o9.14 When an adult male is taken captive, *the caliph considers the interests of Islam and the Muslims* and decides between the prisoner’s death, slavery, release without paying anything, or ransoming himself in exchange for money or for a Muslim captive held by the enemy.<sup>353</sup> (Emphasis added)

Note that the only legal “interest” the caliph must consider when deciding the treatment of prisoners is that of “Islam and Muslims.” When stating the legal standard, neither prisoner’s rights nor their status as non-combatants is recognized as an “interest” requiring consideration in law. Shabani stated this same legal standard in his *Siyar* when stating “the Imam should examine the situation and decide *whatever he deems to be advantageous to the Muslims*.”<sup>354</sup> (To trace the origins of Sections o9.13 & 14 to the classical sources, see APPENDIX H - “The Legal Pedegree on the Treatment of Prisoners”)

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<sup>352</sup> Nyazee, *Ijtihad*, 252.

<sup>353</sup> al-Misri, Book O “Justice,” at o9.0 “Jihad,” at §§ o9.13-14 “The Rules of War.”

<sup>354</sup> al-Shaybani, 101.

Hence, the actual understanding of Verse 9:29 is that Muslims are ordered to fight non-believers, including Christians and Jews, until they submit, feel themselves subdued and pay the *jizyah* tax. According to noted Muslim historian al-Tabari, Umar b. al-Khattab, one of the “Four Rightly Guided Caliphs,” gave the following order to his forces in 636:

Summon the people to Allah; those who respond to your call, accept it from them, (This is to say, accept their conversion as genuine and refrain from fighting them) but *those who refuse must pay the poll tax out of humiliation and lowliness.* (Qur’an 9:29) If they refuse this, *it is the sword without leniency.* Fear Allah with regard to what you have been entrusted.<sup>355</sup> (Emphasis added)

There are numerous historical examples of the *jizyah* being imposed. Ibn Rushd described the three types of *jizyah* in a way that clarifies the ultimate intent of the tax:

*Jizya* in their view is of three types. The first is *jizya resulting from conquest by force*, and this is what we have discussed, that is, one that is imposed upon the warring enemy after they have been overpowered. The second type of *jizya* resulting from a negotiated settlement, and this is what they voluntarily offer *so that the Muslims may stay their hand against them.* ... The third type of *jizya* is related to the ‘*ushr*.’<sup>356</sup> (Emphasis added)

Hence, the first justification for the *jizyah* is conquest and the second is a wholly *voluntary* payment made to keep the Muslims from killing them (“staying their hand”).

Ibn Rushd’s commentary reflects an Islamic rule that has remained consistent through time.<sup>357</sup>

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<sup>355</sup> Al-Tabari, “The Battle of Qadissiyah and the Conquest of Syria and Palestine, “*The History of al-Tabari (Ta’rikh al rusul wa’l-muluk)*, vol 12, trans. Yohanan Friedman, (Albany, NY: State University of New York Press, 1992), 167, as cited in *Legacy*, 26.

<sup>356</sup> ibn Rushd 1, 485, 486, 596. Note: The glossary to *Bidayat al-Mujtahid* defines ‘Ushr as “a ten percent levy on the produce of the earth that is to be paid as a religious duty.”

<sup>357</sup> The following examples from separate time and places in Islamic history - separated by time and space – reflect a historical consistent understanding of *jizya* through time.

From an 11<sup>th</sup> century chronicler during the reign of al-Muqtadi, the Caliph of Baghdad from 1075 to 1094: “...the Caliph of Baghdad, al-Muqtadi [1075-1094] ... imposed that each male Jew should wear a yellow badge on his headgear. This was one distinctive sign on the head

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and the other was on the neck- a piece of lead of the weight of a silver dinar hanging round the neck of every Jew and inscribed with the word dhimmi to signify that the Jew had to pay *poll-tax*. Jews also had to wear girdles round their wastes. Abu Shuja further imposed two signs on Jewish women. They had to wear a black and a red shoe, and each woman had to have a small brass bell on her neck or shoe, which would tinkle and thus announce the separation of Jewish from Gentile [Muslim] women. *He assigned cruel Muslim men to spy upon Jewish women, in order to oppress them with all kinds of curses, humiliation, and spite.* The Gentile population used to mock all the Jews, and the mob and their children used to beat up the Jews in all the streets of Baghdad ... When a Jew died, who had not paid up the poll-tax [*jizya*] to the full and was in debt for a small or large amount, the Gentiles did not permit burial until the poll-tax was paid. If the deceased left nothing of value, the Gentiles demanded that other Jews should, with their own money, meet the debt owed by the deceased in poll-tax; otherwise they [threatened] they would burn the body.” A. Scheiber, “The Origins of Obadyah, the Norman Proselyte,” *Journal of Jewish Studies* (Oxford), Vol. 5, 1954, 37, as cited in *Legacy gallies, n.p.*

The Delhi Sultanate of the early Mogul Sultanate, Sufi cleric Abdul Quddis Gangoh (~ A.D. 1456 – 1537) wrote to numerous Indian Sultans of the need to re-impose the Shari‘a against the Hindu population: “Extend utmost patronage and protection to theologians and mystics... that they should be maintained and subsidized by the state... No non-Muslim should be given any office or employment in the Diwan of Islam... Furthermore, in conformity with the principles of the Shariat they should be subjected to all types of indignities and humiliations. They should be made to pay the *jizya*...They should be disallowed from donning the dress of the Muslims and should be forced to keep their Kufr [infidelity] concealed and not to perform the ceremonies of their Kufr openly and freely... *They should not be allowed to consider themselves the equal to the Muslims.*” K.S. Lal, *The Legacy of Muslim Rule in India*, (New Delhi: Aditya Prakashan, 1992), 237, as cited in *Legacy gallies, n.p.*

A few decades later, also in India, eminent Sufi mystic of the Naqshbandi Order, Shaykh Ahmad Sirhindi (A.D.1564 - 1624), worked to restore Islamic Sunni orthodoxy in India. His comments conform to the established pattern: “Shariat can be fostered through the sword....Kufr and Islam are opposed to each other. The progress of one is possible only at the expense of the other and co-existence between these two contradictory faiths is unthinkable....The honor of Islam lies in insulting kufr and kafirs. One who respects kafirs, dishonors the Muslims. To respect them does not merely mean honoring them and assigning them a seat of honor in any assembly, but it also implies keeping company with them or showing considerations to them. They should be kept at an arm’s length like dogs....If some worldly business cannot be performed without them, in that case only a minimum of contact should be established with them but without taking them into confidence. The highest Islamic sentiment asserts that it is better to forego that worldly business and that no relationship should be established with the kafirs...*The real purpose in levying jizya on them (the non-Muslims) is to humiliate them* to such an extent that, on account of fear of *jizya*, they may not be able to dress well and to live in grandeur. They should constantly remain terrified and trembling. It is intended to hold them under contempt and to uphold the honor and might of Islam...Cow-sacrifice in India is the noblest of Islamic practices. The kafirs may probably agree to pay *jizya* but they shall never concede to cow-sacrifice...The execution of the accursed kafir of Gobindwal [a Sikh who lead an uprising against the oppressive Muslim rule of his community] is an important achievement and is the cause of great defeat of the accursed Hindus...*Whatever might have been the motive behind the execution, the dishonor of the kafirs is an act of highest grace for the Muslims.* Before the execution of the kafirs I had seen in a vision that the Emperor had destroyed the crown of the head of *Shirk*. Verily he was the chief of the Mushriks and the leader of the kafirs...Whenever a Jew is killed, it

**Humiliation and Jizyah.** The purpose of the *jizyah* is the infliction of humiliation. For Shaybani, “humiliation is the payment of the poll tax (*jizya*).”<sup>358</sup> As ibn Kathir explained, the phrase “*and feel themselves subdued*” from Verse 9:29 means that those who submit are “miserable, disgraced and humiliated” and should therefore be treated with “continual humiliation, degradation and disgrace.”<sup>359</sup> In fact, even al-Ghazali, the famed Sufi philosopher (and pre-eminent Shafi’i authority) emphasized the calculated role humiliation plays when imposing the *jizyah* tax:

The *dhimma* is obliged not to mention Allah or His Apostle ... Jews, Christians, and Majians must pay the *jizya* ... on offering up the *jizya*, the *dhimmi* must hang his head while the official takes hold of his beard and hits the *dhimmi* on the protuberant bone beneath his ear [i.e., the mandible]... The *dhimmi* may not ride an elegant horse or mule; he may ride a donkey only if the saddle-work is of wood. He may not walk on the good part of the road. They - the *dhimmis* - have to wear an identifying patch on their clothing, even women, and even in the public baths... *dhimmis* must hold their tongue.<sup>360</sup> (Emphasis added)

It is from this understanding of submission that Shamim Siddiqi, in his *Methodology of Dawah Ilallah in American Perspective*, spoke of the need to impose the *jizyah* on Americans who refuse to convert to Islam:

The idolaters were finally warned to accept Islam or be ready to fight. ... Muslims were vehemently exhorted to fight in the way of Allah (SWT) with life and wealth. *The people of the Scriptures were warned either to accept Islam or pay the Jizyah and live the life of*

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is for the benefit of Islam.” Saiyid Athar Abbas Rizvi, *Muslim Revivalist Movements in Northern India in the Sixteenth and Seventeenth Centuries*. (Lucknow: Agra University, Balkrishna Book Co, 1965), 247-50; Yohanan Friedmann, *Shaykh Ahmad Sirhindi: an Outline of his Thought and a Study of His Image in the Eyes of Posterity*, (Montreal, McGill University, Institute of Islamic Studies, 1971), 74, as cited in Andrew Bostom, “Sufi Jihad,” 15 May 2005, URL: < [http://www.americanthinker.com/articles.php?article\\_id=4495&search=Sufi](http://www.americanthinker.com/articles.php?article_id=4495&search=Sufi) >, accessed 15 May 2005.

<sup>358</sup> al-Shaybani, 147.

<sup>359</sup> ibn Kathir 4, 404-405.

<sup>360</sup> Muhammad ibn Muhammad ibn Muhammad ibn Ahmad, Abu Hamid Hujjat al-Islam al-Ghazali (d. A.D.1111), *Kitab al-Wagiz fi fiqh madhab al-imam al-Safi’i*, trans. Michael Schub, (Beirut, 1979), 199-200, 202-203, as cited in *Legacy*, 32.

*second class citizens* under the bounds and bounties of the Islamic state.<sup>361</sup> (Emphasis added)

It is with reference to the phrase “and live the life of second class citizens under the bounds and bounty of the Islamic state”<sup>362</sup> that Islamic concepts of tolerance are best understood. Non-Muslim Americans are to be tolerated as second-class citizens subject to payment of the submission tax according the requirements of Islamic law. Shammin Siddiqi is an American citizen who wrote his *Dawah* in 1989 for the purpose of applying Sayyid Qutb’s *Milestones*<sup>363</sup> to America. It is through Islamic notions of submission that some in the Islamic community understand concepts like tolerance and respect when communicating with non-Muslims. An IPB process could be structured to identify when outreach programs in furtherance of common objectives become overshadowed by concepts of toleration overly influenced by Islamic notions of submission. Making message patterns the object of an IPB methodology simply recognizes the reality of a theory of war best understood as a continuous process of warfare, *psychological* and *political* if not strictly military.

**The Dar al-Islam and Dar al-Harb.** It is through concepts of *jihad*, submission and the treatment of prisoners that the division of the world into the *dar al-Islam* and the *dar al-harb* is best understood. From modern Islamic law professors like Imran Ahsan

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<sup>361</sup> Shamim A. Siddiqi, *Methodology of Dawah Ilallah in American Perspective*, (Brooklyn: The Forum for Islamic Works, 1989), 46.

<sup>362</sup> Shamim A. Siddiqi, *Methodology of Dawah Ilallah in American Perspective*, (Brooklyn: The Forum for Islamic Works, 1989), 46.

<sup>363</sup> Sayyid Qutb, *Milestones*, Salimiah, (Kuwait: International Islamic Federation of Student Organizations. 1978 [written 1966]).

Khan Nyazee in Pakistan to the Indian born Malaysian ‘Abdur Rahman I. Doi to Iraqi born American Professor of Advanced International Studies at John Hopkins University, Majid Khadduri to a contemporary Pakistani Advocate General Allah Bukhsh Brohi, to an early 20<sup>th</sup> century Ottoman Caliph, to noted authorities like the towering 14<sup>th</sup> century Syrian born Shafi’ite authority ibn Kathir and 12<sup>th</sup> century Andalusian (Spanish) born Maliki jurist Abu al-Walid Muhammad ibn Ahmad ibn Rushd (“Averoes”) to the original treatise on the law of war written by the eighth century Hanafi al-Shaybani (who memorialized the views of the original eighth century Islamic legal authority and Grand Imam, Abu Hanifa), explicit recognition is given to the classic Islamic division of the world into two irreconcilable camps, the world of Islam and peace and the world of perpetual war and the infidel -- the *dar al-Islam* and the *dar al-harb*.<sup>364</sup> With a lineage that traces back to the very beginning of Islamic law, there is reason to know that this legal concept retains its status in Islamic jurisprudence to this day. There does not appear to be a legal basis to claim otherwise.

When al-Shaybani discussed the rules of engagement for Muslim forces, the primary distinction among combatants was that between members from the *dar al-Islam* and the *dar al-harb*. Today, “extremists” often rely on al-Shaybani’s reasoning for the killing of non-combatants and fellow Muslims in acts of terrorism today. From Shaybani:

112. I asked: would it be permissible to inundate a city in the *territory of war* with water, to burn it with fire, or to attack its people with mangonels even though there may be slaves, women, old men, and children in it?
113. He applied: Yes, I would approve of doing all that to them.
114. I asked: Would the same be true if those people have among them Muslim prisoners of war or Muslim merchants?

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<sup>364</sup> al-Shaybani, 40.

115. He replied: Yes, even if they had among them [Muslims], there would be no harm to do all of that to them.
116. I asked: Why?
117. He replied: If the Muslims stopped attacking the inhabitants of the *territory of war* for any reason that you have stated, they would be unable to go to war at all, for there is no city in the *territory of war* in which there is no-one at all of these you have mentioned.<sup>365</sup> (Emphasis added)

Khadduri explains *jihad* by starting with the classic “complete way of life” description of Islam<sup>366</sup> that confers legal status on the *Siyar*’s statements of law.

Khadduri explains the Islamic political division of the world:

In Islamic theory, the world was split into two divisions: *the territory of Islam* (the *dar al-Islam*), which may be called *Pax Islamica*, comprising Islamic and non-Islamic communities that had accepted Islamic sovereignty, and the rest of the world, called the *dar al-harb*, or *the territory of war*. The first included the community of believers as well as those who entered into alliance with Islam.<sup>367</sup> (Emphasis added)

Because the division is permanent, the world of unbelief remains the permanent object of Islamic conquest:

The world surrounding the Islamic state, composed of *all other nations and territories* that had not been brought under its rule, was collectively known as the “territory of war.” The territory of war was the object, not the subject, of the Islamic legal system, and it was the duty of Muslim rulers to bring it under Islamic sovereignty *whenever the strength was there’s to do so*.<sup>368</sup> (Emphasis added)

Because Islam is obligated to make the entire world a part of the “abode of peace,” a state of hostility exists between the *dar al-Islam* and *dar al-harb* until the abode of war is subsumed. Of course, the legal consequence of this doctrine is that countries

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<sup>365</sup> al-Shaybani, 101-102.

<sup>366</sup> al-Shaybani, 10. “In order to reconstruct an Islamic theory of the law of nations we should recall that Islam is not merely a set of religious ideas and practices but also a political community (the *umma*) endowed with central authority.”

<sup>367</sup> al-Shaybani, 11.

<sup>368</sup> al-Shaybani, 12.

from the *dar al harb*, the United States for example, remain in a permanent state of war with Islam:

The *dar al-Islam*, in theory, was in a state of war with the *dar al-harb*, because the ultimate objective of Islam was the whole world. If the *dar al-harb* were reduced by Islam, the public order of *Pax Islamica* would supersede all others, and non-Muslim communities would either become part of the Islamic community or submit to its sovereignty as *tolerated* religious communities or as autonomous entities possessing treaty relations with it.<sup>369</sup> (Emphasis added)

From this last citation, the Islamic concept of toleration reappears. From the earliest Islamic authorities to contemporary Muslim jurists, a rule of law emerges that holds that, when the capability exists, that the Muslim world is required to prosecute *jihad* against the non-Muslim world where the term *jihad* means “war against non-Muslims to establish the religion.” On the requirements of *jihad*, what the Pakistani Advocate General Allah Bukksh K. Brohi called “culpable omission”<sup>370</sup> in his introduction to Pakistani Brigadier S. K. Malik’s *Quranic Concept of War*, Khadduri calls “gross error:”

The instrument which would transform the *dar al-harb* into the *dar al-Islam* was the *jihad*. The *jihad* was not merely a duty to be fulfilled by each individual; it was also above all a political obligation imposed collectively upon the subjects of the state so as to achieve Islam’s ultimate aim – the universalization of the faith and the establishment of Allah’s sovereignty over the world. Thus the *jihad* was an individual duty upon the community as a whole, and failure to fulfill it would constitute a *gross error*.<sup>371</sup> (Emphasis added)

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<sup>369</sup> al-Shaybani, 13.

<sup>370</sup> S. K. Malik, xiv. “Similarly, when a believer sees that someone is trying to obstruct another believer from traveling on the road that leads to Allah, spirit of *Jehad* requires that such a man who is imposing obstacles should be prevented from doing so and the obstacles placed before him should be removed, so that mankind may freely be able to negotiate its own path that leads to Heaven. To omit to do this is a **culpable omission**, if only because by not striving to clear or straighten the path we become passive spectators of the counter-initiatory forces imposing a blockade in the way of those who mean to keep their faith with Allah.”<sup>370</sup> (Emphasis added)

<sup>371</sup> al-Shaybani, 15.

Since its original drafting, there has only been one substantive modification to al-Shaybani's treatise.<sup>372</sup> Both Khadduri's and Shaybani's characterization of the *dar al-harb* conform to the Qur'an and *sahih* hadith. Not with standing his use of past-tense language, Khadduri recognized the current legal validity of the *Siyar* by stating that it reflects consensus among the scholars.<sup>373</sup>

**On Harbi.** Islamic law designates a person from the territory of was as *harbi*. From the *Siyar*, Khadduri defines *harbi* as “a person belonging to the territory of war, equivalent to an alien in modern terminology, but may be regarded as an enemy as well since he was also in a state of war with the Muslims.”<sup>374</sup> Owing to their status as the enemy, persons entering Islamic lands without permission in the form of an *aman* are

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<sup>372</sup> al-Shaybani, 58. Khadduri explains that the most fundamental change in the view of warfare as stated by al-Shaybani came with the Shafi'ite requirement to make legal opinions more accountable to Islamic tradition (more accountable to the Qur'an and *sahih* hadith). The effect of tradition on the Islamic theory of war was to make that theory more uncompromising and offensively oriented. Khadduri states: “It was Shafi'i who first formulated the doctrine that the jihad had for its intent the waging of war on unbelievers for their disbelief and not merely when they entered into conflict with Islam. The jihad was thereby transformed into a collective duty on Muslims to fight unbelievers “*wherever you may find them*” (Q. IX, 5), although not every individual Muslim was necessarily obligated to fight. This legal principle provoked a discussion among Shafi'i's contemporaries and lead to a division among the Hanafi jurists who followed Shaybani. Some, like Tahawi (d. 321/933), adhered more closely to the early Hanafi doctrine that fighting was enjoined only in a conflict with unbelievers; but Sarakhsi, the great commentator on Shaybani's works, accepted the Shafi'i doctrine that fighting the unbelievers was “a duty enjoined permanently until the end of time.” Jurists who came afterward, and up to the very decline of Islamic power, merely introduced refinements and elaborations of these basic principles.”

<sup>373</sup> al-Shaybani, 16. “It [jihad] was enjoined by Allah upon all believers “*to slay the polytheists wherever you may find them,*” (Qur'an 9:5) and the Prophet's utterance “*to fight the polytheists until they say: 'There is no god but Allah.'*” (Bukhari 1: 111) In Islamic theory, the jihad was a permanent obligation upon the believers to be carried out by a continuous process of warfare, psychological and political, even if not strictly military. No other form of fighting was lawful, whether within Islamic territory or outside it. The Imam was empowered to decide when the jihad was to commence or stop. *No essential difference among leading jurists is to be found on this fundamental duty, whether in orthodox or heterodox doctrine.* (Emphasis added)”

<sup>374</sup> al-Shaybani, 47.

subject to legally sanctioned physical abuse.<sup>375</sup> The *‘Umdat al-Salik* confirms the concept of the *dar al-Islam* and ratifies the status of *harbi* as discussed in the *Siyar*:

o4.17 There is no indemnity obligatory for *killing a non-Muslim at war with Muslims (harbi)*, someone who has left Islam, someone sentenced to death by stoning for adultery by virtue of having been convicted in court, or those it is obligatory to kill by military action such as a band of highwaymen.<sup>376</sup> (Emphasis added)

Hence, as stated by Shaybani, affirmed by Khadduri and confirmed by the *‘Umdat al-Salik*, the term “*harbi*” retains its legal status in Islamic law. Since Islamic doctrine holds that the *dar al-Islam* is in an ongoing state of war with the *dar al-harb*, the legal theory indicates that all non-Muslims not a part of the *dar al-Islam* (and not under treaty) are classified as *harbi*. This explains why the Caliph, in the 1915 fatwa, could be so emphatic in condemning friendships between Muslims and non-Muslims and why the “heart war” minimally requires “that the Muslim should believe in his heart that infidels are enemies to him and to his religion, and that he should desire their disappearance and the destruction of their power.”<sup>377</sup> As important, since all members of the *dar al-harb* carry the legal status of enemy, language from Verse 8:60 “*to strike terror into the hearts of the enemies of Allah and your enemies, and others besides, whom ye may not know,*” could in theory be interpreted to justify attacking any member of the *dar al-harb* because, by definition, all are the enemy.

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<sup>375</sup> al-Shaybani, 18. “In the absence of a treaty, the *harbi* – a person from the territory of war – may enter the territory of Islam under the *aman*, obtained beforehand by [sic] any Muslim. Such an *aman*, if granted, transforms the status of the *harbi* from a state of war to one of temporary peace and security, with respect to his own private relations with the inhabitants of the territory of Islam. *For the harbi, subject to molestation owing to the state of war between his territory and Islam*, becomes under Islamic law a *musta’min*, a person who is clothed with security as long as he remains in Islamic lands.”

<sup>376</sup> al-Misri, Book O “Justice,” 4.0 “Indemnity,” at o4.17.

<sup>377</sup> 1915 Fatwa, 22.

Classified as *harbi*, members of the *dar al-harb* do not retain their status as civilians. This is what Hani Siba'i, head of the London Center for Islamic History, meant when he said "in Islam, there are no such things as civilians" in connection with the killing of civilians in the London Bombing when interviewed by al-Jazeera TV in July 2005.<sup>378</sup> Minimally, this language provides a legal basis for striking non-Muslim countries in the absence of any other justification. Aligning the discussion of the *dar al-harb* with questions of submission, because *dhimmi* status arises out of the legal status of captured *harbi*, the fact that Islamic law has them revert to captured prisoner status if they fail to pay the *jizyah* begins to make sense. The point of this discussion is not to assert that all Muslims subjectively agree or are even familiar with the subject matter but rather only to point out that Islamic law is able to support this position and actually has served as a legal basis for "extremist" claims in furtherance of waging a *jihad*.

This is not just a theoretical discussion. As noted, speech war is an identified component of *jihad*. The power of language, here the language of Islamic law on the status of *harbi*, is not lost on al-Qaeda. As with Hani Siba'i above, the preference for using the language of Islamic law was on the mind of the late Abu Musab al-Zarqawi when he delivered his lecture "Do Ye Know Better Than Allah?" in early October 2005.<sup>379</sup> In the lecture, Zarqawi emphasized the necessity of using the language of Islamic law when discussing *jihad* against Coalition forces. Because the "idioms" of *jihad* were formed around concepts of *jihad* given operational definition by Islamic law,

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<sup>378</sup> MEMRI TV Clip 748, "Terror in London (7) - Head of London Center for Islamic History Hani Siba'i: In Islam, There Are No Such Things as Civilians," 08 July 2005, URL: <<http://memritv.org/>>, accessed 09 July 2006.

<sup>379</sup> Al-Zarqawi Lecture, 07 October 2005.

Zarqawi argued that success in imposing those terms as the language of debate would set in motion Islamic concepts of *jihad* that run in only one direction in ways that legitimize the “extremist” agenda:<sup>380</sup>

As a result, we have begun to hear the words resistance and clash of civilizations instead of *jihad* in Allah's cause, and the words civilians and innocent people instead of infidels and combatants, and the words 'the other side' instead of Jews and Christians.<sup>381</sup>

“Extremists” understand the power of the message. For Muslims to understand *jihad*, they first have to understand the terms of the debate that “extremists” understand to be the language of Islamic law. Once understood, the requirements of *jihad* become manifest by operation of law. Zarqawi realized that so long as contemporary Muslims call "non-military infidels and polytheists" civilians, it becomes problematic whether the Muslim population would accept them as legitimate targets in *jihad*.<sup>382</sup> Far from being the incoherent ramblings of an itinerant “extremist,” Zarqawi’s linguistic argument was genuinely based on Islamic legal concepts that, once established, would generate traction inside Islamic cultures. Hence, Zarqawi’s argument for control of the language of the debate represented an attempt to take control of the key terrain in the WOT as identified by the IPB methodology. Understanding the fit between Zarqawi’s lecture and Islamic doctrine on the status of *harbi* and the *dar al-Islam* means that what seems to be an obscure doctrinal debate ends up revealing an identified weakness in the information architecture of the enemy in the WOT. An IPB process specifically tuned to the language of the debate would have indicated that al Qaeda in Iraq was experiencing difficulties in

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<sup>380</sup> Al-Zarqawi Lecture, 07 October 2005.

<sup>381</sup> Al-Zarqawi Lecture, 07 October 2005.

<sup>382</sup> Al-Zarqawi Lecture, 07 October 2005.

their information campaign. The language the enemy relies on to validate their claims is the same language Current Approach advocates actively seek to remove from the vocabulary of decisionmakers and analysts.<sup>383</sup>

“Extremists” consistently level the charge that the U.S. is at war with Islam. In looking to counter such accusations, consideration should be given to the possibility that those charges can never be overcome given a legal doctrine that puts Islam in an ongoing state of war with the *dar al-harb*. Hence, the default position is that the West is at war with the Islam because Islamic law requires that Islam be at war with it -- psychological and political if not strictly military. Those leveling the charge know this. So why make the charge? The objective of such accusations may be to put respondents on the defensive by forcing them to justify themselves to their accusers “*until they submit and feel themselves subdued.*” The view that the world is divided into two such hostile camps is taught to contemporary 7th grade American Muslim students:

If all we needed was a lot of Muslims living together, then those countries would be the *Dar as Salam* (Land of Peace). But they’re not. A Muslim is a Muslim but a believer is as solid as a rock. (According to the Qur’an, not every Muslim is a believer. (See 49:14-15) Also, not every Masjid is built for serving Allah.) (See 9:107-108)

We cannot hope to *build an Islamic nation* again on the backs of people who are hypocrites, weak in their Eman or just plain lazy. Allah even mentions that some people only serve Him if times are good but then run away if things get rough. (22:11)

In fact, there are some Muslim countries that actually oppose the implementation of *Shari’ah*-based laws because they love their alcohol and illicit relations too much. You can’t build a solid wall with bricks made of soft mud. (3:176-177)

There is an interesting remark made by a scholar some time ago. He said, “*The only thing that can reform Muslims today is the same thing that made them great before (i.e. following the Qur’an).*”

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<sup>383</sup> For examples, see: Jim Guirard, “Global War on Terrorism (GWOT) – War of Words Briefing,” handout, 10, and Col (France) Bader and CCJ5-CPG, CPG Lexicon Project and Naming the Adversary, USCENTCOM, CCJ5-CPG: McDill AFB, 2007), 1, CCJ5-CPG, CPG Naming the Adversary, USCENTCOM, CCJ5-CPG: McDill AFB, 2007), 1.

In other words, we must build our character, build our Eman, build our Taqwa and then truly surrender to Allah completely. Why shouldn't we do that? We're all going to be dead in a few short years anyway. Our lives are shorter than the blinking of an eye. We have so little time to understand why we're here. What's wrong with insuring the eternal happiness of our souls? Like Allah says, "*You will gain control if you are true in faith.*" (3:139)

Indeed, only when we produce a generation of people who actually fear the Day of Judgment and love to be closer to the Prophet's example, will we be able to *make Islam dominant on earth.*<sup>384</sup> (Emphasis added)

### **Tolerance and Respect**

I say to you: that we are in a battle, and that more than half of this battle is taking place in the battlefield of the media. And that we are in a media battle in a race for the hearts and minds of our *Ummah*. And that however far our capabilities reach, they will never be equal to one thousandth of the capabilities of the Kingdom of Satan that is waging war on us.

**Eaman al-Zawahiri**  
The al-Zawahiri Letter to Abu Musab al-Zarqawi

With Khadduri's comments earlier on the psychological and political aspects of *jihad*, Siddiqi's comment on living the life of second class citizens, Khadduri's comment concerning "tolerated religious communities," and al-Qaeda's recognition of the role of language in *jihad*; there are reasons to know that some in the Islamic community understand non-Muslims through the prism of Islamic doctrines that interpret concepts like tolerance and respect in terms of submission. Such understandings are built on the Islamic doctrine of *jihad*, specifically those elements associated with submission and the status of non-Muslims as being either submitted *dhimma* or as the enemy -- *harbi*. It is only after constructing this backdrop that a meaningful examination of Islamic concepts of toleration and respect can be undertaken. One of the strategies in the WOT is to delegitimize "extremists" through outreach programs with the broader Islamic

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<sup>384</sup> Emerick, 378.

community. Because many U.S. Government outreach programs are directed toward alleviating Islamic concerns over perceived lack of tolerance and respect, a review of how they can be influenced by Islamic concepts of submission is in order. The recent Danish Cartoon Crisis will serve as the model.

**The Cartoon Crisis.** Characterized by mainstream organizations and media as extremist reactions to the Danish daily *Jyllands-Posten*'s publishing images of Muhammad in September 2005, the Muslim response was broad and broadly coordinated. Beginning with the Saudi Grand Mufti declaring a "war against our creed" at the *hajj* sermon on 10 January 2006,<sup>385</sup> a sampling of the Middle Eastern media reveals a broad response spanning the entire Muslim world including the Saudi recall of its ambassador from Denmark,<sup>386</sup> the Saudi Foreign Affairs Committee condemning Denmark,<sup>387</sup> the Imams of the Grand Mosque in Makkah,<sup>388</sup> the Holy Mosque in Medina,<sup>389</sup> the Prophet's Mosque in Madinah<sup>390</sup> condemning the Danish government, al-

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<sup>385</sup> "Condemnation of West's War on Islam," *The Daily Mail (Pakistan)*, 11 January 2006. From the U.S. Central Command "Regional Media Daily." Secondary source cited hereafter as RMD.

<sup>386</sup> "Gulf Boycotts Danish Goods," *Bahrain Tribune*, 29 January 2006, RMD.

<sup>387</sup> "Saudi Arabia Recalls Envoy in Danish Row," *Asharq Al-Awsat* (United Kingdom), 27 January 2006, RMD.

<sup>388</sup> P.K. Abdul Ghafour, "Imams Back Call for Danish Boycott in Cartoons Row," *Arab News* (Saudi Arabia), 28 January 2006, RMD.

<sup>389</sup> "Gulf Boycotts Danish Goods," 29 January 2006.

<sup>390</sup> "Imams Back Call for Danish Boycott in Cartoons Row," 28 January 2006.

Azhar<sup>391</sup> and Egyptian government clerics<sup>392</sup> condemning Denmark; Kuwait summoning the Danish ambassador<sup>393</sup> and condemning the cartoons;<sup>394</sup> as well as comments from the secretary general of World Muslim League;<sup>395</sup> the Arab League (representing all the Arab Foreign Ministers);<sup>396</sup> the leadership of the Supreme Islamic Council;<sup>397</sup> and the leadership of the Organization of the Islamic Conference<sup>398</sup> and many other *Ummah*-level organizations and leaders. All took aggressive public stances against the newspaper, Denmark and the entire Western world in language bearing common talking points that were broadly communicated.

The first indication that the Danish cartoons would serve as an information initiative came four months after publication when, on 10 January 2006, the Saudi Grand Mufti announced at the Hajj to the entire Muslim world that the West was waging war against Islam. This message was reinforced by other prominent clerics throughout the

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<sup>391</sup> Ahmad Maher, "Norwegian Muslims Blast Magazine over Prophet Cartoons," Islam Online (Qatar), 11 January 2006, RMD.

<sup>392</sup> "Egyptian Government Cleric at Egypt's Ministry of Endowments," *Arab News* (Saudi Arabia), 09 December 2005, RMD.

<sup>393</sup> "Kuwait Summons Denmark's Ambassador," *Bahrain Tribune*, 29 January 2006, RMD.

<sup>394</sup> "Kuwait Strongly Condemns Insult of Holy Prophet in Danish Papers; Tabtabaei Calls for 'Restrictions,'" *Arab Times* (Kuwait) 29 January 2006, RMD.

<sup>395</sup> "Muslim World League Condemns Norwegian Magazine for Publishing Offending Cartoons," *Arab News* (Saudi Arabia), 12 January 2006, RMD.

<sup>396</sup> "Row Deepens over Danish Cartoons," *BBC News*, 29 December 2005, RMD.

<sup>397</sup> Ahmad Maher, "Norwegian Muslims Blast Magazine over Prophet Cartoons," Islam Online (Qatar), 11 January 2006.

<sup>398</sup> Siraj Wahab, "OIC Demands Unqualified Danish Apology," *Arab News* (Saudi Arabia), 29 January 2006, RMD.

Islamic world including prominent Saudi Imams and others from Egypt's al-Azhar University, the pre-eminent Islamic center of study in the Islamic world:

- **Saudi Grand Mufti** Sheikh Abdul Aziz al-Sheikh declared at the Hajj to millions: “*There is a war against our creed, against our culture under the pretext of a war on terror*”... Islam, he stressed, was a complete code of life” ... “It is therefore a *sacred duty* of all Muslim nations to forge unity in their ranks to remove misconceptions against their faith. They must know that the *enemies* of their faith are striving hard ... In the process, *some nations will be called upon to make sacrifices.*”<sup>399</sup> (Emphasis added)
- Imam of the **Grand Mosque in Makkah**: “This goodly government ... showed its extreme displeasure, did justice to the Prophet *and warned of the dangers of continuing this grave hostile path.*”<sup>400</sup> (Emphasis added)
- Imam of the **Holy Mosque in Medina**: “Ridiculing the prophet is an *appalling crime* which *should not pass without response*, because that would allow others in the future to commit the same indecent act.”<sup>401</sup> (Emphasis added)
- Imam of the **Prophet’s Mosque in Madinah** said many people in the past had tried to defame the Prophet. “They were *thrown in the dustbin of history* and nobody remembers them.”<sup>402</sup> (Emphasis added)
- **Al-Azhar**, the highest seat of religious learning in the *Sunni* world, vowed to raise the issue as a *provocation*.<sup>403</sup> “Those cartoons are very offensive to every Muslim feeling, and to Islam as a religion,” said Abdel Moeti Bavoumi, a theology professor at al-Azhar University in Cairo. “*Do you expect Muslims to remain silent or rise and defend their religion?*”<sup>404</sup> (Emphasis added)

Islamic clerics throughout the Muslim lands echoed the same message. Given the pointedly militant language, the question presented by the al-Azhar theologian was on point: “Do you expect Muslims to remain silent or rise and defend their religion” after

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<sup>399</sup> “Condemnation of West’s War on Islam,” *The Daily Mail* (Pakistan), 11 February 2006, RMD.

<sup>400</sup> “Imams Back Call for Danish Boycott in Cartoons Row,” 28 January 2006.

<sup>401</sup> “Gulf Boycotts Danish Goods,” 29 January 2006.

<sup>402</sup> “Imams Back Call for Danish Boycott in Cartoons Row,” 28 January 2006.

<sup>403</sup> “Norwegian Muslims Blast Magazine over Prophet Cartoons,” 11 January 2006.

<sup>404</sup> Jan Olsen, “Danish Cartoons of Prophet Irk Muslims,” AP, 09 December 2005, accessed via LexisNexis 10 December 2005.

being so insulted? When assessing the Imams' statements, it should be remembered that they are fully aware of the Islamic law that holds that images of the Prophet are criminal insults that can warrant death. Alongside the comments of the clerics were those of prominent mainstream *Ummah*-level organizations with reasonable claims to reflect the broad policy views of the Muslim world. For example, from the Supreme Islamic Council and the Arab League:

- From **The Supreme Islamic Council (SIC)** - "*Editors should not take free speech as an excuse to insult a certain religion; otherwise they risk an extremist response from the offended, which carries grave consequences.*"<sup>405</sup> (Emphasis added)
- At the **Arab League** conference in Cairo, the **Arab Foreign Ministers** said "Islam forbids any depiction of Muhammad and Allah" and that "*the cartoons were an insult to Islam.*"<sup>406</sup> (Emphasis added)

When mainstream Islamic organizations speak of "extremist responses," "grave consequences," or of events being "an insult to Islam," are they simply making inflammatory comments or are they speaking to an understood standard? As noted, the Arab League is an organization of Arab foreign ministers. When its pronouncements reflect the position of all the Arab foreign ministers, it also reflects the position of the Arab *ummah*. Hence, when the foreign ministers agreed that publication of the cartoons was "an insult to Islam," it could be argued that they rendered a judgment reflecting the Arab-Muslim *Ummah*. It is not reasonable to think that those same foreign ministers were unaware that the penalty for insulting Islam can be death. When listening to comments from those presumed to be knowledgeable about Islam, the assumption has to be that they know what they are saying in light of the Islamic system that defines their

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<sup>405</sup> Ahmad Maher, "Norwegian Muslims Blast Magazine Over Prophet Cartoons," *Islam Online* (Qatar), 11 January 2006, RMD.

<sup>406</sup> "Row Deepens over Danish Cartoons," 29 December 2005.

Islamic way of life. Hence, it is also not reasonable for decisionmakers and analysts to assess statements from recognized Islamic institutions as if their messages were culturally neutral in terms of Islamic doctrinal rulings. The Current Approach's failure to inform should be assessed in light of this information.

The only way to avoid the harsh consequences of such a crime is to petition Islamic authorities for forgiveness for the "provocation" caused but only on condition that those involved submit an "unqualified apology" to assuage the "tension" created -- in other words, by an overt act of submission. From the *Pakistan Observer*:

*The religious sentiments of Muslims the world over have been hurt as a result of the publication of blasphemous cartoons in newspapers in Denmark and some other European countries. The ongoing protest demonstrations and violent incidents is an unambiguous proof of the fact that no Muslim can bear with such acts of provocation ... These newspapers should tender unqualified apology to the Muslims to defuse the tension that has gripped the whole world.*<sup>407</sup> (Emphasis added)

Are these comments an implied threat: an unqualified apology or else what?

Aggregated together, the messages from these entities cluster around known Islamic principles that anticipate holy rage. Another theme used extensively in the information campaign was the one that spoke for 1.x billion Muslims that left the not so thinly veiled threat that is better understood by adding the term "or else" to the end of their comments:

- The Secretary-General of the **Organization of the Islamic Conference (OIC)** said: "It is the *legitimate expectation of 1.3 billion Muslims* that *perpetrators of blasphemy* who have transgressed the civilized boundaries of freedom redress the situation by extending an *unqualified apology* ... failure of the Danish authorities to categorically condemn the cartoons *set a dangerous precedent*, as shown by the fact that the cartoons have been rerun in two Norwegian publications."<sup>408</sup> The Chairman also said: "The angry reaction in the Muslim world... is mainly due to the *premeditated and deliberate attack* on the revered person of the prophet, whose holy position, message and teachings were

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<sup>407</sup> "Condemning Europe," *Pakistan Observer*, 11 February 2006.

<sup>408</sup> "OIC Demands Unqualified Danish Apology," 29 January 2006.

*maliciously and calculatingly sacrilege by the so called defenders of freedom.”*<sup>409</sup>  
(Emphasis added)

- **The Muslim World League** (MWL) Secretary-General *warned of the negative consequences*: “Such incidents anger over *1.5 billion Muslims who want to live in peace and harmony the world over.*”<sup>410</sup> (Emphasis added)
- In the Islamabad *Daily Mail* opinion piece, “By stubbornly refusing to apologize to the world’s *1.3 billion anguished Muslims* and mindlessly defending the intolerably insensitive newspaper, *Jyllands-Posten*, the Denmark leadership allowed this issue to grow into a *disturbing showdown* between the West and Muslim world.”<sup>411</sup> (Emphasis added)

As with the Arab League and Supreme Islamic Council earlier, the Organization of the Islamic Conference and Muslim World League are mainstream *Ummah*-level organizations. The Islamabad *Daily Mail* is, likewise, mainstream. Yet the language used by these entities was hostile and threatening. With such mainstream entities positioning themselves as the voice of reason warning the West to submit to their demands lest the Muslim world resort to its “extremist” option, their rhetoric takes on classic good cop / bad cop dimensions. Running throughout the course of these calls for submission one finds an ongoing transference of responsibility for the violent acts of the aggressor to the victim.<sup>412</sup> When conforming to the demands of this message in the interest of finding common ground, the target audience puts itself in a submissive position that concedes positive control of the dialogue to the good cops to keep from antagonizing the bad.

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<sup>409</sup> “OIC Slams Denmark,” *Bahrain Tribune*, 29 January 2006, RMD.

<sup>410</sup> “Muslim World League Condemns Norwegian Magazine,” 12 January 2006.

<sup>411</sup> “Ball in Denmark’s Court,” *The Daily Mail* (Pakistan), 11 February 2006, RMD.

<sup>412</sup> **Author Comment:** An observation noticed by some, choosing to accept responsibility for such acts bears similarity to spousal abuse victims who find fault in themselves for the beatings they took.

The broadly disseminated rhetoric of the cartoon crisis did not emanate from “extremist” sources or rogue states like Syria or Iran. Speaking to a specific crime in Islamic law in ways that contemplate the classic Islamic redress, those mainstream entities (good cops) cannot easily be discounted as “extreme.” The strategic message, templated against Islamic legal requirements associated with a specific but broadly recognized criminal offense, remained on point across the entire *Ummah*. It is through understanding the template that one realizes that there was nothing incoherent or unpredictable about the message arising out of the cartoon campaign. It was an information campaign that was predictable from beginning to end.

Understanding the messaging from the cartoon crisis is contingent upon realizing that such events can only be understood with reference to the Islamic reality – in this case Islamic legal concepts associated with insults to Islam. The second realization is that *jihad* is not just an “extremist” term but rather one that describes fully developed and clearly defined theories of war that are substantially more sophisticated than many seem to want to understand. Part of this realization comes from accepting that Islamic notions of *jihad* are inseparably integrated into the Islamic legal and cultural framework in just the way Islamic law states. Perhaps this is what Professor Khadduri meant when saying that “the universality of Islam, in its all embracing creed, is imposed on the believers as a *continuous* process of warfare, *psychological* and *political* if not strictly military.”<sup>413</sup> By using the terms continuous but not strictly military, Khadduri meant that psychological and political warfare operate outside the parameters of strictly kinetic aspects of warfare.

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<sup>413</sup> *War and Peace*, 63-64, as cited in *Legacy*, 95-96.

In this, Pakistani Brigadier S.K. Malik agreed. In the *Quranic Concept of War*,<sup>414</sup> S. K. Malik argued that the main battle was only to be executed after its success was assured:

*The Quranic strategy comes into to play from the preparation stage, and aims at imposing a direct decision upon the enemy. Other things remaining the same, our preparation for war is the true index of our performance during war. We must aim at creating a wholesome respect for our Cause and our will and determination to attain it, in the minds of the enemies, well before facing them on the field of battle. So spirited, zealous, complete and thorough should be our preparation for war that we should enter upon the 'war of muscles' having already won the 'war of will'. Only a strategy that aims at striking terror into the hearts of the enemies from the preparation stage can produce direct results and turn Liddell Hart's dream into a reality.*<sup>415</sup> (Emphasis added)

Regarding S.K. Malik's comment, the Madrid bombings represented the classic unfolding of the Quranic concept of "war of will." Hence, whether Khadduri's psychological and political *jihad*, S.K. Malik's war of will or the Caliph's heart and speech war; they all envision *jihad* as continuous, extending beyond the mere kinetic, and operating outside of Western concepts of hostility. As S.K. Malik makes clear, the most decisive element in *jihad* occurs at a time when *harbi* believe they are at peace. It is the object of S. K. Malik's war of will to get enemy nations to submit to the will of Islam through threats, intimidation and terror before actual wartime operations occur. As Malik makes clear, the object of *jihad* is the destruction of faith.<sup>416</sup> Returning to the cartoon campaign, intermixed with the rest of the messaging - and of kind with it - was Ayatollah Khatami's claims of holy rage discussed earlier in connection with individual *jihad*. It is in the context of continuous *jihad* and submission that Khatami's comments are to be understood. In such a context, is it really too far fetched to draw a connection between

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<sup>414</sup> *The Quranic Concept of War* by Brigadier S.K. Malik, (Lahore, Pakistan: Wajid Al's Ltd., 1979. (with a forward by General Zia-ul-Haq) (This paper relies on the 1986 First Indian Reprint). Cited hereafter as S.K. Malik.

<sup>415</sup> S. K. Malik, 58.

<sup>416</sup> S. K. Malik, 60.

such incendiary (and enabling) rhetoric and individual *jihad*? From this and related news-stories, one suspects that the American public intuitively grasps the threat posed by the individual *jihad* if not necessarily its basis in doctrine.

**Slander.** Intuitively, for such an Islamic concept of war to succeed, one would expect to see a largescale effort to keep the *harbi* unaware that such doctrinal-based strategies exists. For authority on the limits of deception, “extremists” can look first to the Qur’an and hadith:

*Let not the Believers take for friends or helpers Unbelievers rather than Believers: if any do that, in nothing will there be help from Allah: except by way of precaution, that ye may guard yourselves from them. For Allah cautions you to remember Himself; for the final goal is to Allah. (Qur’an 3:28)*

*Anyone who, after accepting Faith in Allah, utters Unbelief – except under compulsion, his heart remaining firm in Faith – but such as open their breast to unbelief – on them is Wrath from Allah, and theirs will be a dreadful Penalty. (Qur’an 16:106)*

Muhammad said, "*War is deceit.*" (Bukhari 4:267 and 269)

*He who makes peace between the people by inventing good information or saying good things, is not a liar. (Bukhari vol.3:857 p.533)*

In tandem with the right to deceive *harbi* is the requirement to enforce non-disclosure of those rules of Islam as an enforceable offense. Substantially different than the American, the Islamic concept of slander fills this requirement:

r2.2 Slander (*ghiba*) means to mention *anything concerning a person that he would dislike.*

r2.3 As for talebearing (*namima*), it consists of quoting someone’s words to another in a way that *worsens relations between them.*<sup>417</sup> (Emphasis added)

r2.6 The Prophet (Allah bless him and give him peace) said:

(1) *“The talebearer will not enter paradise.”*

(2) *“Do you know what slander is?”* They answered, “Allah and His Messenger know best.” He said, *“It is to mention of your brother that which he would dislike.”* Someone

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<sup>417</sup> al-Misri, Book R “Holding One’s Tongue,” r2.0 “Slander,” r2.1, r2.2.

asked, “What if he is as I say?” And he replied, “*If he is as you say, you have slandered him, and if not, you have calumniated him.*”

(3) “*The Muslim is the brother of the Muslim. He does not betray him, lie to him, or hang back from coming to his aid.*”<sup>418</sup> (Emphasis added)

r3.1 ... In fact, talebearing is not limited to that, but rather *consists of revealing anything whose disclosure is resented*, whether presented by the person who originally said it, the person to whom it is disclosed, or by a third person. ... *The reality of talebearing lies in divulging a secret, in revealing something confidential whose disclosure is resented. A person should not speak of anything he notices about people besides that which benefits a Muslim to relate or prevents disobedience.*<sup>419</sup> (Emphasis added)

From such definitions, it is easy to see how a legally sanctioned code of silence could be imposed and enforced. This rule helps explain why “moderate” Muslims can insist that acts of terrorism undertaken by “extremists” (who self-identify as *jihadis* claiming Islam as their motivation to crowds of applauding Muslims broadcast as such on Arab stations) had nothing to do with Islam. But should such explanations control our understanding of those same events? When looking to the definition of talebearing in Section r2.6, it is worth observing that the statement of law comes from breaking a hadith into the elements of the law. The legal standard forbids the disclosure of any sensitive information to non-Muslims, where sensitive means any information that disadvantages Islam or a Muslim. Hence the rule of law seems to be that any information that a Muslim discloses to a non-believer that would cause a non-believer to question either Islam or a Muslim is forbidden; the penalty being eternal damnation. This means that reliance on individuals who are held to such a standard involves acceptance of the wholesale subordination of our collection requirements to the disclosure rules dictated by Islamic

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<sup>418</sup> al-Misri, Book R “Holding One’s Tongue,” r2.0 “Slander,” r2.6.

<sup>419</sup> al-Misri, Book R “Holding One’s Tongue,” r3.0 “Talebearing (*Namima*),” r3.1.

law. This is submission. It also turns all professional notions of competent analysis on its head.<sup>420</sup>

In tandem with the Current Approach's lack of insight into this notion of slander is the observation that Edward Said's enforcement of the *Orientalism* doctrine effectively stops non-Muslims from raising those same issues. Edward Said's primary objection to Western scholarship is its imposition of "a kind of intellectual authority over the Orient"<sup>421</sup> that he categorically refuses to recognize and which he seeks to reverse by controlling the inputs. As with the cartoon crisis images of Muhammad, for Said, it is the fact of Western scholasticism on Arabs/Muslims that is the object of his objections:

It is clear, I hope, that *my concern with authority does not entail analysis of what lies hidden in the Orientalist text*, but analysis of the text's surface, its exteriority to what it describes. I do not think that this idea can be overemphasized. *Orientalism is premised upon exteriority, that is, on the fact that the Orientalist, poet or scholar, makes the Orient speak, describes the Orient, renders its mysteries plain for and to the West. He is never concerned with the Orient except as the first cause of what he says. What he says and writes, by virtue of the fact that it is said or written, is meant to indicate that the Orientalist is outside the Orient, both as an existential and moral fact.*<sup>422</sup> (Emphasis added)

An interesting parallel emerges between the requirements of Islamic law on the inappropriateness of disclosing otherwise valid information and the effects of Said's argument if successfully operationalized. In this context, it opens up the question whether Said's argument in *Orientalism* represents a demand for control of the terms of debate concerning the Arab and greater Islamic world. Since the effects of the Current

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<sup>420</sup> **Author's Note:** This does not mean that the inputs from someone beholden to such a rule should not be heard but rather only that there is risk associated with basing a decision on information that is solely dependent on inputs that may have been filtered to meet requirements that may not accord with national strategic objectives.

<sup>421</sup> Said, 19.

<sup>422</sup> Said, 20-21.

Approach parallel Said's paradigm, the question to consider is whether operating under the Current Approach reflects a form of submission.

The question is serious and should to be asked and answered. From the text box discussion that discusses how Edward Said's chosen term "orientalism" already had a known pedigree inside the "extremist" community; it is worth recalling that Qutb's hard-line position against non-believers talking about Islam is likewise grounded in the Qur'an.

### **Orientalism Parallels to Milestones**

Labeling Western scholarship “Orientalism,” Edward Said relies on terminology that already had understood currency inside Islamic circles. For example, in the monograph *Milestones*, written in 1966 while in prison awaiting execution, “extremist” Sayyid Qutb caustically referred to orientalists ten times.\* Additionally, Said’s categorical rejection of Western scholarship based exclusively on the scholarship’s Western origins is consistent with Quranic warnings against listening to Jews and Christians as well as with Muslim “extremists” such as Sayyid Qutb when he issued warnings along the same line:

#### **From the Qur’an:**

*There is among them a section who distort the Qur’an with their tongues: As they read you would think it is a part of the Qur’an; and they say, “That is from Allah,” but it is not from Allah: It is they who tell a lie against Allah, and well they know it. (Qur’an 3:78)*

*And judge between them according to what Allah has revealed, and do not follow their opinions, and beware of them lest they confuse you in matters which Allah has revealed to you. (Qur’an 5:49)*

#### **From Sayyid Qutb’s Milestones:**

*Many among the People of the Book wish to turn you back from your faith toward unbelief, due to their envy, even after the Truth has been known to them; but forgive and excuse them until Allah brings about His decision. Indeed, Allah has power over everything. (Qur’an 2:109)*

*The Jews and Christians will not be pleased with thee unless thou follow their way. Say: “Indeed, Allah’s guidance is the true guidance”. And if, after this knowledge has come to thee, thou follow their desires, then thou wilt find no helper or friend against Allah. (Qur’an 2:120)*

*O you who believe! If you follow a party of the People of the Book, they will return you to the state of unbelief after you have believed. (Qur’an 3:100)*

After this warning to the Muslims from Allah concerning the ultimate designs of the Jews and Christians, it would be extremely short-sighted of us to fall into the illusion that when the Jews and Christians discuss Islamic beliefs or Islamic history, or when they make proposals concerning Muslim society or Muslim politics or economics, they will be doing it with good intentions, or the welfare of the Muslims at heart, or in order to seek guidance and light. People who, after this clear statement from Allah, still think this way are indeed deluded. (pp 212, 213)

The enemies of the Believers may wish to change this struggle into an economic or political or racial struggle, so that the Believers become confused concerning the true nature of the struggle and the flame of belief in their hearts becomes extinguished. The Believers must not be deceived, and must understand that this is a trick. (p 302)

\* Sayyid Qutb, *Milestones*, Salimiah, (Kuwait: International Islamic Federation of Student Organizations. 1978 [written 1966]), 111, 112, 114, 116, 124, 125, 131, 138.

The Jews and Christians that Qutb warns Muslims against associating with resemble the same group Edward Said calls orientalists. Said's objection conforms to the same Quranic injunctions for the same reasons given by the "extremists." Yet, if such warnings are actually in the Qur'an and the "extremists" explanation is in line with the plain reading of those verses, how can their interpretations be branded "extreme?" As recently as 12 October 2006, in the "moderate" *Gulf Times* (Qatar), Abdul Rahman bin Hammand al-Omar commented on those groups that offend Islam. Orientalists led his non-Muslim list:

The second category, of those who offend against Islam are the *orientalists*, missionaries, Jews and other rancorous offenders of Islam who follow them. Rancorous *orientalists*, and missionaries invented lies against Islam and Prophet Muhammad, tried to impute false accusations against the Prophet and tried to disgrace the laws of Allah in order to alienate people from Islam, but Allah always ruins their mechanism and they will never gain victory over Islam, because they are struggling against the truth; the truth always overcomes and prevails over falsehood. Allah stated in the Qur'an (which means): "*Their intention is to extinguish Allah's light (By blowing) with their mouths: But Allah will complete (The revelation of) His light, even though the Unbelievers may detest (it) it is He who has sent His Messenger with Guidance and the Religion of Truth, that He may make it prevail, over all religion, even though the Pagans may detest it.*"<sup>423[vi]</sup> (61: 8-9) (Emphasis added)

For non-believers, the corollary to the Islamic rule against disclosing anything disadvantageous to Islam is that they remain silent on discussions about Islam that extend beyond what is permitted. This may explain why cultural experts like Edward Said are so sincere in their calls for cultural experts able to provide non-Muslims with the information they are allowed to know. Because a straight reading of Islamic doctrine yields facts that favor the "extremist" position in ways that transcend interpretation, the Current Approach -- as an extension of *Orientalism* -- successfully removes those facts from discovery. Cast in academic dress, the Current Approach intervenes in the

deliberate decisionmaking process through elite paths of education to the senior professional military education system. Understood as an academic trend, acts of submission can occur without the leaders ever realizing that they did. This is at the heart of the desynchronized nature of our understanding of the threat that was reflected by the Chairman's observation that we broadly recognize the enemy's COAs while lacking an ability to push that understanding back to its doctrinal foundations.

Whereas the Current Approach (*ala* Said and Islamic notions of slander) avoids facts as unwanted disclosures, the IPB process is specifically tailored to answer questions concerning the enemy's doctrine by direct reference to those same facts. There can be no successful intelligence analysis where the underlying facts are barred. This is why the IPB Manual's demand for unconstrained analysis using all relevant facts able to contribute to the development of the enemy's stated doctrine is aligned with professional standards of competent inquiry.

The cartoon campaign was not just directed against the actual perpetrators of the insult. In keeping with S.K. Malik's requirement that *harbi* submit to Islam in the war of will phase, a consistent *Ummah* messaging theme centered on getting Western nations to curb free speech laws by making it impermissible to insult either Islam or its 1.x billion Muslims. The main objective, four months after the offending event, was to get the West to subordinate a high value Western right to Islamic law:

*The European governments ought to see that the hoax of Press freedom should not be overstretched to attack other religions and hurt the feelings of their followers. It's time that European press must also shun the tendency of teasing others in the name of Press freedom and respect established norms of decent behavior instead of challenging Islam and generating the controversy of the so-called 'clash of civilizations', which will obviously be detrimental to international peace and stability.*<sup>424</sup> (Emphasis added)

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<sup>424</sup> "Condemning Europe," 11 February 2006.

It's also important that *European countries should leash the newspapers* that have the tendency of overstepping moral and ethical limits in the name of *Press freedom*. No morals and ethics permit ridiculing Prophets much less the Prophet of Islam, who is the leader of all Prophets.<sup>425</sup> (Emphasis added)

The conditions were set. For Europe to retain peaceful relations with the Muslim world, it had to submit core Western rights to the demands of Islamic law. Being forced to bear responsibility for violent acts directed against it by elements of the Muslim community (bad cops), non-compliance would force the “clash of civilization” calculated to be “detrimental to international peace and stability.” With the exception being those hints of violence to be undertaken by the bad cops as a direct consequence of failing to follow the direction of the good cops (thus forcing Islam to resort to *extreme* measures to enforce compliance), nowhere mentioned in any of the statements from the Islamic world was there any acknowledgment of any responsibility that Islam might bear for the violence done its name. Since the cartoon crisis, European Union delegates have entered into discussions with Islamic authorities to discuss effecting laws that make insults to Islam a crime.<sup>426</sup> As ominous, during a visit to Pakistan, the *Karachi News* reported President Musharraf raised the issue of drafting such laws with President Bush and received a favorable response:

President Musharraf ... raised the offensive caricatures issue and *demand*ed his US counterpart draft law to avoid such incidents in the future. President Bush, who hopes to boost the US' image among Muslims, condemned the publications of the cartoons and assured full cooperation.<sup>427</sup> (Emphasis added)

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<sup>425</sup> “Condemning Europe,” 11 February 2006.

<sup>426</sup> Qudssia Akhlaque, “Spain Backs Initiatives for Action at UN: Blasphemous Cartoons,” *Dawn* (Pakistan), 08 March 2006, RMD.

<sup>427</sup> “Pakistan urges US to expand cooperation beyond war on terrorism,” Kuwait News Agency, 04 March 2006, RMD.

### **Progressive Revelation and *Dawah***

A nexus exists between progressive revelation, abrogation and slander. Remembering that abrogation doctrine reflects what Nyazee, Kamali, and Yusuf Ali (see footnotes 223 & 224) describe as "progressive revelation" over the period of Quranic revelation, the effect of Islamic law of slander is that it allows for conversion to an incomplete understanding of Islam. In a book that discusses the Islamization of America, Shamim Siddiqi, in his *Methodology of Dawah Ilallah in American Perspective*, discusses how new American converts to Islam are to be converted to a form of Islam that reflects an early stage of revelation thus leaving the mosque community to oversee the new convert's personal journey through the Milestones of revelation.

The concept of Tawheed (Oneness of God) is explained to them in academic fashion without telling what this Kalimah demands from a Muslim. Aqidah is explained without giving the details of the impact of Iman Billah and Iman Bil-Akhirah, and *without telling what revolution* it must bring in the life of an individual and the society in which he lives.

Some rituals of religion and traditions of the Muslim Community are explained. A short account of the Prophet's (PBUH) life is presented, *without the revolutionary aspect*. *When Islam is acceptable to the new entrants in this concocted or abbreviated form*, the ceremony of Shahadah is performed with great reverence. A non-Muslim thus becomes a Muslim, obedient to Allah (SWT) alone. *The revolutionary aspect of Islam is rarely brought before the new converts*, as in most of the cases the Da'ee (caller) himself is not conversant with it.

The new convert becomes the automatic member of the community presented the Dawah. He becomes an integral part of the mosque and of the community. *The Imam becomes his leader*. The Imam is virtually taken as Ameer. Training of the newcomer is limited to learning Salah/Sawm, memorizing some Surahs of the Qur'an for daily prayer's, learning some day-to-day Fiqh problems and *picking up some defense/fighting tactics to save the Masjid and the community to which he belongs from the attack of the 'Kuffar' (non-Muslim)*. (Emphasis added)

**Shamim A. Siddiqi, *Methodology of Dawah Ilallah in American Perspective*, 71.**

If the cost of boosting our image is the suppression of our Constitutional Rights, is the cost too high? It is difficult to envision U.S. leaders ever entertaining such concessions to the Soviet Union during the Cold War as a condition of outreach. While not the topic of this paper, over-committing to Islamic sensitivities in furtherance of demonstrating toleration and respect in the foreign policy domain will eventually lead to a sharp domestic backlash predictably calculated to undermine confidence in our national

leadership. This is in line with what S. K. Malik meant when saying that the object of *jihad* is the destruction of faith.

**Doctrinal Notions of Tolerance and Respect.** While there is broad familiarity with events associated with the cartoon crisis, there is little recognition that it was coordinated and still less that there were specific objectives in mind. A common concern heard from the Muslim world is that the West does not demonstrate enough tolerance and respect for either Muslims or Islam. While general principles of toleration and respect should be accorded all peoples on equal terms, there is genuine concern that Islamic notions of toleration and respect can be unduly influenced by doctrinal requirements of submission as stated in Qur'an Verse 9:29, the requirements of the heart war, the West's status as the *dar al-harb* or of Americans as *harbi*. Certainly the Islamic usage of the terms "tolerance" and "respect" in the Middle Eastern coverage of the cartoon crisis sustains this concern:

- Hezbollah leader: "*We are an Islamic nation that cannot tolerate, be silent or be lax when they insult our prophet and sanctities. ... We will uphold the messenger of God not only by our voices but also by our blood*"<sup>428</sup> (Emphasis added)
- They flayed the blasphemous act and sought unconditional apology from the wrongdoers. *They said no Muslim would tolerate such acts. ... The JI leaders said Muslims of the world are one and united against the sacrilege. They will protect the sanctity of the Prophet (SAW) and will never tolerate any audacity in respect of His person. ... All sacred books, they said, prohibit insult of any prophet.*<sup>429</sup> (Emphasis added)
- Turkish Prime Minister Erdogan, in a letter to world leaders, warns of "a dangerous escalation in tension over the publication of the caricatures of the Prophet Mohammed in European newspapers *that is threatening global peace and stability.*" He said in his letter

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<sup>428</sup> "Hezbollah Leader Tells US Leaders 'Shut Up,'" *Kuwait Times*, 10 February 2006, RMD.

<sup>429</sup> "Demos, Rallies Held against Caricatures," *The News* (Pakistan), 11 February 2006, RMD.

that “*Muslims could not be expected to tolerate* their Prophet being insulted in a manner that goes well beyond limits of criticism and said, “No culture has the right to insult sensitivities of another culture.”<sup>430</sup> (Emphasis added)

- The caricatures were highly offensive to Muslims, they said. They *demand*ed that the European countries tender *unconditional apology* to the *Ummah*. ... Moulana Tanveer-ul-Haq Thanvi, Khatib Jamia Mosque, said that by publishing caricatures *the West had challenged the Ummah*. He said it was a conspiracy and *no Muslim could ever tolerate* such insults. *There could be no compromise on Islamic principles*, he added.<sup>431</sup> (Emphasis added)

As indicated above, there is reason to know that some Islamic principles cannot be compromised. When the Muslim media uses the term “tolerance,” it is positioned as a check on deeply held democratic principles:

The *journalists would claim their right for freedom of speech*, but what about other key principles of democracy - *tolerance* and the freedom of religion. Sacred Things are Inviolable.<sup>432</sup> (Emphasis added)

Regarding the term “respect,” it was frequently used to convey the Islamic legal requirement that non-Muslims are under an obligation to respect “Islam and Muslims.” The expectation of respect arising out of such demands seems to reflect a form or respect expected of non-Muslim Americans whose station should be that of “second class citizens living within the bounds and bounty of the (American) Islamic state”<sup>433</sup> just as Islamic law unambiguously requires.

As S.K. Malik explains, it is in the “war of will” phase of *jihad* that the *dar al-Islam* puts its main effort. There is much to suggest that the United States may be

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<sup>430</sup> “Erdoğan Appeals to World Leaders to Calm Down Cartoon Crisis,” *Turkish Daily News*,” 12 February 2006, RMD.

<sup>431</sup> “Protest over Cartoons Publication Continues,” *The News* (Pakistan) 12 February 2006, RMD.

<sup>432</sup> “Ball in Denmark’s Court,” 11 February 2006.

<sup>433</sup> Siddiqi, 46.

currently experiencing such a war of wills. What Malik calls the “war of wills,” this paper calls a submission campaign. While many in the U.S. Government associate the fiery language in the cartoon crisis with posturing, the American population intuitively understands it to be menacing threats to personal safety and is responding accordingly. Stating that “for us, the safety and security of our customers and employees is a top priority, and we believe that carrying this issue [of a magazine] could challenge that priority,” Beth Bingham, a spokeswoman for the Borders Group, stated that the bookstore retailer would not distribute publications deemed insulting to Islam.<sup>434</sup> A major American publishing distributor censoring its content out of actual fear for physical safety is left unprotected by a national security establishment that has yet to even understand such events as threats. Yet such intimidation would instinctively be understood to be an impermissible attack on First Amendment rights if such threats came from politicians or other religious organizations. When the U.S. Government leaves Constitutional Right of free expression unprotected, American citizens are forced to submit to the threats they know can be made real. This personal sense of conscious vulnerability convinces Americans that their leaders are too disconnected to protect them. The result is actual loss of faith in the leadership’s ability to protect “here and now” interests in life, liberty and the pursuit of happiness. Because the law of *jihad* requires continuous non-kinetic activity in the pre-hostility phase, decisionmakers and analysts should operate on the assumption that such activities are currently ongoing as part of the WOT. Hence, the relevant question is not whether non-kinetic operations exist but rather how to properly identify and assess them.

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<sup>434</sup> Lawrence Van Gelder, “Bookstores Bar Magazine with Muhammad Cartoons,” *New York Times*, 01 April 2006.

## CONCLUSIONS TO JIHAD IN ISLAM

As it turns out, the concepts of *jihad* given expression by “extremists” find full expression in the body of Islamic law as defined by recognized authorities and authoritative sources. It also turns out that on questions of doctrine, the Current Approach finds no support able to challenge the doctrinal supremacy the “extremists” enjoy. Starting with a review of modern Hanafi law, transitioning to classical authoritative sources like the Qur’an, *sahih* hadith, al-Shafi’i, Malik ibn Anas, ibn Khaldun, ibn Kathir and ibn Rushd (Averoes), and then back to the modern era to review a currently valid restatement of Islamic law, an interlocking, overlapping, seamless web of Islamic law on *jihad* can be identified that is uncommonly unified and consistent in defining *jihad* as “warfare against non-Muslims to establish the religion.”<sup>435</sup> The legal description of *jihad* has remained consistent across the 1400 year span that incorporates the contributions of the recognized authorities relied on to write this paper. The rules of law remained consistent regardless of whether it was defined by an eighth century Arab, a ninth century Uzbeki, a 12th century Spaniard, a 14th century North African, or even a 20th century Arab, Pakistani, Indian, Malaysian or American. None of the legal authorities spoke to the “greater *jihad*.” All conformed to the idea that *jihad* does not end until the world has been made the *dar al-Islam*. All discussions of *jihad* reflected scholarly consensus and the primacy of Surah Nine, the last surah (chronologically revealed) to discuss *jihad*.

Because there is agreement among the scholars on the status of *jihad*, it belongs to the fixed inner sphere of Islamic law that can never be changed. It is this “version” of

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<sup>435</sup> al-Misri, Book O “Justice,” at § o9.0 “Jihad.”

Islam that the Current Approach keeps the decisionmakers and analysts from being able to fix their glance upon in furtherance of developing an ideological screen capable of fixing the enemy's stated doctrine.

The second part of the chapter focused on the less obvious (but equally real) non-kinetic component of *jihad* built on the architecture of submission. The principle mechanisms of the non-kinetic phase are the heart war, the speech war and individual *jihad*. The non-kinetic phase of *jihad* is the phase Khadduri describes as a “continuous process of warfare, *psychological* and *political* if not strictly military,”<sup>436</sup> that S.K. Malik identifies as the principle focus of the war of wills that is identified as the main effort of *jihad* war.<sup>437</sup> As with *jihad* generally, non-kinetic *jihad* draws its meaning from an Islamic view that divides the world into two camps: the *dar al-Islam* and the *dar al-harb*. In the doctrinal Islamic construct, non-Muslims are viewed as either the enemy – *harbi*, or submitted subject people – *dhimmi*. The *dhimmi* are to be treated as submitted people subject to humiliation. *Dhimmiude* is the only acceptable basis on which Islamic law accepts non-Muslims in the Islamic state. In the context of submission, when engaging in religious outreach programs with the Islamic community, it is important to remember that Islam views other religions, specifically Judaism and Christianity, as abrogated as a matter of fixed Islamic law. Hence, from a doctrinal perspective, the only acceptable outcome of religious outreach programs is the acceptance of the formerly valid religions' submission to Islamic law on a less than equal basis. Given the doctrines inability to permanently accept any other outcome, this raises questions concerning the motivations

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<sup>436</sup> *War and Peace*, 63-64, as cited in *Legacy*, 95-96.

<sup>437</sup> S. K. Malik, 58.

and objectives of the Muslim members of any given outreach program. The expectation to guard against is the illusion of progress where it is known, as a matter of fact, that none is possible, as a matter of law.

The doctrinal understanding of non-Muslims as either *dhimmi* or *harbi* influences Islamic concepts of toleration and respect that can interfere with more common understandings of those terms. In this regard, the doctrinal understanding of tolerance and respect in the context of non-Muslims should be understood through the prism of submission. For those attuned to recognizing them, the patterns of submission are ever present in the discourse of the day. In the WOT, it is the non-kinetic phase of *jihad* that presents the greatest long-term challenge for the United States. There is reason to know that Islamic concepts of submission are working their influence against the West generally and the United States specifically. A currently operating manifestation of submission may be a Current Approach that traps senior thinkers and decisionmakers in a process that keeps them from gaining traction against the enemy in the WOT. In this, submission does not reflect a subjective state of mind but rather an objective commitment to processes incapable of generating success against an openly declared enemy.

The Current Approach stands for the proposition that the WOT can be successfully prosecuted without reference to a substantive understanding of the enemy. In this, the Current Approach purposefully violates Sun Tsu's first rule of war: to know the enemy. Never understanding the enemy means never being able to generate an effective strategy to defeat him. At the operational level, this means never having the ability to convert tactical successes into strategic victories. The cost of not understanding the enemy has been high and is getting higher everyday. It will increasingly be measured

by news stories that narrow in on senior leaders' inability to answer basic questions about the nature of the enemy and his environment. It will also manifest itself in official responses to terrorist attacks that become progressively less reality-based. To accept the Current Approach is to believe there is nothing in this chapter that a decisionmaker or commander would benefit from knowing in furtherance of successfully prosecuting the WOT. Because this chapter specifically identifies doctrines that the enemy self-identifies as his center of gravity, this cannot be true as a matter of our own threat identification doctrine. The Current Approach cannot succeed because it does not account for the enemy's doctrine. There is no substitute for a working knowledge of the enemy through a professional comprehension of his threat doctrine. The United States military developed the IPB process as the mechanism of choice to assess enemy doctrine in furtherance of developing enemy COAs that, in turn, drive friendly COA development.

Current Approach advocates tend to explain Islamic drivers to terrorism in Western terms leaving the decisionmakers and analysts with a sense that the "extremists" are incoherent and unpredictable. To win the WOT, the Current Approach should be abandoned and replaced by an IPB methodology specifically tailored to meet the intelligence requirements associated with it. The threat model should be constructed in a way that maximally reflects the enemy's threat doctrine. To do this correctly, it is not only necessary to properly characterize the individual threat concepts, but also to represent them in ways that bring out their intended meaning. For this reason, the threat model should be templated against a view of the world that is consistent with the Islamic legal view that identifies the Islamic community in terms of the *Ummah*; defines the world as being divided into two camps; the *dar al-Islam* and the *dar al-harb*; and

understands non-Muslims in terms of either being *harbi* (the enemy) or as being *dhimmi* (submitted people). While this screen may not constrain the enemy, it can at least make the enemy more comprehensible and predictable.

While the purpose of this paper is to determine the requirements of *jihad* in Sunni Islamic law, it should be noted that a leading Shia authority concurs on this point:

- Those who know nothing of Islam pretend that Islam counsels against war. Those who say this are witless. Islam says: Kill all the unbelievers just as they would kill you all! Does this mean that Muslims should sit back until they are devoured by the unbelievers? Islam says: Kill them, put them to the sword and scatter their armies.... Islam says: Whatever good there is exists thanks to the sword and in the shadow of the sword! People cannot be made obedient except with the sword! The sword is the key to Paradise, which can be opened only for the Holy Warriors! There are hundreds of other (Qur'anic) psalms and Hadiths urging Muslims to value war and to fight. Does all this mean that Islam is a religion that prevents men from waging war? I spit upon those foolish souls who make such a claim.

*Ayatollah Ruhollah Khomeini*

## CHAPTER 6

### DISARMED IN THE WAR OF IDEAS

What kind of man is he who, after listening to the commandment of Allah and the traditions of the Prophet – peace be on him – and after reading about the events which occurred during the Islamic Jihaad, still thinks that it is a temporary injunction related to transient conditions and that it is concerned only with the defense of the borders?

Sayyid Qutb, *Milestones*

We've seen the expansion of the concept of religious freedom and individual rights in every region of the world -- except one. In the Middle East, we have seen instead the rise of a group of extremists who seek to use religion as a path to power and a means of domination. This self-appointed vanguard presumes to speak for Muslims. They do not. They call all Muslims who do not believe in their harsh and hateful ideology "infidels" and "betrayers" of the true Muslim faith. This enemy falsely claims that America is at war with Muslims and the Muslim faith, when in fact it is these radicals who are Islam's true enemy.

**President George W. Bush**  
The Islamic Center of Washington, D.C.  
June 27, 2007

It is the conclusion of this thesis that Islamic law forms the doctrinal basis for the *jihadi* threat that can only be understood through an unconstrained review of the Islamic law of *jihad*. Answering the three research questions, it turns out that:

- When the Chairman said that we have yet to read what our enemy's have said, he confirmed that we have failed to do a doctrine-based threat assessment of the enemy;
- Had the IC done so, it would have quickly found that the doctrinal basis of the *jihadi* threat is the law of *jihad* in Islamic law in just way the enemy claims; and

- The only way to understand this doctrine is to return to a threat-based analysis of the enemy that starts with an undelegated and unconstrained assessment of those motivating doctrines the enemy self-identifies as being the basis for his cause of action.

### **Discussion**

From the earliest Islamic legal authorities to modern American 7th grade school texts on Islam, it turns out that all agree that Islam is a complete way of life governed by Islamic law. There was nothing to indicate that there are recognized forms of Islam that are not governed by Islamic law. The national constitutions of most Muslim countries, and all Arab countries surveyed, formally reflect this subordination. All the Islamic authorities identified *jihad* as a duty incumbent on all Muslims at the communal and individual levels. When the authorities spoke to Islamic law of *jihad*, its meaning was limited to that of warfare against non-Muslims to establish the religion. Because this finding is in line with Quranic verses from surahs from the later periods of revelation, it reflects abrogation's doctrinal influence on Islamic law. Because *jihad*'s legal status reflects scholarly consensus, it means that the rules of *jihad* as stated in Islamic law are absolute and hence cannot be contravened or annulled.

Hence, if Islamic law is to serve as the measure, and there is no doctrinal basis to argue that it should not, there may not be an Islam that is not under obligation of *jihad* that remains in force until the world has been claimed for Islam. As Qur'an Verse 2: 216 suggests,<sup>438</sup> the requirements of *jihad* are objective and do not appear to be sensitive to the personal preferences of believers. As al-Shafi'i stated in his *Risala*, a duty of *jihad*

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<sup>438</sup> *Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth and ye know not.* (Qur'an 2:216)

arises when one learns that it is a requirement.<sup>439</sup> Hence, education on *jihad* seems to be pegged to the capabilities of Islam to carry the requirements forward. This conforms to concepts of progressive revelation that “extremists” like Sayyid Qutb emulate when templating their “extremist” ideology.

Under the Current Approach, this entire line of inquiry has been effectively shut down by objections that do not extend beyond surface assertions that “Islam does not stand for this” or “there are a thousand different interpretations of Islamic law” (so what’s the point in looking?). The consequences of uncritically heeding this advice have been the ongoing failure to understand the nature of the enemy. “Extremists” state that they fight *jihad* in furtherance of Islamic causes. This fact remains true regardless of whether the enemy is ultimately correct in its understanding of Islam. Hence, there are Islamic drivers to the WOT that simply must be taken into account when developing the doctrinal template of the enemy. Failure to account for Islamic law will result in a failure to recognize the laws of *jihad* that the enemy consciously emulates. When a doctrinal template fails to account for legal doctrines of *jihad* that the enemy self-identifies as the basis of his doctrine, the resulting enemy COAs will be fatally flawed as will be the ensuing friendly COAs.

Recalling that the disclosure of any information about Islam or Muslims that would cause a non-Muslim to question Islam violates strict Islamic laws on slander, it may help to explain why those beholden to such a standard could earnestly insist that “Islam has nothing to do with it” in the face of evidence that would normally argue otherwise in other circumstances. Because a slander concerning Islam can easily qualify

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<sup>439</sup> al-Shafi’i, 40, 41, 81,83.

as an insult to Islam, the consequences, as noted earlier, can be severe. This would be true even if the slander was factually accurate. This may help explain why the writing of a thesis such as this could lead to strong accusations that it is either an insult or slander to Islam even when every point asserted is verified and validated. Either way, choosing to ignore the information that lies beneath the surface of such claims is to submit the information that drives decisionmaking and analysis to the disclosure requirements of Islamic law. This is submission.

Enforcing such a prior constraint on information flows is fundamentally inconsistent with IPB processes that demand unconstrained access to all relevant data, including that data that some would rather remain beneath the surface. The Current Approach constrains because it was designed to do so. IPB runs on unconstrained flows of information. Hence, the two processes are mutually exclusive. Given both our inability to develop a descriptively accurate understanding of the nature of the enemy and our broad frustration with the current state of affairs in the WOT, it may be time to ponder deeply what was meant when Majid Khadduri said that “the universality of Islam, in all its embracing creed, is imposed on all believers as a continuous process of warfare, psychological and political if not strictly military”<sup>440</sup> that Pakistani Brigadier S. K. Malik said was the point where Quranic concepts of war are won -- at the war of will phase. To break from the slow submission cycle that leads to the destruction of our confidence, a recommitment to a process driven by facts along with an associated commitment to *ruthlessly* go wherever those facts may take us is recommended. With IPB, we already have a methodology capable of taking us down that path.

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<sup>440</sup> *War and Peace*, 63-64.

## **Finally**

It is not the objective of this paper to get readers to believe the positions asserted but rather to convince them to submit those assertions to an intense threat analysis in furtherance of generating facts able to service a functional threat model of the enemy in the WOT. If, in furtherance of creating a working threat model, points in this thesis are successfully challenged, this thesis will still have served its purpose. Having said that, it is the position of this thesis that it *will not fail* if decisionmakers and analysts return to an IPB methodology that begins with an unconstrained, undelegated, systematic, factual analysis of the threat doctrine that the enemy self-identifies as being driven by Islamic law. Following such a process has the benefit of meeting professional standards for competent analysis. This thesis *cannot succeed*, however, if the response is to outsource it to subject matter experts willing to volunteer their information under the sole condition that it be accepted both uncritically and unconditionally. This is not only true because such an approach fails to meet the professional standard, but also because it fails the standard for the same reason that it will lead to defeat in the WOT.

A businesswoman returns early from a business trip and walks into her bedroom only to find her husband in bed with another woman. Caught completely by surprise, the husband jumps out of bed and calls to his wife:

“Honey, who are you going to believe, me or your lying eyes?”

A joke commonly told by those who have actually read Islamic law on *jihad*

## APPENDIX A

### MUSLIM BROTHERHOOD AND THE CALL TO *JIHAD*

From the section “What We Choose not to Know” in Chapter 1, Osama bin Laden, Wahhabis and Saudi Arabia served as the example. As will be demonstrated, the situation is not unique to the Saudis and could have been done using other groups; for example the Muslim Brotherhood regarding Egypt. Because there is a movement to legitimize the Muslim Brotherhood by re-branding them as “moderate,” a Muslim Brotherhood example is provided in the expectation that it will challenge thought in this area. What follows is a series of quotes from Muslim Brotherhood<sup>441</sup> leaders to demonstrate the consistency of their Islam-centric message through time.

Bin Laden was not alone in basing his call to jihad on the individual’s requirement to fight *jihad* when non-Muslim forces enter Muslim lands. As recent events indicate, while the Muslim Brotherhood attempts to strike a moderate pose for Western consumption; its senior leaders are taking the same position as bin Laden. Both Mahdi ‘Akef, Supreme Guide of the Muslim Brotherhood and Sheikh Yousef Al-Qaradhawi, Muslim Brotherhood leader and recognized religious authority, took positions recently that conform to Islamic law and in so doing concurred in Osama Bin Laden’s reasoning.

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<sup>441</sup> The Muslim Brotherhood is a Islamic group formed in Egypt in 1928 by Hasan al-Banna that can make reasonable claims to being the progenitor of the “extremist” Islamic movement of the modern era.

From Mahdi 'Akef on Al-Jazeera TV in 2006:

I fear that blood be shed for no price. I want blood that is shed for a price. .... This American Satan claims to be a messenger of divine guidance. Divine guidance never commands anything but truth, justice, and freedom, things that have nothing to do with him. ... I go back to the issue of *Jihad*. *Jihad* is an individual duty incumbent upon every Muslim, male and female, if any inch of the land of Islam and the Muslims is occupied.  
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From Sheikh Qawadhawi at the Egyptian Journalist Union in Cairo in 2004:

All of the Americans in Iraq are combatants, there is no difference between civilians and soldiers, and one should fight them, since the American civilians came to Iraq in order to serve the occupation. The abduction and killing of Americans in Iraq is an obligation so as to cause them to leave Iraq immediately. (*Al-Sharq Al-Awsat* (London), September 2, 2004.)<sup>443</sup>

Because of Qaradhawi's stature and favorable profile among many leaders in the West, numerous Islamic authorities came out to support the validity of his claim, including those from the prestigious Al-Azhar University. As posted on Al-Jazeera.net on 9 June 2004, Dr. Abd Al-Mu'ti Bayyoumi, former Dean of the Al-Azhar Faculty of Religious Fundamentals, Dr. Salih Zaydan, Al-Azhar Lecturer, and Sheikh Mansur Al-Rifa'i Ubeid, former Undersecretary of Al-Azhar's Department of Religious Endowments, all validated the legal basis of Qawadhawi's claim that all Americans in Iraq were legitimate targets. From Dr. Abd Al-Mu'ti Bayyoumi:

Islamic law states that it is forbidden to kill civilians who are distant from the area of fighting, who are not participating in military operations, and who have nothing to do with the occupation of lands. However, civilians who take part in military operations, whether it be supplying food or giving medical treatment to the fighters, their legal status is that of fighters who are attacking land, honor, and property, and therefore there is no

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<sup>442</sup> MEMRI TV Monitor Project, "Mahdi 'Akef, Supreme Guide of the Muslim Brotherhood Warns Egyptian Regime: The People Will Trample You Underfoot," Clip No. 1214, 30 July 2006, URL: < <http://www.memritv.org/Transcript.asp?P1=1214> >, accessed 20 May 2007.

<sup>443</sup> MEMRI Special Dispatch, "Reactions to Sheikh Al-Qaradhawi's Fatwa Calling for the Abduction and Killing of American Civilians in Iraq," MEMRI Special Dispatch No.794, 6 October 2004, URL: < [http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79404#\\_edn1](http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79404#_edn1) >, accessed 5 May 2007. Cited hereafter as "Qaradhawi's Fatwa."

prohibition in Islam against killing them.<sup>444</sup>

From Dr. Salih Zaydan:

Whoever cooperates with the fighters who attack the land of Muslims, like the American civilians who are aiding the military in Iraq, becomes through his actions a fighter himself. Muslims are permitted to fight against such people and to kill them so as to defend land, honor, and property, and thus there is no prohibition against killing them.<sup>445</sup>

From Sheikh Mansur Al-Rifa'i Ubeid:

It is illogical to think that the U.S. is sending its civilians to Iraq in the current state of war without their having a role in the military operations. Therefore, they are not civilians, but fighters whose status in religious law is identical to that of the military combatants.<sup>446</sup>

Expecting such rhetoric from “extremists,” what distinguishes the comments of current Muslim Brotherhood leaders from those of the doctrinally elite Al-Azhar? The Muslim Brotherhood is among the more senior organizations within the modern *Salafi/jihadi* domain. As the Muslim Brotherhood asserts its moderate *bona fides*, it is important to account for leadership statements not just today but also for continuity through time. Founded in 1928 by its “Supreme Guide,” Hasan al-Banna argued that “it is the nature of Islam to dominate, not to be dominated, to impose its law on all nations and to extend its power to the entire planet.”<sup>447</sup> As the Muslim Brotherhood evolved, it adopted a creed in line with Banna’s vision:

Allah is our goal; the Messenger is our guide; the Koran is our constitution; *Jihad* is our means; and *martyrdom* in the way of Allah is our inspiration.<sup>448</sup>

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<sup>444</sup> Qaradhawi's Fatwa.

<sup>445</sup> Qaradhawi's Fatwa.

<sup>446</sup> Qaradhawi's Fatwa.

<sup>447</sup> Jerrold M. Post, *Leaders and their Followers in a Dangerous World: The Psychology of Political Behavior*, (Cornell University Press: Ithica, NY, 2004), 139, citing Amir Tehiri, *Holy Terror*, unknown binding, 1989.

<sup>448</sup> Muslim Brotherhood Creed. Noreen S. Ahmed-Ullah, Sam Roe and Laurie Cohen, “A rare look at secretive Brotherhood in America; Muslims divided on Brotherhood,” *Chicago*

The Muslim Brotherhood's most influential thinker was Sayyid Qutb. His most popular tract was written while awaiting execution in Egypt in 1966. Titled *Milestones*, Qutb discussed Islam and the role of *jihad*:

Since the objective of the message of Islam is a decisive declaration of man's freedom, not merely on the philosophical plane but also in the actual conditions of life, it must employ *Jihaad*. .... The reasons for *Jihaad* which have been described in the above verses are these; to establish God's authority in the earth; to arrange human affairs according to the true guidance provided by God; to abolish all the Satanic forces and Satanic systems of life; and to end the lordship of one man over others since all men are creatures of God and no one has the authority to make them his servants or to make arbitrary laws for them.<sup>449</sup>

Of note, although attempting to reposition as moderates, the Muslim Brotherhood has yet to reject any portion of its historic mission as stated above. As the citation string of Muslim Brotherhood leaders indicates, "extremists" have a coherent message that is consistent and specifically defined in Islamic terms that include *jihad*. As both al-Qaeda and Muslim Brotherhood examples indicate, choosing not to look to Islam for answers becomes the decision not to understand the threat. Not only are Osama bin Laden, Qaradawi and 'Akef's assertions that Islam requires *jihad* when non-Muslims enter Muslim lands accurate, it turns out to be a specifically enumerated element of Islamic law<sup>450</sup> that, for that reason, is part of the required curricula in the primary education

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*Tribune*, 19 September 2004, < [http://www.nexis.com/research/home?key=1178517336&session=939e9fcc-fc5f-11db-86b5-00000aac593b.1.3355970136.148478.0.0.0&state=&wchp=dGLzVlz-zSkBb&\\_md5=ae4325da6158c8b3996195549734fc5e\\_](http://www.nexis.com/research/home?key=1178517336&session=939e9fcc-fc5f-11db-86b5-00000aac593b.1.3355970136.148478.0.0.0&state=&wchp=dGLzVlz-zSkBb&_md5=ae4325da6158c8b3996195549734fc5e_)>, accessed LexisNexis databases 20 November 2005.

<sup>449</sup> Sayyid Qutb, *Milestones*, Salimiah, (Kuwait: International Islamic Federation of Student Organizations. 1978 [written 1966]), 42, 47.

<sup>450</sup> Ahmad ibn Naqib al-Misri, '*Umdat al-Salik (Reliance of the Traveller: A Classic Manual of Islamic Sacred Law)*, rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994), Book O "Justice," at o9 "Jihad," at o9.3. "*Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, having entered our territory, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but must be met with effort and struggle to repel them by every possible means."

systems of Muslim countries, including Egypt.<sup>451</sup> Hence, not only is there substance to Muslim Brotherhood claims, but Islamic law serves as the basis for its claims of authenticity. It also explains why Muslim Brotherhood leaders like 'Akef and Qaradhawi could advocate requirements that led them to call for the targeting of all Americans in Iraq and then why preeminent figures from the most prestigious al-Azhar University could validate those same claims.

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<sup>451</sup> Center for Monitoring the Impact of Peace (CMIP), *Jews, Christians, War and Peace in Egyptian School Textbooks*, Ed., Comp. & Trans. Arnon Groiss, (New York: CMIP, 2003) 291, 292. “This noble [Quranic] Surah [Surat Muhammad] ... deals with questions of which the most important are as follows: ‘Encouraging the faithful to perform jihad in Allah’s cause, to behead the infidels, take them prisoner, break their power, and make their souls humble – all that in a style which contains the highest examples of urging to fight.’”

“You see that in His words: *‘When you meet the unbelievers in the battlefield strike off their heads and, when you have laid them low, bind your captives firmly. Then grant them their freedom or take a ransom from them, until war shall lay down its burdens.’*”

## APPENDIX B

### IS THE IRAQI CONSTITUTION FATALLY FLAWED?

Language in the Iraqi Constitution (“Constitution”) formally subordinates that instrument to Islamic law. Relevant to the issue of subordination is the fact that a majority of the Iraqi population is *Shia* and a substantial plurality is *Sunni*. In line with this demographic reality is the fact that recent Iraqi elections effectively vested governmental authority with the *Shia* majority. It stands to reason that the *Shia* government would subordinate the Constitution to *Shia* Islamic law thus effectively rendering it the law of the land as a matter of that same Constitutional subordination. Given the prospects of a permanent *Shia* majority, the question becomes whether the *Sunni* minority can submit to a government so formally subordinated. Hence, when speaking to events currently ongoing in Iraq, terms like “sectarian strife” end up being under-inclusive to the issues at stake from an Islamic perspective. A brief review of the Constitution will be undertaken for the purpose of further framing the issue.

#### **Subordinating Language in the Constitution**

The relevant language in the Constitution is located in Section 1 “Fundamental Principles” at Article 2:

- **Article 2.** Islam is the official religion of the state and is a basic source of legislation:
  - No law can be passed that contradicts the undisputed rules of Islam.<sup>452</sup>

As a “basic source of legislation,” Islam becomes the “fundamental principle” whose “undisputed rules” cannot be contradicted. A straight-forward reading of the language (in English) indicates that any rule in Islam that rises to the level of being undisputed would necessarily overrule any statement of law in the Constitution in contravention. To fully grasp the issue, it is important to recognize that the Constitution gives explicit recognition to the existence of “undisputed rules of Islam” which, as a matter of law, supersede the Constitution. Because the undisputed rules of Islam, if they exist at all, exist within the body of Islamic law, Islamic law should be understood to supersede the Constitution. This is a critical point because, notwithstanding Western notions to the contrary, the Iraqi Constitution and, therefore, the government and people of Iraq, formally recognizes Islamic law to be the supreme law of the land not just because Islamic law dictates but also because the Constitution requires.

An implied task of the Iraqi Constitution, therefore, is the requirement to identify, define and establish the authority of those absolute rules to which it must subordinate itself. Such a process will drive a requirement to choose whether the supreme law of the land will be *Sunni* or *Shia* Islamic law. Understood to be a real competition for control of the primary governing law, the issues dividing the *Shia* and *Sunni* may be more complicated than simple sectarian strife. For example, if *Sunni* Islamic law prevails, one might expect Iraq’s orientation to be in line with the Arab *Ummah*; if *Shia*, then Iran.

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<sup>452</sup> **Iraqi Constitution**, (translated from Arabic by Associated Press), October 2005, URL: <[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24\\_08\\_05\\_constit.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_08_05_constit.pdf)>, assessed 20 February 2007.

## Undisputed Rules

While both the Current Approach and conventional wisdom is that there are no “undisputed rules of Islam,” the very fact that the Constitution gives explicit recognition (and deference) to them requires any analysis to proceed as if they exist.<sup>453</sup> What follows is a brief look at the status of “absolute rules” in *Sunni* and *Shia* law.

**The Sunni Perspective.** Often translated as “scholarly consensus” or “consensus among the scholars,” *Sunni* Islamic law recognizes “undisputed rules of Islam” through a legal concept known as *ijma*’. The *‘Umdat al-Salik*, a text of *Sunni* Islamic law translated to English as *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, defines *ijma*’ as follows:

- b7.0 SCHOLARLY CONSENSUS (*IJMA*’)
  - b7.1 Scholarly consensus (*ijma*’) is the agreement of all the mujtahids of the Muslims existing at one particular period after the Prophet’s death (Allah bless him and give him peace) about a particular ruling regarding a matter or event.
  - b7.2 When the four necessary integrals of consensus exist, the ruling agreed upon **is an absolute authoritative part of Sacred Law** that is obligatory to obey and not lawful to disobey. Nor can mujtahids of a succeeding era make the thing an object of new *ijtihad*, because the ruling on it, verified by scholarly consensus, is an absolute legal ruling which **does not admit of being contravened or annulled.**<sup>454</sup> (Emphasis added)

Restated, the *Sunni* concept of *ijma*’ holds that 1) when all the legal authorities come together at one time and one place to discuss a single issue in which they unanimously agree, then

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<sup>453</sup> **Author’s Note.** The Afghan Constitution has the same language in Article 3 of that country’s constitution: “In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.” Afghanistan Constitution, 04 January 2004, URL: < [http://www.oefre.unibe.ch/law/icl/af00000\\_.html](http://www.oefre.unibe.ch/law/icl/af00000_.html)>, accessed 20 March 2005.

<sup>454</sup> Ahmad ibn Naqib al-Misri, *‘Umdat al-Salik (Reliance of the Traveller: A Classic Manual of Islamic Sacred Law)*, rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994). Cited hereafter as al-Misri. Book B “The Validity of Following Qualified Scholarship,” at b7.0 “Scholarly Consensus,” b7.1, b7.2.

2), the ruling becomes a part of SACRED Islamic law that must be obeyed, cannot be disobeyed and cannot be re-opened for reconsideration by future authorities because the ruling, once established, transitions to SACRED Islamic law that can NEVER be overruled. As defined, *Sunni* Islam's "absolute rules" are beyond man's ability to "contravene or annul." Characterized as "an absolute authoritative part of Sacred Law" that "does not admit of being contravened or annulled," legal doctrines that achieve scholarly consensus in *Sunni* Islam can fairly be qualified as "absolute rules of Islam." Hence, any rule in *Sunni* Islamic law that satisfies the requirements of *ijma'* should have standing to overrule the Iraqi Constitution.

**The Shia Perspective.** *Shia* Islam recognizes the concept of *ijma'* but subordinates that doctrine to the authority of the imam – a man. This represents a substantive difference to the *Sunni* model. To understand the *Shia* perspective on *ijma'*, it is first important to account for the difference between *Shia* and *Sunni* law on this matter. Majid Khadduri, in his *War and Peace in the Law of Islam* stated the issue succinctly:

- The underlying difference between the Shi'a and *Sunni* legal theory is the doctrine of the imamate (the Shi'a term for the Caliphate) which narrows the qualifications of the candidate for the position not merely to the tribe of the Quraysh but still further to *ahl al-bayt*, the descendents of Ali and Fatima. The Shi'a accepts the legitimate right of 'Ali to the imamate as an article of faith; for, it is held, 'Ali was designated by Muhammad and after him his descendents in direct line. This designation, made on a special occasion, entrusted 'Ali with divine authority; at the same time it confided to him a secret knowledge (*ta'wil*), empowering him to interpret the Qur'an as well as ***to make – some say even to abrogate – the law***. This esoteric knowledge 'Ali passed on to his male descendents from generation to generation. (Emphasis added)
- This doctrine, regarding 'Ali and his descendents as the repository of the Islamic truth, was further elaborated by 'Ali's devoted followers so as to ascribe superhuman qualities to him, raising him and his descendents to a level higher than fallible human beings. ... To the majority of the Shi'a, however, 'Ali was to rule by ***divine right***, armed with such authoritative knowledge bequeathed to him by Muhammad – a knowledge which ***placed him beyond the reproach of human***

*beings. He and his descendants formed, in contrast to the Sunni caliphs, a caste of not only infallible, but also impeccable imams.*<sup>455</sup> (Emphasis added)

While *Sunni* Islam is averse to notions of a formal clerical hierarchy or of any man -- or institution of man -- sharing in Allah's exclusive law creating authority, as Khadduri explains, *Shia* Islam invests the imams<sup>456</sup> with heightened insights that are beyond the reach of ordinary men:

- The Shi'a conception of law, it will be noted, is more authoritarian and far more detached from social reality than the *Sunni* conception, *not only because the final authoritative interpretation of the law had been placed in the imam, but also because of his infallibility and his possession of an esoteric knowledge of the true meaning of the law.*<sup>457</sup> (Emphasis added)

It is in the context of the differing status and authority of the *Shia* imamate that *Shia* restrictions on *ijma'* are to be understood:

- In the Shi'a, as in the *Sunni*, legal theory the Qur'an is accepted as an unquestionable source of law; but the hadith<sup>458</sup> is not accepted unless related by an imam recognized by the Shi'a. *The ijma' is rejected unless the imam takes part in it because neither the community nor the scholars have the final legal authority to interpret the law.*<sup>459</sup> (Emphasis added)

### The Breakpoint

The Iraqi Constitution yields to Islamic law at the point where Islam enumerates it "undisputed rules." For *Sunni* Muslims, the undisputed rules are those that become "an

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<sup>455</sup> Majid Khadduri, *War and Peace in the Law of Islam*, (Clark, NJ: Lawbook Exchange, 2006 [reprint from Johns Hopkins Press: Baltimore, 1955]), 38-39.

<sup>456</sup> **Author's Note.** Shia Islam awaits the return of the Imam as the *mahdi*. In his absence, authority vests with mujtahids – Ayetallahs. Khadduri explains: "The doctrine of the *ghayba* (absence of the imam) and his final return as the *mahdi* (messiah), to dispense justice and righteousness in a world full of sin, forms the basis of the Twelvers' creed. During the imams absence, the creed and the law have been interpreted by the *mujtahids* (scholars) who have acted as agents of the imam." Khadduri, 40.

<sup>457</sup> Khadduri, 40.

<sup>458</sup> While a *bona fide* issue in its own right, this paper will forgo discussion on the status of the hadith between *Sunni* and Shia Islam.

<sup>459</sup> Khadduri, 41.

absolute authoritative part of Sacred Law” that are “obligatory to obey and not lawful to disobey” that “do not admit of being contravened or annulled”<sup>460</sup> by *any* man. Not only do the *Shia* deny the law creating authority of the scholars, they specifically vest that authority in the hands of the Imam – a man. Hence, the point where the Iraqi Constitution defers to the absolute rules, *Sunni* and *Shia* Islam take non-conforming positions on the authoritative basis for those laws. Because the legal theory underlying both bodies of law is that they derive their ultimate authority from Allah, the ability to accommodate to the other’s authority may be compromised by the inability to accept the mutually exclusive basis for the other’s authority.<sup>461</sup> The issue is simple; can a *Sunni* minority accept absolute rules that derive their authority from sources that they sharply oppose on substantive doctrinal grounds? How far, if at all, can either side compromise on rules that both sides maintain come to them from Allah (as the law of the land)? Far from simple sectarian strife, the issue dividing *Sunnis* from *Shia* ends up being a struggle for the rule of law in a part of the world that understands Islamic law to be the law of the land in a country whose constitutional system specifically recognizes and defers to it as such.

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<sup>460</sup> al-Misri, Book B “The Validity of Following Qualified Scholarship,” at b7.0 “Scholarly Consensus,” b7.2.

<sup>461</sup> **Author’s Note.** In most instances there may be little practical difference between absolute rules that derive from *Sunni* as opposed to *Shia*. The issue is not primarily one of the laws themselves but rather on the authority to generate those laws. As Khadduri states: “The difference between the *Shi’a* and *Sunni* law in matters of detail (*furu*) are hardly more marked than those between one orthodox school of law and another. Apart from the doctrine of the imamate, and the consequent emphasis on the authoritarian character of the law, the Shi’i system, as it has been proposed, might have constituted a fifth *madhhab*, or school of law.” Khadduri, 41.

### **Silent on Judicial Authority**

The Iraqi Constitution's incorporation of Islamic law into the Iraqi system can be better appreciated by comparison to the Pakistani Constitution's treatment. Pakistan is a declared Islamic Republic<sup>462</sup> that requires its constitution to fully subordinate itself to Islamic law.<sup>463</sup> The Pakistani Constitution calls for the creation of an Islamic Council appointed by the President;<sup>464</sup> a Federal *Shari'a* Law Court whose members are appointed for a fixed term by the President;<sup>465</sup> and a right of appeal to the Pakistani Supreme Court.<sup>466</sup> Hence, while the Pakistani Constitution formally subordinates itself to Islamic law, it also fully subordinates the adjudication of Islamic law to Pakistani

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<sup>462</sup> **The Constitution of the Islamic Republic of Pakistan**, Part I "Introduction," Section 1 "The Republic and its Territories," 12th April, 1973, URL: <<http://www.pakistani.org/pakistan/constitution>>, accessed 27 February 2007, at Section 1(1): Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

<sup>463</sup> **The Constitution of the Islamic Republic of Pakistan**, Section 227. Provisions relating to the Holy Qur'an and Sunnah. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

<sup>464</sup> **The Constitution of the Islamic Republic of Pakistan**, Section 228. Composition, etc. of Islamic Council. (1) There shall be constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council. (2) The Islamic Council shall consist of such members, being not less than eight and not more than [twenty], *as the President may appoint* from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

<sup>465</sup> **The Constitution of the Islamic Republic of Pakistan**, Section 203C The Federal Shariat Court. (1) There shall be constituted for the purposes of this Chapter a court to be called the Federal Shariat Court. (2) The Court shall consist of not more than eight Muslim Judges, including the Chief Justice, to be appointed by the President.

<sup>466</sup> **The Constitution of the Islamic Republic of Pakistan**, Section 203F Appeal to Supreme Court. Any party to any proceedings before the Court under Article 203D aggrieved by the final decision of the Court in such proceedings may, within sixty days of such decision, prefer an appeal to the Supreme Court.

Courts<sup>467</sup> appointed by the President and answerable to the Pakistani Supreme Court. In short, the Pakistani Constitution vests all authority for the adjudication of Islamic legal issues with the Pakistani Government at the federal level. In contrast, the Iraqi Constitution is silent on the Iraqi government's jurisdiction over Islamic law courts. For example, Article 87 of the Constitution calls for the standing up of courts but says nothing of *Shari'a* law courts:

- **Article (87).** The federal judiciary will include the Supreme Judiciary Council, the Supreme Federal Court, the Federal Cassation Court, the Prosecutor's Office, the Judiciary Inspection Department and other federal courts that are organized by law.<sup>468</sup>

The closest the Constitution comes to Islamic law is Article 90 (2<sup>nd</sup>) where it states that the Supreme Federal Court is to include experts in Islamic law:

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<sup>467</sup> **The Constitution of the Islamic Republic of Pakistan**, Section 203D Powers, Jurisdiction and Functions of the Court. (1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam. (1A) Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated in either of those Lists, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court. (2) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision: (a) the reasons for its holding that opinion; and (b) the extent to which such law or provision is so repugnant; and specify the day on which the decision shall take effect: Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal there from may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal. (3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam, (a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and (b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.

<sup>468</sup> **Iraqi Constitution**, Article 87.

- **Article (90) 2<sup>nd</sup>**. The Supreme Federal Court will be made up of a number of judges and experts in Sharia (Islamic Law) and law, whose number and manner of selection will be defined by a law that should be passed by two-thirds of the parliament members.<sup>469</sup>

Calling for experts in Shari'a law begs the question as to whether that expertise will be *Sunni* or *Shia*. Another question is whether the failure to vest authority for Islamic courts with the central government was an oversight or whether it reflects an unresolved deferred issue. Either way, failure to secure jurisdictional authority of Islamic law with the Iraqi Federal Government would foreseeably result in the derogation of that authority to tribal level courts traditionally associated with dispensing Islamic law. The effect will be that the laws that control the Constitution end up operating at a level beneath the Federal government outside the Federal system.

If the Islamic law that operates at the tribal level ends up adjudicating the “absolute rules of Islam,” then the Constitution becomes subordinated to a body of law whose center of gravity rests at the tribal level. The effect of the Constitution’s silence on jurisdictional authority over Islamic law, therefore, is that it establishes a *de facto* form of confederate governance that leaves the federal government dependent on the tribal Shari'a courts for the determination of the absolute rules that control it. But, at the tribal level, the courts tend not only to be either *Sunni* or *Shia*, they also tend to be only Arab or only Kurdish or only Iranian, etc. Hence, serious in itself, the omission would also tend to create a downward cascade of authority away from the Iraqi federal government to the level where actual decisionmaking occurs. With the derogation of legal decision making to the sub-federal level, the struggle for political power would foreseeably devolve to those levels as well.

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<sup>469</sup> **Iraqi Constitution**, Article 90, Second.

With centuries of British rule and common law familiarity, the Pakistani's grasp the paramount necessity of *expressly* vesting all vice-regency authority for Islamic law *exclusively* in the hands of the Islamic Republic. Such language is absent from the Iraqi Constitution. When assessing Iraq's Constitution, the Pakistani should serve as the benchmark. Yet, because Pakistan is a *Sunni* Islamic Republic, it does not have to contend with the competing requirements of *Shia* law. Hence, the discussion returns to the central issue that the Iraqi Constitution subordinates itself to the "absolute rules of Islam" in a country where two mutually exclusive bases for the formation of absolute rules exist. When measuring against the Pakistani Constitution, the central question remains: at what point does the inability of the Iraqi Constitution to incorporate Islamic law become an accurate reflection of Iraq's inability to both govern at the federal level and remain faithful to a unitary set of absolute rules?

## CONCLUSION

The Iraqi Constitution may be fatally flawed in its current state. The current state may (or may not) accurately reflect a chasm between *Sunni* and *Shia* concepts of authority that the Constitution may not be able to resolve at the federal level. Is it reasonable to think that *Shia* voters would not elect a *Shia* majority that would not subordinate Iraq to the absolute rules of Islam as defined by *Shia* Islamic law? (Does not the USG look to Grand Ayetallah Sistani as an ultimate authority in Iraq?) Is it reasonable to think that the *Sunni* minority would accept their subordination to an Iraqi

central authority governed along *Shia* lines of authority?<sup>470</sup> The Iraqi Constitution calls for the actual subordination of that instrument to Islamic law which it understands to be a currently existing body of law that it recognizes to be the controlling law of the land. Iraq has two *bona fide* forms of Islamic law able to compete for the status as the controlling law of Iraq. As such, the struggle in Iraq goes beyond mere issues of sectarian strife because it strikes at core issues concerning which rule of law is to control Iraq. The resolution of this question will bring with it real winners and losers both inside Iraq and beyond its borders. If the Constitution is to subordinate itself to Islamic law through the mechanism of Islam's "absolute rules," it should include *express* language that vests all decisionmaking authority *exclusively* in the hands of the Iraqi federal government. If such an undertaking happens, it will serve as a proxy for the larger question as to whether Iraq can peacefully form a national government that balances the rights of all its citizens.

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<sup>470</sup> **Author's Note.** Questions like these could help explain why *Sunni* tribal leaders often state that they will deal directly with the USG in circumstances where they refuse to deal the Iraqi government.

## APPENDIX C

### ABROGATION AND PROGRESSIVE REVELATION

Of the issues raised, the most contentious has been the Islamic concept of abrogation, a legal doctrine that is associated with a concept known as progressive revelation. Authority for progressive revelation comes from the Qur'an and was revealed in stages starting in the Middle Meccan period with Verse 17:106:

*It is a Qur'an which We have divided into parts from time to time, in order that though mightest recite it to men at intervals: We have **Revealed it by stages.***<sup>2317</sup> (Qur'an 17:106)

2317. [Qur'an Commentator Yusuf Ali] The marvel is that these parts, revealed at different times and in different circumstances, should fit together so closely and consistently as they do. **All revelation is progressive.** The previous revelations were also progressive. Each of them marked a stage in the world's spiritual history. Man's mind does not take in more than his spiritual state will have prepared him for. Allah's revelation comes as a light to illuminate our difficulties and show us the way in actual situations that arise. (Emphasis added)

So when Sayyid Qutb said that "Allah Most High imparted [the Qur'an] to them in a gradual manner, to be read at intervals,"<sup>471</sup> he accurately reflected the message of Verse 17:106. In the Late Meccan period, the concept of 'staged revelation' expanded to take on a replacement quality that included the ability to substitute one revelation with that of another:

*When We substitute one revelation<sup>2140</sup> for another - and Allah knows best what He reveals in stages - They say, "Thou art but a forger": But most of them understand not.* (Qur'an 16:101)

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<sup>471</sup> Sayyid Qutb, 28.

2140. [Qur'an Commentator Yusuf Ali] See 2:106, and n. 107. The doctrine of *progressive revelation* from age to age and time to time does not mean that Allah's fundamental Law changes. It is not fair to charge a Prophet of Allah with forgery because the Message, as revealed to him, is in a different form from that revealed before, when the core of the Truth is the same, for it comes from Allah. (Emphasis added)

As Yusuf Ali's commentaries on both verses indicate, 'revelation in stages' is understood in terms of progressive revelation. As important, Yusuf Ali explains that substitution is a function of the relevant stage of revelation and does not reflect a change in the universal message. Qutb reflects this understanding when arguing that a series of milestones must first be reached before the evolved Muslim community is able to take on Islam's end-state requirements calling for *jihad*. With the advent of the Medinan period, major changes took place in the Muslim community that substantially realigned it so that it conforms with the final stage of revelation that explicitly states that substitution of one verse with another includes the outright abrogation of earlier verses by later ones:

*None of Our revelations do we abrogate or cause to be forgotten, but we substitute something better or similar; knowest thou not that Allah hath power over all things?* (Qur'an 2:106)

While the doctrine of abrogation was introduced in the thesis to demonstrate that it procedurally favors "extremist" arguments on the requirements of *jihad*, recognition of the underlying doctrine of progressive revelation is important in its own right for a second reason: progressive revelation underpins the operational architecture that drives "extremist" ideology. Failure to understand progressive revelation's influence represents a failure to appreciate how "extremist" ideology grounds itself in Islamic doctrine.

**Incorporated into Milestones.** Sayyid Qutb's entire milestone architecture is premised on the progressive nature of Quranic revelation. From *Milestones*, Qutb stated:

- The milestones will necessarily be determined by the light of the first source of this faith -- the Holy Qur'an -- and from its basic teachings, and from the concept which it created in the minds of the first group of Muslims, those whom Allah raised to fulfill His will, those who once changed the course of human history in the direction ordained by Allah.<sup>472</sup>
- Indeed, this Qur'an does not open its treasures except to him who accepts it with this spirit: the spirit of knowing with the intention of acting upon it. It did not come to be a book of intellectual content, or a book of literature, or to be considered as a book of stories or history, although it has all these facets. It came to become a way of life, a way dedicated to Allah. Thus, Allah Most High imparted it to them *in a gradual manner*, to be *read at intervals*.<sup>473</sup> (Emphasis added)
- This is the manner in which the first Muslim group was formed which eventually developed into the first Muslim community. This is the only way in which any Muslim group is started and a Muslim community comes into being.<sup>474</sup>

One cannot appreciate *Milestones* if one does not understand its nexus to the Qur'an as revealed to the first generation of Muslims. In *Milestones*, Sayyid Qutb established the operational model that serves as the template for the Muslim Brotherhood, Egyptian Islamic *Jihad*, al-Qaeda, and most other Islamic "extremist" groups. A key strength of Qutb's model is the fidelity by which it maps to the period of Quranic revelation through the mechanism of progressive revelation. Progressive revelation methodology provides a central unifying theme. Recognizing the theme will clarify one's understanding of the threat model.

This Appendix will explain how "extremists" ideology incorporates core Islamic doctrine into the threat profile through progressive revelation. In so doing, an independent basis for making abrogation and progressive revelation critical elements of threat ideology will be established. From the perspective of the doctrinal template,

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<sup>472</sup> Sayyid Qutb, *Milestones*, Salimiah, (Kuwait: International Islamic Federation of Student Organizations. 1978 [written 1966]), 17, 18.

<sup>473</sup> Sayyid Qutb, 28.

<sup>474</sup> Sayyid Qutb, 146.

because progressive revelation and abrogation can be associated with the threat doctrine, their inclusion in the IPB process should be mandatory.

**Milestones as Revealed to the First Generation.** Sayyid Qutb's milestones are pegged to the periods of Quranic revelation understood in terms of progressive revelation. Qutb associates progressive revelation with the establishment of the first generation of Muslims:

Through this particular quality of Islam, the first Muslim community came into existence, and in the future, whenever a Muslim community is to be created in the world, it can be created only by this method and in relation to this character.<sup>475</sup>

For Qutb, the first generation was formed over a period of years according to a divine plan that was time phased and pegged to the Community's capacity fulfill the requirements of a particular stage of revelation:

The Qur'an did not come down at once but took thirteen years to construct and strengthen the structure of faith. Had Allah wanted, He would have revealed the entire Qur'an a once and then left the Companions to learn it for a period of approximately thirteen years so that the Believers would master the 'Islamic theory'. But Allah Most High did not choose this method; He wanted something else. He wanted to lay the foundations of a community, a movement and a belief simultaneously He wanted the community and the movement to be founded on the belief, while with the dynamic progress of the community the faith also grew. He wanted faith to grow with the progress of the community, while the practical life of the community was at the same time a mirror of faith.<sup>476</sup>

The Qur'an not only revealed the requirements of faith but also the precise methodology for their implementation. As Qutb reasoned, if a divine methodology was good enough for the best generation, it is good enough for any future community that inclines toward Islam. From *Milestones*:

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<sup>475</sup> Sayyid Qutb, 68.

<sup>476</sup> Sayyid Qutb, 67, 68.

We cannot receive the Divine guidance or live according to it unless we adopt the Divinely ordained method, the method which Allah intended for reforming human thought and practice.<sup>477</sup>

**Formation of the Vanguard – the Muslim Brotherhood.** Just as Muhammad formed his cadre of “Companions,” Qutb called for the formation of an elite vanguard trained to read the stages of revelation from the period of the Companions and map them to the current situation regarding the presently existing Muslim community. Qutb stated:

It is necessary that this vanguard should know the landmarks and the milestones of the road toward this goal so that they may recognize the starting place, the nature, the responsibilities and the ultimate purpose of this long journey. Not only this, but they ought to be aware of their position vis-à-vis this Jahiliyyah, which has struck its stakes throughout the earth: when to cooperate with others and when to separate from them ...<sup>478</sup>

The community is assessed according to which milestone in the period of revelation it currently operates based on comparisons to the first generation. Because certain operational requirements are associated with later stages of revelation, reading the milestones includes a disciplined approach to ensure that capabilities retain their close association with the respective period of revelation to which it is associated. As *Milestones* explains, there is no point to providing a resource that the community lacks the capacity to put in motion while there is great risk to operationalizing a capability prematurely:

The second aspect of the religion is that it is a practical movement which *progresses stage by stage*, and at every stage it provides resources according to the practical needs of the situation and prepares the ground for the next one. It does not face practical problems with abstract theories, *nor does it confront various stages with unchangeable means*. Those who talk about Jihād in Islam and quote Qur’anic verses do not take into account this aspect, *nor do they understand the nature of the various stages through which the movement develops, or the relationship or the verses revealed at various occasions with*

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<sup>477</sup> Sayyid Qutb, 71, 72.

<sup>478</sup> Sayyid Qutb, 17.

*each stage.* Thus, when they speak about Jihaad, they speak clumsily and mix up the various stages, distorting the whole concept of Jihaad and deriving from the Qur’anic verses *final principles and generalities for which there is no justification. This is because they regard every verse of the Qur’an as if it were the final principle of this religion.*<sup>479</sup> (Emphasis added)

While resorting to *jihad* prematurely can cause any number of problems inside the “extremist” community, Qutb makes it clear that once the *Ummah* reaches the final stage, it must take power. For many in the “extremist” community, the debate is not whether *jihad* means holy war but rather whether the *Ummah* has reached a stage of development where it can successfully undertake *jihad* and, if so, whether that is the optimal path to take given the options available. It is on the issue of the proper reading of the milestones that various groups like al-Qaeda and the Muslim Brotherhood quarrel. In this, the questions are ones of timing and capability.

Thus, wherever an Islamic community exists which is a concrete example of the Divinely ordained system life, *it has an Allah-given right to step forward and take control of the political authority, so that in may establish the Divine system on earth*, while it leaves the matter of belief to individuals conscience. *When Allah restrained Muslims from Jihaad for a certain period, it was a question of strategy rather than of principle*; this was a matter pertaining to the requirements of the movement and not to the belief. *Only in the light of this explanation can we understand those verses of the Holy Qur’an which are concerned with the various stages of this movement.* In reading these verses, we should always keep in mind that one of *their meanings is related to the particular stages of the development of Islam*, while there is another general meaning which is related to the unchangeable and eternal message of Islam.<sup>480</sup> (Emphasis added)

The Qur’an provides the operational model that Islamic organizations are to pattern themselves after. To understand Islamic “extremists,” therefore, one must first master the doctrine of progressive revelation as Qutb explained it. This is why analyzing “extremists” organizations without reference to the Qur’an is like trying to make sense of an encryption without reference to its key. When following this methodology, a

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<sup>479</sup> Sayyid Qutb, 99.

<sup>480</sup> Sayyid Qutb, 139, 140.

comprehensible pattern emerges that identifies “extremist” expectations and objectives that can be templated as indicators able to provide predictive information.

**Milestones Applied: From Zawahiri to Siddiqi.** The milestones model has taken hold in the “extremist” community. When the number two man of al-Qaeda, former leader of the Egyptian Islamic *Jihad* and onetime member of the Muslim Brotherhood, Ayman al-Zawahiri counseled Abu Musab al-Zarqawi for using excessive brutality in Iraq, his concern was not that Zarqawi’s tactics were wrong *per se* but rather that such tactics were beyond the Muslim community’s current stage of development and hence needed to be suspended until the community advanced to the stage where such activity becomes a community standard. In his Letter to al-Zarqawi, dated 9 July 2005, al-Zawahiri said:

Therefore, the mujahed movement must avoid any action that the masses do not understand or approve, if there is no contravention of Sharia in such avoidance, and as long as there other options to resort to, meaning we must not throw the masses -- scant in knowledge -- into the sea before we teach them to swim, relying for guidance on the saying of the Prophet to Umar bin al-Khattab lest the people should say that Muhammad used to kill his Companions.<sup>481</sup>

Progressive revelation underpins other entities as well. Looking to craft a program to bring Islamic rule to America, Shamim A. Siddiqi wrote *Methodology of Dawah Ilallah in American Perspective*. Written in 1989, Siddiqi aligned his plan with Qutb’s operationalization of progressive revelation as explained in *Milestones*. From Siddiqi:

This was the culminating point of *Dawah Ilallah*. The struggle of a *Da’ee* must continue up to that stage. This will be possible only when the *entire process* and the *milestones of different stages of Dawah* are clearly understood and kept in the forefront. The policies

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<sup>481</sup> “Complete Text of Al-Zawahiri 9 July 2005 Letter to Al Zarqawi,” FBIS Document ID EUP20051012374001, accessed on DNI Open Source, 12 October 2005. Cited hereafter as Zawahiri Letter.

to be evolved, the program to be chalked out and the efforts to be sustained, all should lead to the same goal. It will create cohesiveness in the Islamic Movement and *one stage will lead to the next stage* automatically.<sup>482</sup>

Allowing for an émigré's understanding of English, Siddiqi explained that new American converts to Islam should be brought into the community at a stage of revelation that reflects the non-confrontational Early Meccan period of Quranic revelation.

Following the model, Siddiqi argued against presenting a view of Islam that prospective converts would be unprepared to cope with given their early progression through the stages. Given Islam's infancy status in America, Siddiqi observed that even among those who were converting new members to Islam, many had yet to progress far enough to grasp the full transformational aspects of Islam. On converting American converts to Islam, Siddiqi said :

Some rituals of religion and traditions of the Muslim Community are explained. A short account of the Prophet's (PBUH) life is presented, without the revolutionary aspect. When Islam is acceptable to the new entrants in this concocted and abbreviated form, the ceremony of Shahadah is performed with great reverence. A non-Muslim thus becomes a Muslim, obedient to Allah (SWT) alone. The revolutionary aspect of Islam is rarely brought before the new converts, as in most of the cases the *Da'ee* himself is not conversant with it.<sup>483</sup>

Advocates like Siddiqi have succeeded in maintaining discipline when presenting Islam in its progressive stages to the non-Muslim community. This success extends to the treatment Islam is given in introductory survey courses at American colleges and universities. For example, in keeping with the *Milestones* requirement to bring a community in at the early stages of revelation and rely on a vanguard to transition the membership through the milestones, a popular college survey text titled *Approaching the*

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<sup>482</sup> Shamim A. Siddiqi, *Methodology of Dawah Ilallah in American Perspective*, (Brooklyn: The Forum for Islamic Works, 1989), 50.

<sup>483</sup> Siddiqi, 71.

*Qur'an*, translated by Michael Sells, presents an image of Islam to students that focuses exclusively on “a careful selection of the earliest ‘suras’ (revelations)”<sup>484</sup> that excludes what Siddiqi refers to as the more “revolutionary aspects” of the faith. In keeping with Siddiqi’s 1989 requirement, the 1999 course-book provides the “concocted and abbreviated form” of Islam that withholds the revolutionary aspects of faith for a later time.<sup>485</sup>

**In the Slipstream of Belief.** Abrogation is a legal doctrine that arises out of -- and is the consequence of -- the Islamic concept of progressive revelation. These concepts are grounded in the Qur’an. The digression into “extremist” ideology was undertaken to demonstrate that progressive revelation and abrogation have real presence in the Islamic community that “extremists” rely on to establish their *bona fides* as genuine Islamic movements. The inability to accept Islamic concepts like abrogation can have the effect of shifting one’s glance away from the slipstream of belief that binds the Islamic community together. The effect of abrogation in Islamic law is that it favors later Quranic verses at the expense of earlier ones where conflict exists between the two. As an element of progressive revelation, abrogation is also an element of the “revelation in stages” orientation to the Qur’an that underpins “extremist” ideology. Hence, rejecting abrogation because it conflicts with Judeo-Christian concepts of revelation comes at a premium because it shuts the mind off from understanding a key conceptual driver of the

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<sup>484</sup> Michael Anthony Sells, *Approaching the Qur’an*, (New York: Reed Business Information, 1999), reviewed by *Library Journal* in Amazon website, URL: < [http://www.amazon.com/Approaching-Quran-Michael-Anthony-Sells/dp/1883991692/sr=1-/qid=1160587436/ref=sr\\_1\\_1/102-3173623-1513723?ie=UTF8&s=books](http://www.amazon.com/Approaching-Quran-Michael-Anthony-Sells/dp/1883991692/sr=1-/qid=1160587436/ref=sr_1_1/102-3173623-1513723?ie=UTF8&s=books) > accessed 15 October 2006.

<sup>485</sup> Siddiqi, 71.

enemy in the WOT. Because abrogation locks the “extremist” perspective in place procedurally, its effects must be addressed. Cast in the language of *Milestones*, because abrogation and progressive revelation are expressed elements of the enemy’s published doctrine, its inclusion in the threat development phase of the IPB process should be mandatory.

## APPENDIX D

### THE CALIPHATE EXPLAINS VERSE 5:51 TO THE *UMMAH*

When discussing issues like interfaith outreach, Current Approach advocates typically provide superficial explanations that avoid direct comparison to the doctrinal realities when reconciling “moderate” ideations with the facts of Islamic law. Among the last of fatwas calling for *jihad* by the Caliphate, the *Aljihad*<sup>486</sup> of 1313 A.H. (1915 A.D.) explained the limits on friendship between Muslims and People of the Book (Jews and Christians). The seat of the Caliphate was Istanbul. While the timeline for the fatwa lines up with the Armenian genocide,<sup>487</sup> the fatwa is generally understood to have failed for its primary purpose – to generate spontaneous uprisings against British and French colonials during World War I. The Caliphate is the ultimate legal authority in *Sunni* Islam, is presumed to be competent, and is empowered to render binding legal judgments that have the authority to compel. With this understanding, from the 1915 Fatwa, the Caliphate explains the proscription against taking Jews and Christians for friends by reference to Qur’an Verse 5:51:

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<sup>486</sup> National Society of Defense – The Seat of the Caliphate, *A Universal Proclamation to All the People of Islam*, The Seat of the Caliphate: The Ottoman Empire: Muta’at al Hairayet, 1313/1915, trans. American Agency and Consulate, Cairo, in U.S. State Department document 867.4016/57, 10 March 1915, 1. Cited hereafter as 1915 Fatwa.

<sup>487</sup> 1915 Fatwa, 1.

Yes, beware of what shall overtake you, for he who believes in Allah and the last day neither the mind nor the sacred law nor the precious Koran permits him to be in any way whatever given over in subjection to the enemies of Allah and His Apostle *or a friend of them or conforming to their commands*. And it is easy to judge that one who is in this condition is weak in faith in spite of his prayers and his fasting. Yes, and he who is in the condition is not allowed to call himself a believer if we regard the meaning of the saying of the Most High: (Emphasis added)

- *(You shall not find a people who believe in Allah and the last day who spare from the service of Allah and of His Apostle even their fathers and their children and their brothers or their relatives. They have written in their hearts the faith and they have themselves by a Spirit from Him. And He causes them to enter into a paradise from under which flow rivers eternal, and in it Allah is gracious to them, and the host of Allah is gracious to them, and the host of Allah they are who shall prosper.)*

And we see that you have understood from this precious verse the judgment of those who make friendships with the infidels. And you have understood who are the party of Allah and who are those who it is expected will be in this world and in the last day the prosperous one, it is not possible that we, when we read this verse, should not be sorrowful and pity the condition of those who make friendships with infidels who trust in them.

These will say, “We do not love the infidels and do not incline toward them.” But we say to them, “If we accept that as it appears what will you say when you are asked why you continue under the rule of these infidels and consenting to their governments.” Would that I knew what excuse will avail you in the last breath better than His who knows the unseen world and the Testimony. Believe that there is no excuse for you that will heal the breast or will be a cause for escape in the day of dread. If there is in your heart a grain of faith and if you are in any doubt in regard to this, hear the word of the Most High.

- *(O you have believed do not take the Jews and the Christians as friends. They are friends to one another and he of you who becomes a friend to them is of them and Allah does not guide the people of oppressors.)*

And the saying of the Most High,

- *(O true believers, take not such of those to whom the Scriptures were delivered before you, or of the infidels, for your friends, who make laughing stock and a jest of your religion, but fear Allah if ye be true believers).*

O brothers have you considered carefully these precious verses? Look and meditate, you will find them as if they were sent down in you by inspiration. ***You will find that you are forbidden to have friendship with the Jews and the Christians***, you will find that you are denied to have social intercourse with those who deride your religion so that Allah Most High has said that he who makes friends of the Jews and the Christian, let him become of them, and there is no doubt that the command and the prohibition in the verse points to this duty, as the saying of Allah Most High guides to it:

- *(And if they believed in Allah and the Prophet and in what has been sent down to him they would not have made friends of them, but many of them are impious.)*

If we carefully consider this verse how can we assent to the faith of those who do not desire what constitutes a part of the trust, the withdrawal from the friendship of the infidels and the lordship of the enemies, and do not strive for the release from their hands and do not arise to drive them out from their native lands, even if we hesitate to say that they are not believers without doubt we may not hesitate to say that they are impious, and near to infidelity, **for the Most High has clearly named them impious**. O brothers, think and see and deliver yourselves from this difficult time while the bow of hope is still:

- *(O you who believe, do not make friends of your fathers and brothers if they have sought the friendship of infidelity against faith, and whoever of you makes friends of them, they are oppressors.)*

See, O brothers, the strictness of the prohibition in this verse which you must believe from your whole heart. And if you do not melt with dread before the strictness of it, and if you do not give the importance that's due to its contents, then know that your hearts over which the ideas of the infidels have increased in influence have become steeped by that in hardness which has no end. And if there is doubt lest the Creator of all creatures and the Ruler of the day of retribution should apportion to you that you are unjust if you remain in this condition. O brothers, seize the opportunity and strive to deliver yourselves before it pass, and read the following verses with all carefulness and consideration:

- *(They who take the infidels as friends, rather than the believers, do they desire from them strength? All strength belongs unto Allah.)*

O you who believe, do not take the infidels as friends rather than believers. Do you wish that Allah should place over you a revealed ruler? It may be that your perseverance in the friendship of the infidels, and your slowness in driving them out of the land of Islam grown out of your fear of the passing away of the repose and pleasure which you falsely think are found in your country, or the glory and honor which you imagine for yourselves in your native lands, but be perfectly assured this your condition is in truth shame and disgrace and that is has no other meaning than delight in captivity and submission to servitude, for the glory belongs to Allah and to the party of Allah. And in any case, you must know truly that your sitting down in this condition is greatly abhorred of God the Most High. And if you shall continue ensnared in the meshes (ukn) of delusion and dazzled by the violence of cowardice, then know that there is before you nothing else but that the word of punishment should be verified against you by the Lord of Lords and that the afflictions of torture will begin to be poured upon your heads, and that this outpouring will increase day by day. And it will in a gradually increasing measure and you are not conscious of it. Beware lest you be of those in whom carelessness has thrown a veil over their eyes and their ears, and they do not see and they do not hear. Allah, Allah is in yourselves! Do not be confirming by your works and your negligence the word of the Most High:

- *(Allah has decreed a dullness upon their hearts and upon their hearing and upon their sight, and there is for them great torture.)*

And we will conclude our discourse by citing the following verses:

- *(Let not the believers take the infidels as friends rather than the believers, and he who does that is not of Allah in anything, on the contrary you should abstain from them completely, and Allah himself warn you, and to Allah belongs the victory.).*

Continue to look at the strictness of the prohibition in this honored verse, and remember that in ***it the Most High has clearly expounded that he who makes friends of the infidel is not of Allah in anything***. Now go your way thinking, and if there be in your heart the weight of a grain of faith (and it absolutely exists) *no doubt that there will open before you a wide road to the Holy War*. And your conscience and your faith will reveal to you the obligation to the Holy War, and call you to begin the work. And if you desire to be established in your faith, and not to be driven out from the assembly of the Mohammedan nation, then answer this call immediately, and fight in the path of Allah with your substance and with yourselves, and know that there is not possibility of deliverance today or tomorrow or after that from the divine warning, which refuses all exception in His Word: *(You must abstain from them completely.)*<sup>488</sup>

This rhetoric could easily have come from President Ahmadinejad, the late Zarqawi, bin Laden, Hamas or from any number of *jihadi* networks. As intolerant as it sounds, it is difficult to show that this language violates core doctrines of Islam in light of the fact that it tracks with Islamic law and was directly promulgated from the Seat of the Caliphate.

From the prohibition against friendship with Jews and Christians, three points emerge: first, as the Qur'an citations indicate, the Caliph's argument is firmly grounded in Islamic law and appears to say exactly what the Caliphate asserts -- that Allah established a "strict prohibition" against associating with non-believers. Second, for the reasons just stated, the ruling does not conflict with Islamic law in terms of whether the Qur'an can be genuinely interpreted as the Caliphate did and that such prohibitions can be made. Third, that the Caliphate can and did render such a ruling. While historians can

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<sup>488</sup> 1915 Fatwa, 11-16.

argue the fatwa's failure from a political perspective, there are no serious arguments that the fatwa was improper, that it was improperly executed or that it lacked proper authority.

## APPENDIX F

### THE LESSER & GREATER *JIHAD*: AN EXPLANATION

The “greater *jihad*” is understood in Islam as “spiritual warfare against the lower self (*nafs*).”<sup>489</sup> Owing to the absence of support from the Qur’an and strong hadith, the greater *jihad* lacks a firm basis in the fixed inner sphere of Islamic law. In Islamic legal circles, there is controversy on the status of the greater *jihad* and hence the concept can make no claims to consensus. Lacking a Quranic basis, support from strong hadith, or even some measure of consensus, in terms of authority, the greater *jihad* does not compare favorably to the lesser. These shortcomings have a downward affect on the greater *jihad*’s status in Islamic law. Yet, upwards of 90 percent of the hits from a Google™ search on the term “*jihad*” emphasize the greater, to the exclusion -- and often outright rejection -- of the lesser. This would indicate that *jihad*’s popular understanding in the West is at variance with the term’s doctrinal understanding in a worldview where the legal definition is known to control the term’s ultimate meaning. Beyond just the popular, however, most decisionmakers and analysts also seem to prefer the denatured application of the term to that of its first principles definition when developing enemy and friendly COAs.

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<sup>489</sup> Ahmad ibn Naqib al-Misri, ‘Umdat al-Salik (*Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*), rev. ed. trans. Nuh Ha Mim Keller (Beltsville: Amana Publications, 1994), Book O “Justice,” at § o9.0 “*Jihad*.”

Given the lack of direct support, what is the legal status of the greater *jihad*? In an article published before 11 September 2001 in *Nidaa'ul Islaam* titled “Greater and ‘Lesser’ *Jihad*: Refutation of a Common Misconception”<sup>490</sup> (hereafter “Refutation”), a critical analysis of the “greater and lesser *jihad*” was undertaken to explain the concept to its Muslim readership. Because the Refutation did a credible job of stating the case succinctly, this paper will follow its reasoning. Those interested in more authoritative treatments of the topic can also look to noted hadith authorities like al-Bani, Ibn Hajr, and Ibn Taymiya for more detailed treatment on this topic.<sup>491</sup>

The discussion begins by stipulating to what is agreed: that even those most favorably disposed to the concept of the “lesser and greater *jihad*” concede that, if they qualify as hadith at all, at best they only rate as the weakest form of recognized hadith (*da'if*). The importance of this stipulation is that, as weak hadith, greater *jihad* concepts lack the legal strength and authority to challenge doctrines of *jihad* directly grounded in the Qur'an, authenticated primary hadith (the *Sahih Sittah*) and scholarly consensus. As the term implies, *da'if* hadith is the weakest acceptable form of hadith and is defined as “any hadith with a chain of transmission containing a narrator whose memory was poor, one who was not trustworthy, not identified by name, or for other reasons.”<sup>492</sup> Given the

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<sup>490</sup> Abu Fadl, “Greater and ‘Lesser’ *Jihad*: Refutation of a Common Misconception,” (trans. Khalil Fadl), URL: < [http://iisca.org/knowledge/jihad/greater\\_and\\_lesser.htm](http://iisca.org/knowledge/jihad/greater_and_lesser.htm)>, accessed 27 February 2002, from, “Greater and ‘Lesser’ *Jihad*: Refutation of a Common Misconception,” *Nidaa'ul Islaam*, Issue 26, Volume VI, Dhul-Hijjah & Muharram 1419/1420, April & May 1999.

<sup>491</sup> For details see Ibn Hajr's *Takhrijul Kashshaf* as annotation on *Zamkhashri's Kashshaf*, 1st ed., vol. 3, (*Daru'l-Turath al-'Arabi*, 1997), 174-5 / *Ibn Taymiyyah, Fatawa*, 2nd ed., vol. 11, (*Riyad*: 1399 AH), 197 / *Al-Bani, Silsilah al-Ahadith al-Da'ifah wa al-Mawdufah*, 1st ed., vol. 5, (*Riyad: Maktabah al-Ma'arif*, 1992), 478-80.

<sup>492</sup> al-Misri, Book W, § w48.0 “Weak Hadiths,” at w48.1: (A:) *Weak (da'if)* is a term for any hadith with a chain of transmission containing a narrator whose memory was poor, one

permissive nature of weak hadith, the distinction between it and false hadith can end up being based on a subjective weighting of the textual evidence. Hence, while “not well authenticated” hadith still qualify as hadith,<sup>493</sup> spreading false hadith is identified as an “Enormity” that puts the hadith in a particularly serious category of crime.<sup>494</sup> Those taking the position that hadith that recount the “lesser and greater *jihad*” are false look to the “Enormities” and find an entire section on “Lying about the Prophet” that clearly states that the narration of false hadith is a form of disbelief (*kufr*) that takes believers beyond the pale of Islam – i.e.; apostasy. As Muhammad explicitly warned:<sup>495</sup>

- (1) *“A lie about me is not the same as a lie about someone else: whoever intentionally lies about me shall take a place for himself in hell.”*
- (2) *“Whoever relates words purportedly from me, thinking it a lie, is a liar.”*<sup>496</sup>

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who was not trustworthy, not identified by name, or for other reasons. But *weak* cannot simply be equated with *false*. Were this the case, mere analysis of the transmitters would be the universal criterion for acceptance or rejection of particular rulings based on hadiths. While scholars do use this measure in upgrading the work of preceding generations of legal authorities, they have not employed it as a simplistic expedient to eliminate every piece of legal information that is connected with a weak hadith, because of various considerations.

<sup>493</sup> al-Misri, Book P “Enormities,” at § p9.5: (n: Having discussed lies and forgeries, we must strictly distinguish them from the hadith category called *not well authenticated* (*da’if*, lit. weak), so-termed because of such factors as having a channel of transmission containing a narrator whose memory was poor, one who was unreliable, unidentified by name, or for other reasons. Such hadiths legally differ from forgeries in the permissibility of ascribing them to the Prophet (Allah bless him and give him peace) and in other ways discussed below at w48 [above].)

<sup>494</sup> al-Misri, Book P “Enormities,” at § p0.0

<sup>495</sup> al-Misri, Book P “Enormities,” at § p9.0: Lying About the Prophet (Allah Bless His and Give Him Peace). p9.1 Some scholars hold that lying about the Prophet (Allah bless him and give him peace) is (*kufr*) that puts one beyond the pale of Islam. There is no doubt that a premeditated lie against Allah and His messenger that declares something which is unlawful to be permissible or something permissible to be unlawful is pure unbelief. The question (A: as to when as to whether it is an enormity rather than an outright unbelief) only concerns lies about other than that.

<sup>496</sup> al-Misri, Book P “Enormities,” at § p9.2.

Reasoning from this law, those hostile to the concept that the “lesser and greater *jihad*” is grounded in hadith can accurately cite to law that clearly states that narrating forged (*mawdu’*) hadith is criminally impermissible.<sup>497</sup> Given the serious nature of such a charge, the strength of the accusation should be measured against the evidentiary rules that establish the merits of the accusation. Hence, the charge that the “lesser and greater *jihad*” is based on false hadith will only be as valid as the evidentiary proof supporting it. The authors of the Refutation seem to be writing to this legal distinction when lining up their argument. To fully appreciate Islamic legal arguments based on the quality of hadith, it is necessary to understand the role that a particular hadith’s chain of transmission -- or *sanad* -- plays in determining the authenticity and weight of the cited hadith.<sup>498</sup> When reading hadith for legal purposes, its “*sanad*,” or chain of transmission, helps to establish its legal authority in ways that are not unlike that of the American legal

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<sup>497</sup> al-Misri, Book P “Enormities,” at § p9.3. It is clear from this that narrating a forged (*mawdu’*) hadith is not permissible.

<sup>498</sup> al-Misri, Book O “Justice,” at ¶ o22.0 “The Judge and the Court,” § o22.1(II) “The types of sunna (A: i.e. hadith) includes:

- (1) hadith (*mutawatir*) related by whole groups of individuals from whole groups, in multiple contiguous channels of transmission leading back to the Prophet himself (Allah bless him and give him peace), such that the sheer number of separate channels at each stage of transmission is too many for it to be possible for all to have conspired to fabricate the hadith (A: ***which is thereby obligatory to believe in, and denial of which is unbelief (kufr)***);
- (2) hadiths (*ahad*) related by fewer than the above mentioned group at once or more stages of transmission, though traced through contiguous successive narrators back to the Prophet (Allah bless him and give him peace). (n: If a hadith is transmitted through just one individual at any point in the history of its transmission, the hadith is termed *singular* (*gharib*). If it is transmitted through just *two* people at any stage of its transmission, it is termed *rare* (*‘aziz*). If its channels of transmission come through only three people at any point in its history, it is termed *well-known* (*mashhur*). These designations do not directly influence the authenticity rating of the hadith, since singular hadith, might be ***rigorously authenticated (sahih)***, ***well authenticated (hasan)*** (N: ***hadiths of both types being obligatory for a Muslim to believe in, though someone who denies them is merely considered corrupt (fasid), not an unbeliever (kafir)***), or ***not well authenticated (da’if)***, depending on the reliability ratings of the narrators and other factors weighed and judged by hadith specialists).

system.<sup>499</sup> For this reason, discussions in Islamic law concerning a hadith's chain of transmission are highly relevant. The Refutation begins its argument by recounting the relevant hadith including an accounting of their transmission by reference to recognized hadith authorities:

It has been said that the opinion of many Muslims regarding *Jihad* is that it is of two sorts, namely, *Jihad Akbar* (greater) and *Jihad Asghar* (lesser). *Jihad Akbar* meaning *Jihad* against the desires and Shaitaan whilst *Jihad Asghar* is against the disbelievers on the battlefield. ... The classification of *Jihad*, is based upon a Hadith which states that at the time the Messenger of Allaah returned home from the field of warfare he said:

*"We have all returned from Jihad Asghar to Jihad Akbar." Some companions asked: "What is Jihad Akbar Rasulullaah?" He replied: "Jihad against the desires."*

That therefore is the proof for the case proposed by many people. (Al-Haafith) Al 'Iraqy in *Takhriju AHadithil Ihya'* states: "The mentioned Hadith is related by Imam Baihaqi with a da'if Sanad (weak chain of narrators) from Jabir" [*Risalah Jihad*, Hasan al-Banna].

Apart from the Hadith related by Imam Baihaqi there is also a Hadith related by Al-Khatib Al-Baghadadi from Jabir, which states:

*The Prophet, at the time he returned from a battle said: 'We have all just returned to the best of places, and you have returned*

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<sup>499</sup> **Authors Note.** By way of analogy, establishing the transmission of a given hadith has its parallel in the American legal system where lawyers are required to “*Shepardize*™” their legal briefs before submitting them to the court to ensure that the case law or statutes that the brief relies on are good law. The authority of a given case comes from two sources: the ruling court’s jurisdiction (federal or state / trial, appellate, or supreme court) and its treatment in subsequent court decisions (favorably cited, distinguished, overruled, etc.). Hence, by way of a loose analogy, when reading a legal brief submitted to an American court, its “sanad” includes the originating court of the cases cited, thus establishing the issuing court’s jurisdictional reach, as well as any attenuation or dilution of the cited case from being distinguished or overruled. In a sense, the American equivalent of relying on *sahih* hadith from Bukhari would be to rely on a recently decided unanimous Supreme Court decision while reliance on weak hadith from lesser authorities, especially those not among the “Six Canonical Collections” (the *Sahih Sittah*), would be akin to citing an aged and heavily distinguished decision from an Arkansas County Court. For example, there is nothing wrong with citing to case law from an Arkansas county court in a case in an Arkansas state court. It becomes a problem, however, when it is used to directly challenge a current Supreme Court decision in a Federal Court. In the American legal system, submitting a legal brief that relies on bad case law or case law that has been overruled is a serious offense, especially if done knowingly. Given that good hadith, regardless of its status, reflects some measure of indirect divine revelation, the idea that Islamic law takes a harsh view of false hadith should not be characterized as irrational and should not come as a surprise. (Emphasis added.)

*from Jihad Asghar (the lesser Jihad) to strive in Jihad Akbar (the greater Jihad). The companions asked: 'What is Jihad Akbar O Messenger of Allaah?' He answered: 'The Jihad of someone against his desires'.*" [Tarikh al Baghdadadi 13/493]

It turns out that this Hadith is weak because within its Sanad there is a narrator by the name of Khalaf bin Muhammad bin Ismail al Khiyam who, according to Al-Hakim: "His Hadiths are unreliable." And Abu Ya'la al Khalili says: "He often adulterates, is very weak and narrates unknown Hadith." [Mashariul 'Ashwaq ila Masuril 'Ushshaq 1/31] Al-Hakim and Ibnu Abi Zur'ah state: "We often write statements from Khalaf bin Muhammad bin Ismail only as an example, and we remove ourselves of responsibility from him." [Mizanul I'tidal 1/662]. And even more doubtful than that, there is within the Sanad of this Hadith a narrator by the name of Yahya bin Al Ula Al Bajili who according to Imam Ahmad is a known Kadhdhaab -liar-, and forger of Hadith. Also, Amru bin Ali, An Nasai and Daruqtuni state: "His Hadith are renounced." Ibnu Adi states: "His Hadith are false." [Refer: Tahdhibut Tahdhib 11/261-262]

Furthermore, besides the two stated weak Hadiths, there is the statement of a Tabi'i (student of the Companions of the Prophet) by the name of Ibrahim bin Abi Ablah to people who had returned from battle, which states:

*"You have returned from Jihad Asghar so is the Jihad Akbar you intend to do Jihad ul qalbi (Jihad of the heart)?"* Refer: Siyaru A'laamin Nubala 6/325]

Daruqtuni states that Ibrahim bin Abi Ablah himself is believable but the chain of transmission is broken. [Siyaru A'laamin Nubala 6/324].

As a result of that, the statement above cannot be attributed to Ibrahim bin Abi Ablah unless the chain of transmission is authentic.

On the basis of the above statements we can conclude by saying, that the evidence used as proof of the basis for establishing that *Jihad* against disbelievers on the battlefield is *Jihad* Asghar and *Jihad* against the desires and Shaitaan is *Jihad* Akbar, are weak if not false Hadith.<sup>500</sup>

As the references above indicate, the Refutation's argument finds support from hadith authorities to the effect that at best the "greater *jihad*" hadith is not only weak but also potentially corrupted. Given the authorities cited, a serious rebuttal of the Refutation

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<sup>500</sup> Abu Fadl. **Also Note:** Among authorities cited in this work, Ahmad is Ahmad ibn Hanbal, founder of the fourth of the four officially recognized schools of Islamic law.

would have to include a showing that the authorities cited are either not recognized, are miscited or are otherwise misrepresented. Having established the weak doctrinal baseline, the Refutation then demonstrates that hadith supporting the lesser and greater *jihad* contradicts rigorously authenticated sacred hadith:

Besides that the stated Daliil (evidence) **are in opposition** to *Sahih* Hadith, such as the ones below:

Hadith narrated by Imam Muslim [Hadith No. 4636] from Abu Hurairah (r.a.a), who said:

*The Prophet was asked: "O Rasulullaah! What deed could be an equivalent of Jihad in the path of Allaah?" He answered: "You do not have the strength to do that deed." The narrator said: They repeated the question twice or thrice. Every time he answered: "You do not have the strength to do it." When the question was asked for the third time, he said: "One who goes out for Jihad is like a person who keeps fasts, stands in prayer (constantly), (obeying) Allah's (behests contained in) the Aayah (of the Qur'an), and does not exhibit any lassitude in fasting and praying until the Mujahid returns from Jihad in the path of Allaah."*

There is also a Hadith narrated by Bukhari [Volume 4, Hadith 44] from Abu Hurairah (r.a.a), who said: A man came to Allah's Messenger (s.a.w) and said,

*"Guide me to such a deed as equals Jihad (in reward)." He replied, "I do not find such a deed." Then he added, "Can you, while the Mujahid has gone for Jihad, enter your mosque to perform Salat without cease and observe Saum without breaking it?" The man said, "But who can do that?"*

Hadith narrated by Al-Hakim with a Sahih Sanad from Muaz bin Anas (r.a.a) who said:

*A woman once came to the Prophet and asked: "O Rasulullaah! My husband has departed for war and usually if he prays I follow him in his Salat and I follow him in all his acts of worship. Because of that inform me of an act which can equal his until he returns." He said to her: "Are you able to stand without sitting, perform Saum without breaking it and Dhikr until your husband returns?" She replied: "I am not strong enough, o Rasulullaah." So he said to her: "By Allaah in whose hand I am, even if you were strong enough it would surely not attain one tenth of your husband's deeds." [Narrated by Hakim in Al Mustadrak 2/73. Sahih Sanad agreed upon by Az Zahabi].*

From the three Hadith above we can clearly state that *Jihad* Fi Sabilillaah (in the path of Allaah) is the highest act, and there is no other act to equal it.<sup>501</sup>

The Refutation accurately states the status of the *Sahih* hadith cited. While not obvious, the Refutation argument is explicitly legal and relies on the fact that hadith supporting the lesser and greater *jihad* 1) oppose other hadith that are 2) rigorously authenticated and sacred. The same section of Islamic law that designates the expression of false hadith as an enormity also identifies ways of detecting false hadith. One such evidentiary proof is when inconsistencies are found between the subject hadith when compared to established language in the Qur'an or rigorously authenticated (*sahih*) hadith.<sup>502</sup> In terms of hadith, citing to Bukhari and Muslim's is as authoritative as it gets and, as noted above, their *sahih* hadith stand for the legal proposition that there is no activity in Islam that equals that form of *jihad* defined as warfare to establish the religion. Hence, the Refutation argument meets threshold standards of proof that reasonably support the claim that the 'lesser and greater *jihad*' is based on false hadith in that "lesser and greater *jihad*" hadith contradict *sahih* hadith on the subject matter in question.

The relative status of hadith supporting the two variants of *jihad* may explain why Islamic law recognizes the "lesser" but not the "greater." But what of those prominent

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<sup>501</sup> Abu Fadl.

<sup>502</sup> al-Misri, Book P "Enormities," at § p9.4: (Ibn Kathir:) As for detecting forged hadiths, there are many signs that enable one to do so, such as internal evidence of forgery in wording of content, including poor grammar, corrupt meaning, the mention of incredible rewards for inconsiderable efforts, ***or inconsistency with what is established in the Koran and rigorously authenticated (sahih) hadith. It is not permissible for anyone to relate such a hadith except by way of condemning it, to warn one of the ignorant public or common people who might be deceived by it.*** There are many types of individuals who forge hadiths, including those with corrupt convictions about basic tenets of Islamic faith, *as well as devotees who believe they are doing good work by making up hadith-like stories that encourage others to do good, avoid bad, or perform meritorious acts, that such stories may be acted upon (al-Bahith al-hathith sharh Ikhtisar 'ulum al-hadith (y61), 78).* (Emphasis added.)

Muslims who were both recognized *Sufi*s leaders who embraced the “greater *jihad*” and yet were also recognized legal authorities who understood the legal requirements of *jihad*? How did they resolve this seeming contradiction? A review of Imam Ghazali, the great Shafi’i legal authority known as the “Proof of Islam” and the “*Sufi* Imam,” may help to shed light on this question.<sup>503</sup> For al-Ghazali and other noted Islamic authorities, there does not appear to have been a contradiction between the two *jihad*s because the struggle for the self was seen as different from *jihad* as warfare to establish the religion and hence was treated differently. A deeply spiritual *Sufi* Muslim, al-Ghazali spent years in seclusion contemplating his own struggle. Yet, as a pre-eminent Shafi’i legal

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<sup>503</sup> al-Misri, Book X “Biographical Note,” at § x127: **(Imam) Ghazali** (a4.4) is Muhammad ibn Muhammad ibn Muhammad ibn Ahmad, Abu Hamid Hujjat al-Islam al-Ghazali al-Tusi, the Shafi’i Imam, Proof of Islam, and *Sufi* adept born in Tabiran, near Tus (just north of present day Mashhad, Iran), in 450/1058. The Imam of his time, nicknamed Shafi’i the Second for his legal virtuosity, he was a brilliant intellectual who first studied jurisprudence at Tus, and then traveled the Islamic world, to Baghdad, Damascus, Jerusalem, Cairo, Alexandria, Mecca, and Medina, taking Sacred Knowledge from its masters, among them the Imam of the Two Sanctuaries Juwaynni, with whom he studied until the Imam’s death, becoming at his hands a scholar in Shafi’i law, logic, tenets of faith, debate, and in the rationalistic doctrines of the philosophical schools of his time, which he was later called upon to refute. When Juwayni died, Ghazali debated the Imams and scholar of Baghdad in the presence of the vizier Nizam al-Mulk, who was so impressed that he appointed him a teaching post at the Nizamiyya Academy in Baghdad, where words of his brilliance spread, and scholars journeyed to hear him.

His worldly success was something of a mixed blessing, and in mid-career, after considerable reflection, he was gripped by an intense fear for his soul and his fate in the afterlife, and he resigned from his post, traveling first to Jerusalem and then to Damascus to purify his heart by following the ways of *Sufism*. In Damascus he lived in seclusion for some ten years, engaged in spiritual struggle and the remembrance of Allah, at the end of which he emerged to produce his masterpiece *Ihya’ ‘ulum al-din* [Giving Life to the Religious Sciences], a classic among the books of the Muslims about internalizing godfearingness (taqwa) in one’s dealing with Allah, illuminating the soul through obedience to Him, and the level of believers’ attainment therein. The work shows how deeply Ghazali personally realized what he wrote about, and his masterly treatment of hundreds of questions dealing with the inner life that no-one had previously discussed or solved is a performance of sustained excellence that shows its author’s well-disciplined legal intellect and profound appreciation of human psychology. He also wrote nearly two hundred other works, on the theory of government, Sacred Law, Koranic exegesis, scholastic theology, and bases of Islamic jurisprudence. He died in Tabiran in 505/1111 (*al-A’lan* (y136), 7.22; *Ihya’ ‘ulum al-din* (y39), 1.330; *al-Munqidh min al-dalal* (y41), 46-50; *al-Shifa* (y116), 2.602; N; and n).

authority, he was also clearly able to distinguish the metaphor of the greater *jihad* from the legal fact of the lesser:

... one must go on *jihad* (i.e., warlike *razzias* or raids) at least once a year...one may use a catapult against them [non-Muslims] when they are in a fortress, even if among them are women and children. One may set fire to them and/or drown them ... If a person of the Ahl al-Kitab [People of The Book – Jews and Christians, typically] is enslaved, his marriage is [automatically] revoked ... One may cut down their trees ... One must destroy their useless books. *Jihadists* may take as booty whatever they decide ... they may steal as much food as they need...<sup>504</sup>

In the above statement, Al-Ghazali was clearly speaking about “warfare to establish the religion;” did not commingle his concepts of *jihad*; and made no reference to the greater *jihad*. As harsh as his statement on *jihad* may seem, it accurately reflects the doctrinal status on the use of catapults (the WMD of its day),<sup>505</sup> the legal status on

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<sup>504</sup> al-Ghazali, 186, 190-91, quoted in *Legacy*, 155.

<sup>505</sup> Al-Sarakhsi, citing Muhammad ibn al-Hasan (*Sharh al-Siyar al-Kabir* 4:1467) as cited in Nasir bin Hamd al-Fahd, “A Treatise on the Legal Status of Using Weapons of Mass Destruction against Infidels.” He said that there was nothing wrong with the Muslims' burning the polytheists' strongholds or flooding them with water; setting up catapults against them; cutting off their water; or putting blood, dung, or poison in their water to befoul it for them. This is because we have been commanded to subdue them and break their strength. All these things are military tactics that will cause their strength to break; they derive from obedience, not disobedience to what has been commanded. Furthermore, all these things damage the enemy, which is a cause for the acquisition of reward. God has said, “*Nor gain they from any enemy, but a righteous deed is thereby written to their account.*” (Qur’an 9:120). One abstains from none of this while there are Muslim prisoners of war or Muslims with a safe-conduct, young or old, men or women, among them, even if we know about it; for there is no way to avoid striking them while still obeying the commandment to subdue the polytheists. What cannot be avoided must be pardoned.

ALSO – Al Sarakhsi, *al-Mabsut*, 10:65 as cited in Nasir bin Hamd al-Fahd. “There is nothing wrong with releasing water into the enemy's city, burning them with fire, or bombarding them with the catapult, even if there are children or Muslim prisoners of war or traders among them.”

ALSO - Al-Shafi'i, *Kitab al-Umm*, 4:257 as cited in Nasir bin Hamd al-Fahd. “If the enemy fortifies himself on a hill, by a stronghold, by entrenchment, or by scattering caltrops, or any kind of fortification, they may be bombarded with catapults, siege engines, fire, scorpions, snakes, and anything hateful to them. The fighters may divert water against them to drown them or so that they become bogged down in mud. All this may be done whether or not there are children, women, and monks with them, because the abode has not become immune by profession of Islam or treaty. Similarly, there is nothing wrong with burning their fruit trees and other trees and devastating their cultivated land and any of their inanimate possessions.”

revocation of marriages,<sup>506</sup> the cutting down of trees (laying waste the land),<sup>507</sup> and booty.<sup>508</sup> Yet, with adherents like al-Ghazali also acknowledging the lesser and greater *jihad*, it is difficult to argue against the concept even as it is reasonably clear that those claiming its falsity are well grounded in their claims. The problem, it seems, arises when weak hadith is used outside its limited scope to challenge sacred law by presuming to supplant it. Perhaps the accusations of false hadith stem not so much from the existence of the hadith *per se* as it does from its inappropriate use. From the towering heights of (the lesser) *jihad* as warfare to establish the religion, the concept of greater *jihad* may be harmless analogy, or, at the very worst, harmless error when used to explain mans' personal spiritual struggle. It becomes an entirely different matter, however, when used to challenge Sacred Islamic Law. As stated, the specific evidentiary proof used to support a claim that hadith supporting lesser and greater *jihad* are false arises when there is "inconsistency with what is established in the Koran and rigorously authenticated (*sahih*) hadith" -- a standard that may have as much to do with the improper use of weak

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<sup>506</sup> al-Misri, Book O "Justice," at § o9.13. When a child or woman is taken captive, they become slaves by the fact of capture, and the woman's previous marriage is immediately annulled. **Note:** This element of Islamic Law on *Jihad* reflects Verse 33:50 of the Qur'an which states: "*Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers, and those whom thy right hand possesses out of the prisoners of war whom Allah has assigned to thee ...*"

<sup>507</sup> al-Misri, Book O "Justice," at § o9.15. It is permissible in *jihad* to cut down the enemy's trees and destroy their dwellings.

<sup>508</sup> al-Misri, Book O "The Spoils of Battle," at §§ o10.0 and o10.2.  
o10.0 A free male Muslim who has reached puberty and is sane is entitled to the spoils of battle to the end of it.

o10.2 As for personal booty, anyone who, despite resistance, kills one of the enemy or effectively incapacitates him, risking his own life thereby, is entitled to whatever he can take from the enemy, meaning as much as he can take away with him in the battle, such as a mount, cloths, weaponry, money, or other.

hadith as it does with its existence *per se*. In other words, it could be that claims of falsity arise as much from how a particular *da'if* hadith is applied as it does with the hadith's actual legal status. When not used to challenge the legal status of *jihad* as warfare to establish the religion, then its use does not challenge statements in the Qur'an or authenticated *sahih* hadith and, therefore, its application does not put it in a false light.

The difference between *jihad* as spiritual metaphor versus *jihad* as war may be the distinction historic authorities like al-Ghazali never had difficulty maintaining. As a pre-eminent *Sufi* mystic, al-Ghazali was comfortable speaking of the spiritual struggle by reference to the "lesser and greater *jihad*." Yet, as his quotation above indicates, he never seems to have confused the metaphor for the legal fact. As weak hadith, the lesser and greater *jihad* was never used to contradict sacred primary texts, presumed correct, and authorities like the *Sufi* al-Ghazali never did. Positioning a metaphor to challenge established law, on the other hand, may push weak hadith into the realm of false hadith as a matter of law. It is possibly this tendency, along with a lack of Quranic support, that leaves the concept of lesser and greater *jihad* with no legal basis.

As important, popular emphasis on the greater *jihad* tends to run in tandem with discussions that characterize *Sufism* as a "version" of Islam that exists somehow outside the constructs of Islamic law and hence outside the Islamic legal requirements regarding *jihad* as warfare to establish the religion. As al-Ghazali's background demonstrates, serious Muslims can be serious *Sufis* and yet find no inherent contradiction between their own personal spiritual struggles and the legal call to *jihad*. Comments from prominent *Sufi* clerics cited in the thesis in the discussion on *jizya* also reflect a lack of any sensed contradiction. In fact, as the *Umdat al-Salik* demonstrates, faithful adherence to -- and

mastery of -- Islamic law is a prerequisite to becoming a *Sufi*<sup>509</sup> while those claiming *Sufi* status outside of Islamic law deserve to be killed.<sup>510</sup> (On this last point, it is worth pointing out the authority the ‘*Umdat al-Salik*’ relied on to state the point of law was al-Ghazali himself.) Establishing *Sufis* as doctrinally mainstream *Sunni* Muslims, the ‘*Umdat al-Salik*’ establishes their *bona fides* among *jihadi* leaders in *jihad*.<sup>511</sup> Hence, not

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<sup>509</sup> al-Misri, Book W, at § w9.3 “*Sufism*.” (Ahmad Zarruq:) ... So there is no *Sufism* except through comprehension of Sacred Islamic law ... “He who practices *Sufism* without learning Sacred Law corrupts his faith, while he who learns Sacred Law without practicing *Sufism* corrupts himself. Only one who combines the two proves true.” (*Iqaz al-himam fi sharh al-Hikam* (y54), 5-6)

ALSO – al-Misri, Book W, at § w9.5 “*Sufism*.” (‘Abd al-Wahhab Sha’rani:) The path of the *Sufis* is built on the Koran and *sunna*, and is based upon living according to the morals of the prophets and purified ones. It may not be blamed unless it violates an explicit statement from the Koran, *sunna*, or scholarly consensus (def: b7), exclusively. ... Whoever carefully examines the branches of knowledge of the Folk of Allah Most High will find that none of them are beyond the pale of the Sacred Law. How should they lie beyond the pale of Sacred Law when it is the law that connects the *Sufis* to Allah at every moment? ...

The Folk unanimously concur that none is fit to teach in the path of Allah Mighty and Majestic save someone with comprehensive mastery of the Sacred Law, who knows it’s explicit and implicit rulings, which of them are of general applicability and which are particular, which supersede others and which are superseded. He must also have a thorough grounding in Arabic, be familiar with its figurative modes and similes, and so forth. So every true *Sufi* is a scholar in Sacred Law, though the reverse is not necessarily true. [Note: These qualifications are similar to those of an Islamic judge (*qadi*)]

<sup>510</sup> al-Misri, Book S, at § s4.6 “The Delusions of Would-Be *Sufis*.” (Ghazali:) When anyone claims there is a state between him and Allah relieving him of the need to obey the Sacred Law such that the prayer, fasting, and so forth are not obligatory for him, or that drinking wine and taking other’s people’s money are permissible for him – as some pretenders to *Sufism*, namely those “above the Sacred Law” (*ibahiyyun*) have claimed – ***there is no doubt the Imam of Islam or his representative is obliged to kill him.*** *Some hold that executing such a person is better in Allah’s sight than killing a hundred unbelievers in the path Allah Most High* (*Hashiya al-Shaykh Ibrahim al-Bajuri* (y5), 2.267). (Emphasis added.)

<sup>511</sup> al-Misri, Book W, at § w9.4 “*Sufism*.” Among the *Sufis* who aided Islam with sword as well as pen, according to B. G. Martin’s *Muslim Brotherhoods Nineteenth Century Africa* (y86), are such men as Naqshbandi sheikh Shamil Daghestani, who fought a prolonged war against the Russians in the Caucasus in the nineteenth century; Sayyid Muhammad ‘Abdullah al-Somali, a sheikh of the Salihyya order who lead Muslims against the British and Italians in Somalia from 1899 to 1920; the Qadiri sheikh ‘Uthman ibn Fodi, who led *jihad* in Northern Nigeria from 1804 to 1808 to establish Islamic rule; the Qadirir sheikh ‘Abd al-Qadir al-Jaza’iri, who led the Algerians against the French from 1832 to 1847; the Darqawi faqir al-Hajj Muhammad al-Ahrash, who fought the French in Egypt in 1799; the Tijani sheikh al-Hajj ‘Umar Tal, who led Islamic *jihad* in Guinea, Senegal, and Mali from 1852 to 1864; and the Qadiri sheikh

only do *Sufis* recognize the legal status of *jihad* as warfare to establish the religion, but as legal scholars they cannot be relied on to provide support for a new non-warfare definition of *jihad* capable of generating legal recognition. On prominent contemporary *Sufi-jihadis*, the most infamous example is the *Sufi* Naqshbandi leader, Shamil Basayev, architect of the September 2004 massacre of 331 school children in Beslan, Russia.<sup>512</sup>

Decisionmakers and analysts should demystify their understanding of *Sufism* before looking to that movement for doctrinal silver bullets. Current Approach advocates who cast *Sufi* Muslims as somehow doctrinally different from “mainstream” or “traditional” *Sunni* Muslims should be required to demonstrate their relevant “otherness” in ways that both address and overcome their status in Islamic law.

When assessing the relative merits of the greater *jihad*, it should be remembered that the spiritual struggle has no real standing in Islamic law. Islam is not just a religion but a way of life. As a way of life for all Muslims at both the individual and community level, *Sufis* are bound by Islamic law. Islamic law understands *jihad* exclusively as warfare to establish the religion. In the doctrinal trenches of *jihad*, while Current Approach advocates and the national security community consistently message a doctrinal notions of Islam and *jihad*, the “extremists” will always be able to counter with the requirements of *jihad* that are grounded in Sacred Islamic law emanating directly from Allah and His Prophet.

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Ma' al-'Aynayn al-Qalqami, who helped marshal Muslim resistance to the French in northern Mauritania and southern Morocco from 1905 to 1909.

<sup>512</sup> Andrew Bostom, “*Sufi Jihad*,” 15 May 2005, URL: < [http://www.americanthinker.com/articles.php?article\\_id=4495&search=Sufi](http://www.americanthinker.com/articles.php?article_id=4495&search=Sufi) >, accessed 15 May 2005.

## APPENDIX G

### REAL ISLAMIC RULINGS ON WAR

Two documents will be reviewed that qualify as real Islamic rulings on war that point to how reasonably contemporary Islamic authorities interpreted Islamic requirements of *jihad*. Both *A Universal Proclamation to All the People of Islam*<sup>513</sup> (hereafter the “1915 Fatwa”) and *Quranic Concept of War*<sup>514</sup> reflect modern treatments by Muslim authorities who applied the law of *jihad* to their military and foreign policies. In reviewing both works, initial reaction may be to respond to them with the same conditioned response that uncritically brands the “*jihadis*” as extreme. Moving beyond the desire to reject them out of hand, the reader is challenged to map the statements coming from these rulings to the doctrinal positions of Islam as discussed in the thesis with an eye towards assessing degrees of variance or inconsistency from that doctrine. The relevant comparison will be to Current Approach arguments to determine whether they are even capable of generating enough authority to sustain *bona fide* competing theories on Islamic rulings capable of countering actual doctrine.

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<sup>513</sup> National Society of Defense – The Seat of the Caliphate, *A Universal Proclamation to All the People of Islam*, The Seat of the Caliphate: The Ottoman Empire: Muta’at al Hairayet, 1313/1915, trans. American Agency and Consulate, Cairo, in U.S. State Department document 867.4016/57, 10 March 1915, 1. Cited hereafter as 1915 Fatwa.

<sup>514</sup> *The Quranic Concept of War* by Brigadier S.K. Malik, (Lahore, Pakistan: Wajid Al’s Ltd., 1979. (with a forward by General Zia-ul-Haq) (This paper relies on the 1986 First Indian Reprint). Cited hereafter as S.K. Malik.

## FROM THE SEAT OF THE CALIPHATE: THE 1915 FATWA

### A Universal Proclamation to All the People of Islam (The Aljihad of 1313)<sup>515</sup>

The story behind the 1915 Fatwa is interesting and implicates both the Ottoman and German Empires. Events concerning the 1915 Fatwa were documented by Henry Morgenthau, then U.S. Ambassador to the Ottoman Empire whose memoirs, *Ambassador Morgenthau's Story*,<sup>516</sup> recount his first person account of events that lead the Ottoman Empire's entry into World War I as well as to its systematic extermination of the Armenian nation.<sup>517</sup>

**Ambassador Morgenthau's Account.** Entering World War I on the side of the Triple Alliance with the German and Austro-Hungarian Empires, the Ottoman Sultan's 13 November 1914 declaration of war was also understood to be a call for *Jihad*, or "Holy War,"<sup>518</sup> against the infidel. The declaration was followed by a proclamation from the *Sheik-ul-Islam* calling on all Muslims to massacre their Christian oppressors.<sup>519</sup> Because of the substantial German influence in this affair, certain documents are often

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<sup>515</sup> Special thanks to Dr. Andrew Bostom for making this document available from his private research for his book *The Legacy of Jihad: Islamic Holy War and the Fate of Non-Muslims*.

<sup>516</sup> Henry Morgenthau, *Ambassador Morgenthau's Story*, (Detroit: Wayne State University, 2003 [originally published New York: Doubleday, Page & Company, 1918]).

<sup>517</sup> Morgenthau, 214.

<sup>518</sup> The 1915 Fatwa uses the term "holy war" 24 times in 15 pages. When cited from the 1915 Fatwa in this Appendix, the term "holy war" will be in bold and italics to demonstrate how ubiquitously that term is used to refer to Islamic notions of jihad.

<sup>519</sup> Morgenthau, 112.

referred to as the “Berlin Fatwa” as they came from Berlin and their intent was to incite Islamic uprisings in British and French colonial holdings in order to divert their resources from the European theatre. For the Germans, the “Berlin Fatwa” was a failure. As Morgenthau explained:

Mohammedans could not understand why they should prosecute a *holy war* against Christians and at the same time have Christian nations, such as Germany and Austria, as their partners. This association made the whole proposition ridiculous. The Koran, it is true, commands the slaughter of Christians, but that sacred volume makes no exception in favour of the Germans and, in the mind of the fanatical Mohammedan, a German *rayah* is as much Christian dirt as an Englishman or a Frenchman, and his massacre is just as meritorious an act.<sup>520</sup> (Emphasis added)

While the Fatwa failed to achieve German objectives, it did meet the ancillary objective of the Ottoman leadership to eliminate the Christian populations inside the Ottoman Empire. As Morgenthau observed:

Only one definite result did the Kaiser accomplish by spreading this inciting literature. It aroused in the Mohammedan soul all that intense animosity toward the Christian which is the fundamental fact in his strange emotional nature, and thus started passions aflame that afterward spent themselves in the massacres of the Armenians and other subject peoples.<sup>521</sup>

The Sultan’s proclamation was brief, written in Turkish, took the traditional Ottoman form,<sup>522</sup> and dealt with the proposed Holy War in a general way.<sup>523</sup> Yet shortly after this “Berlin Fatwa,” a second pamphlet emerged that was secretly distributed giving specific instructions to the faithful.<sup>524</sup> When the American Agency and Consulate in

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<sup>520</sup> Morgenthau, 116-117.

<sup>521</sup> Morgenthau, 118.

<sup>522</sup> Peters, 55.

<sup>523</sup> Morgenthau, 113.

<sup>524</sup> Morgenthau, 113.

Cairo first identified the document in March 1915, Ambassador Morgenthau ordered its translation. Morgenthau described the document as follows:

This paper was not read in the mosques; it was distributed stealthily in all Mohammedan countries---India, Egypt, Morocco, Syria, and many others; and it was significantly printed in Arabic, the language of the Koran. It was a lengthy document -- the English translation contains 10,000 words -- full of quotations from the Koran, and its style was frenzied in its appeal to racial and religious hatred. It described a detailed plan of operations for the assassination and extermination of all Christians -- except those of German nationality.<sup>525</sup>

Morgenthau believed this secret fatwa caused “the great massacres and persecutions of the Armenian race” which America and Europe were not supposed to hear of until “the annihilation of the Armenian race ... had been accomplished.”<sup>526</sup> Talaat Bey, a high ranking Ottoman official, was so proud of this accomplishment that he proudly boasted: "I have accomplished more toward solving the Armenian problem in three months than Abdul Hamid accomplished in thirty years!"<sup>527</sup> Morgenthau’s memoirs included extensive extracts from this secret document, enough to establish that it is the same document identified in this paper as the 1915 Fatwa.<sup>528</sup> As Morgenthau indicated, the language of the 1915 Fatwa was so inflammatory and the effects so barbarous,<sup>529</sup> the State Department took the unusual step of keeping it classified until 1961.<sup>530</sup>

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<sup>525</sup> Morgenthau, 113.

<sup>526</sup> Morgenthau, 221, 224.

<sup>527</sup> Morgenthau, 234.

<sup>528</sup> *Legacy*, 221.

<sup>529</sup> Morgenthau, 208-209. By way of example from Morgenthau’s memoirs: “Let me relate a single episode which is contained in one of the reports of our consuls and which now forms part of the records of the American State Department. Early in July, 2,000 Armenian "amélés" --- such is the Turkish word for soldiers who have been reduced to workmen --- were sent from Harpoot to build roads. The Armenians in that town understood what this meant and

When issued by the proper authority, fatwas are “formal legal opinions”<sup>531</sup> that have the force of law. In fact and in law, the 1915 Fatwa meets the criteria for being a formal legal opinion relating to Islamic rulings on war. Issued by the Caliphate -- an ultimate legal authority, these rulings have the force of law that includes a rebuttable presumption of correctness. The following treatment of the 1915 FATWA relies on selected quotations from the 1915 Fatwa that provide a flavor for the overall tenor of such documents and is intended to provide readers with enough language to allow them to develop their own sense for its meaning.

**Jihad is a Duty.** In line with the doctrinal position stated by al-Shafi'i's in his 9<sup>th</sup> Century *Risala* as confirmed by such 20<sup>th</sup> Century Hanafi legal treatise such as Nyazee's *Theories of Islamic Law: The Methodology of Ijtihad*, the 1915 FATWA begins with a reminder to the faithful that *jihad* is duty of believers that reflects a right of Allah:

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pleaded with the Governor for mercy. But this official insisted that the men were not to be harmed, and he even called upon the German missionary, Mr. Ehemann, to quiet the panic, giving that gentleman his word of honour that the ex-soldiers would be protected. Mr. Ehemann believed the Governor and assuaged the popular fear. Yet practically every man of these 2,000 was massacred, and his body thrown into a cave. A few escaped, and it was from these that news of the massacre reached the world. A few days afterward another 2,000 soldiers were sent to Diarbekir. The only purpose of sending these men out in the open country was that they might be massacred. In order that they might have no strength to resist or to escape by flight, these poor creatures were systematically starved. Government agents went ahead on the road, notifying the Kurds that the caravan was approaching and ordering them to do their congenial duty. Not only did the Kurdish tribesmen pour down from the mountains upon this starved and weakened regiment, but the Kurdish women came with butcher's knives in order that they might gain that merit in Allah's eyes that comes from killing a Christian. These massacres were not isolated happenings; I could detail many more episodes just as horrible as the one related above; throughout the Turkish Empire a systematic attempt was made to kill all able-bodied men, not only for the purpose of removing all males who might propagate a new generation of Armenians, but for the purpose of rendering the weaker part of the population an easy prey.”

<sup>530</sup> 1915 Fatwa, 1.

<sup>531</sup> al-Mistri, 1184.

There can be no doubt that it is an *imperative duty* in the case upon *all the people of the Faith* in this case that they should vie with one another in striving for His victory, and for defending the whiteness of Islam with all the power that can be put forth. Therefore every Muslim without exception must be considered as a soldier, and therefore it is an imperative necessity that everyone who is able to bear arms should learn the military duties, and be ready for the **Holy War** in case of need. *And these duties are incumbent upon all individuals, and communities, and peoples; for they are called to that and responsible for it in accordance with the saying of the Most High (And oppose to them all that you can command of forces).*<sup>532</sup> (Emphasis added)

Reflecting promises of success from the Qur'an, hadith and historical accounts of the *salaf*, the 1915 Fatwa reminds the faithful that the rise of the *dar al-Islam* owed to the willingness of the faithful to accept the duty of *jihad* in the cause of Allah:

And after the Hegira he [Muhammad] fought for several years more than fifty times between campaigns and bands, and his successors, the followers of the Right Way adopted his noble example and they spent the days of their Caliphate to the utmost of their ability to lift up the work for truth, and in a word, the generation in which the word of Islam was manifest above all religions and the Muslims were rulers over the rest of the nations that was the generation in which the fighters of the **Holy War** of the Muslims assailed with all violence and fought in Allah a true fight for the elevation of His Word and the defence of His Law. And therefore Allah firmly established them in the land and caused their word to be the highest, and the words of those who denied the Faith to be the lowest.<sup>533</sup> (Emphasis added)

The inverse dynamic is that failure to accept the duty of *jihad* causes the decline of the *dar al-Islam* because failure to do so is a reflection of the decline in the quality of belief that became the reason for the *ummah's* present state of humiliation:

But when possessions and their own selves became dear to them, and they turned aside to rest, and were immersed in the temporary pleasures, there settled upon them a malaria, and they began to sink down from the height of their glory and misfortunes increased greatly among them until they turned the edges of their sword which they were using on the necks of their enemies against the chests of their brothers in the religion as if there did not remain upon the face of the earth an infidel to fight or an oppressor to be pushed away, until they gave up their weapons to the enemies as the weakest of women do. And they forgot what Allah commanded them in His holy book in His word: (*and oppose in them all the force that you are able*) and they magnified every weakness and were terrified by the illusory power of the infidels. ... This is the sum of the humiliation and the bitterness in which the Muslims live since they left the plan of their Great Book and

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<sup>532</sup> 1915 Fatwa, 3.

<sup>533</sup> 1915 Fatwa, 6.

turned aside from the way of the **Holy War** which their honored prophet prescribed to them ...<sup>534</sup>

For Islam to reclaim its divine status as the supreme worldly power, the Caliph ordered the faithful -- individually and communally -- to emulate the *salaf* by recommitting to the duty of *jihad* as a requirement of faith as commanded by Allah:

Arise, awake, and know that today the **Holy War** has become a sacred duty for all the people of the Faith. And it is enjoined upon all the peoples of Islam who are spread abroad upon the face of the whole earth that they should unite among themselves and *hasten to run for the deliverance of their native lands from the hands of the infidels, and that they should hasten to use every means and every plan for this purpose.* The host of the Islamic Caliphate is prepared today for the **Holy War**, and thousands of Muslims who surge to and from on the borders and the sides of it delight in praising and in reciting the *Tekbir* and they are expecting the raising of the flag of the **Holy War**.<sup>535</sup> (Emphasis added)

The Caliphate's command to accept the "sacred duty" in furtherance of the legal requirement to use "every means" maps to the requirements of Islamic law as stated in the *'Umdat al-Salik*.<sup>536</sup>

*Jihad* is also personally obligatory for everyone able to perform it, male or female, old or young when the enemy has surrounded the Muslims on every side, *having entered our territory*, even if the land consists of ruins, wilderness, or mountains, for non-Muslim forces entering Muslim lands is a weighty matter that cannot be ignored, but *must be met with effort and struggle to repel them by every possible means.* (Emphasis added)

Hence, even as the 1915 Fatwa's call to *jihad* seems unbounded according to modern notions of the rules of engagement ("ROE"), it is still aligned with the general statement of Islamic law on *jihad*. From the statement of requirements, the 1915 Fatwa then proceeds to its rules of engagement:

It is necessary that they should know *from today that the Holy War has become a sacred duty and that the blood of the infidels in the Islamic lands may be shed with impunity*

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<sup>534</sup> 1915 Fatwa, 6-7.

<sup>535</sup> 1915 Fatwa, 8.

<sup>536</sup> al-Misri, Book O "Justice," at o9 "Jihad," at o9.3.

(except those who enjoy the protection of the Muslim power and those to whom it has given security and those who are confederate with it).<sup>537</sup> (Emphasis added)

Even as the Caliphate's order violates longstanding traditional rules of war as understood in the West, the command to kill all non-believers cannot be automatically dismissed as "extreme" *as if* it exceeded the scope of the requirements of *jihad* simply because of its unconstrained nature. In this regard, because the order was to shed the blood of *all infidels* in Muslim lands and not just *harbi* (enemy combatants), the 1915 Fatwa's command was genocidal in its reach. Hence, the call included the killing of millions of previously protected submitted *dhimmi*s -- most notoriously the Armenian Christians.

As discussed in Chapter 1 and Appendix A, readers should note that the Caliphate relies on the same reasoning used by Osama bin Laden in his 1996 Fatwa;<sup>538</sup> Sheikh Yousef Al-Qaradhawi, Muslim Brotherhood leader and recognized religious authority in 2004 when he called for the killing of all Americans in Iraq;<sup>539</sup> and Mahdi 'Akef,

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<sup>537</sup> 1915 Fatwa, 9.

<sup>538</sup> "While some of the well-known individuals had hesitated in their duty of defending Islam and saving themselves and their wealth from the injustice, aggression and terror -- exercised by the government -- *the youths (may Allah protect them) were forthcoming and raised the banner of Jihad against the American-Zionist alliance occupying the sanctities of Islam. ... It is now clear that those who claim that the blood of the American soldiers (the enemy occupying the land of the Muslims) should be protected are merely repeating what is imposed on them by the regime; fearing the aggression and interested in saving themselves. It is a duty now on every tribe in the Arab Peninsula to fight, Jihad, in the cause of Allah and to cleanse the land from those occupiers. Allah knows that there (sic) blood is permitted (to be spilled) and their wealth is a booty; their wealth is a booty to those who kill them.*" (Emphasis added)

-- Osama bin Laden, "Declaration of War against the Americans Occupying the Land of the Two Holy Places" (bin Laden's "First Fatwa"), Online NewsHour Online Focus (first published in *Al Quds Al Arabi*, August 1996 URL: <[http://www.pbs.org/newshour/terrorism/international/fatwa\\_1996.html](http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html)>, accessed 5 May 2007.

<sup>539</sup> "All of the Americans in Iraq are combatants, there is no difference between civilians and soldiers, and one should fight them, since the American civilians came to Iraq in order to serve the occupation. The abduction and killing of Americans in Iraq is an obligation so as to

Supreme Guide of the Muslim Brotherhood in 2006 when he also called for the killing of Americans.<sup>540</sup> In the Islamic world, this law is real and it really applies to U.S. forces in Iraq because they are non-Muslim forces in Muslim lands. Failure to account for this and related rules can bring on catastrophic consequences. On Qawadari, because of his stature and favorable profile among many leaders in the West -- including many at USSOCOM, numerous Islamic authorities came to his support, including those from Al-Azhar University. On 9 June 2004 alone, Al-Jazeera.net posted favorable comments from no less than three prominent members of Islam's most prestigious school of Islamic learning; Dr. Abd Al-Mu'ti Bayyoumi, former Dean of the Al-Azhar Faculty of Religious Fundamentals,<sup>541</sup> Dr. Salih Zaydan, Al-Azhar Lecturer, and Sheikh Mansur Al-Rifa'i Ubeid,<sup>542</sup> former Undersecretary of Al-Azhar's Department of Religious Endowments.<sup>543</sup>

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cause them to leave Iraq immediately." (*Al-Sharq Al-Awsat* (London), September 2, 2004.)

-- MEMRI Special Dispatch, "Reactions to Sheikh Al-Qaradhawi's Fatwa Calling for the Abduction and Killing of American Civilians in Iraq," MEMRI Special Dispatch No.794, 6 October 2004, URL: < [http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79404#\\_edn1](http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79404#_edn1)>, accessed 5 May 2007. Cited hereafter as "Qaradhawi's Fatwa."

<sup>540</sup> "I fear that blood be shed for no price. I want blood that is shed for a price. .... This American Satan claims to be a messenger of divine guidance. Divine guidance never commands anything but truth, justice, and freedom, things that have nothing to do with him. ... I go back to the issue of *Jihad*. *Jihad* is an individual duty incumbent upon every Muslim, male and female, if any inch of the land of Islam and the Muslims is occupied."

-- MEMRI TV Monitor Project, "Mahdi 'Akef, Supreme Guide of the Muslim Brotherhood Warns Egyptian Regime: The People Will Trample You Underfoot," Clip No. 1214, 30 July 2006, URL: < <http://www.memritv.org/Transcript.asp?P1=1214> >, accessed 20 May 2007.

<sup>541</sup> "Islamic law states that it is forbidden to kill civilians who are distant from the area of fighting, who are not participating in military operations, and who have nothing to do with the occupation of lands. However, civilians who take part in military operations, whether it be supplying food or giving medical treatment to the fighters, their legal status is that of fighters who are attacking land, honor, and property, and therefore there is no prohibition in Islam against killing them."

-- Qaradhawi's Fatwa.

<sup>542</sup> "Whoever cooperates with the fighters who attack the land of Muslims, like the American civilians who are aiding the military in Iraq, becomes through his actions a fighter

## Non Muslims Cannot Judge Muslims Even in Non-Muslim Lands

Contemporary discussions on the failures of émigré Islamic communities to integrate into Western societies tend to focus on the failed policies of Western governments to properly reflect multi-cultural values. Unaddressed, and possibly unrecognized, is the top-level doctrinal view in Islam that understands the world to be divided into two opposing groups; the *dar al-Islam* and *dar al-harb*. The 1915 Fatwa reflects this division.<sup>544</sup> The language in the 1915 Fatwa is uncompromising in prohibiting non-believers from holding any power in the Muslim lands and does not recognize the authority of non-Muslim authorities to render judgment upon Muslims in non-Muslim jurisdictions:

There can be absolutely no partnership in the native lands of Islam, *for the rule of Infidels over Muslims is not lawful, and it is not allowable that the Muslims should be judged by a non-Muslim at any time whatever*, and he cannot be patient under the rule of infidels, and the honor of the Muslims is that they should not be subjects to others, *and it is their glory that they should have lordship, and that they should always be allowed by others. This is what Islam requires*. And Islam will be completed and perfected in the Muslim if he knows it and practices it.<sup>545</sup> (Emphasis added)

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himself. Muslims are permitted to fight against such people and to kill them so as to defend land, honor, and property, and thus there is no prohibition against killing them.”

-- Qaradhawi's Fatwa.

<sup>543</sup> “It is illogical to think that the U.S. is sending its civilians to Iraq in the current state of war without their having a role in the military operations. Therefore, they are not civilians, but fighters whose status in religious law is identical to that of the military combatants.”

-- Qaradhawi's Fatwa.

<sup>544</sup> 1915 Fatwa, 20-21.

<sup>545</sup> 1915 Fatwa, 18.

Because this statement of Islamic law is embedded in doctrine,<sup>546</sup> it cannot simply be discounted. Recognized as the current condition in predominantly Muslim countries today, national security analysts should assess the lack of enfranchisement of non-believers in predominantly Muslim countries to determine if their lack of enfranchisement reflects a cultural fidelity to Islamic law on the topic. The corollary assessment in this regard should be to determine to what extent, if any, the failure of Muslim émigrés to integrate into Western societies likewise reflects this doctrinal world-view as opposed to imputed failures to properly implement diversity programs. Certainly the separatist view is taught today to Seventh Grade Muslim students in America when stating that “the law of the land is the *Shari’ah* of Allah, the leader, the *Khalifa* of the Islamic nation, implements the *Shari’ah* in society”<sup>547</sup> or when stating that “Muslims dream of establishing the power of Islam in the world.”<sup>548</sup> Laying such a foundation, the school-text *What Islam is All About* uses a saying of Muhammad’s in a hadith to make its ultimate point that there is no obedience to leaders (*Amirs*) who do not follow Islamic law (*Sunnah*):

*Once the Prophet was asked by Mu’adth, “What should we do with the orders of an Amir who does not follow your Sunnah or stick to your orders?” The Prophet replied, “There is no obedience to one who does not obey Allah.”*<sup>549</sup>

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<sup>546</sup> For example, to what extent does such language give meaning to quotes such as: “*O ye who believe! Take not the Jews and the Christians for your friends and protectors. They are but friends and protectors to each other. And he amongst you that turns to them (for friendship) is of them. Verily Allah guideth not a people unjust.*” (Qur’an 5:54)

*I have been commanded to fight them until they testify ...* Bukhari 4:196.

<sup>547</sup> Yahiya Emerick, *What Islam is all About: A Student Textbook (Grades 7 to 12)*, 5<sup>th</sup> rev. ed. (Lebanon: Noorart, 2004), 376.

<sup>548</sup> Yahiya Emerick, 377.

<sup>549</sup> Yahiya Emerick, citing Ahmad, 383.

## The Language of Holy War

In issuing the call to Holy War (*jihad*), the Caliph explains key concepts and, in so doing, defines certain terms. Defining the requirements of Holy War, the 1915 Fatwa first identified the types of Holy War; explains Martyrdom; and then discusses various forms of *jihad*. In the section “The Kinds of **Holy War**,” the Caliph identifies three categories: the “Heart War,” the “War of Speech” and the “True War.”

**The Heart War.** The 1915 Fatwa defines the Heart War as follows:

**The heart-war** --- and that is the lowest form of the war. *And it is that the Muslim should believe in his heart that the infidels are enemies to him and to his religion, and that he should desire their disappearance and the destruction of their power.* And no Muslim can be imagined who is not under obligation to this degree of the war. *Verily all the people of the Faith are under obligation to this amount without any question whatever, in whatever place they may be and in whatsoever condition they may be found.* And that those concerning whom the exception made in the verse presented in the saying of the Most High holds good (*You should abstain from them completely*) to these it is permitted that they should be satisfied with this degree of the heart-war.<sup>550</sup> (Emphasis added)

Hence, the heart-war requires permanent hostility to non-believers, even to those currently “excepted” from the more intense aspects of the current True War. Even as the Ottoman Empire was allied with Germany and Austria, as infidel states, “people of Faith” were still under obligation to see them as “enemies to him and his religion.” It is difficult to misconstrue statements like “the Muslim should believe in his heart that the infidels are enemies to him and to his religion, and that he should desire their disappearance and the destruction of their power.”

**The War of Speech.** The 1915 Fatwa’s treatment of the “War of Speech” is informative as it demonstrates the integrated role communications play in the successful

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<sup>550</sup> 1915 Fatwa, 22.

prosecution of *jihad* that decisionmakers and analysts normally associate with strategic communications and information operations:

**The war of speech**, and that may be with the *tongue* and the *pen*, and that in the condition of some of the Islamic kingdoms before this date. This applies in times like those of the Muslims of Caucasia which were before in a condition which did not admit of there being under obligations to do more than the war of speech, because their condition did not aid them to do more than this. And if there does not exist an excuse which permits contentment with the heart-war, *the war of speech is strictly enjoined upon all Muslims, and it is the duty of the masters of the pen to dissipate the darkness of the infidels and of infidelity with their pens, and the people of eloquence with their tongues; and the war of speech today is a duty decreed on the Islamic world in its entirety.* Not one is excepted from it, *not even the Muslims who dwell in the interior of the land of Russia.* But this kind of war is strictly enjoined upon all of them.<sup>551</sup>  
(Emphasis added)

Not only do Islamic authorities build communications into the requirements of *jihad*, authority is delegated to those with the recognized skills to succeed in the information warfare aspects of *jihad* by assigning the mission to “masters of the pen and people of eloquence with their tongue” – in other words, communication experts. As the discussion indicates, war of speech is in furtherance of *jihad* as war. A close reading of the citations on heart war and war of speech indicates that the level of commitment to the *jihad* is primarily capabilities based. One appears to be required to fight at the highest level possible without exceeding either an individual or collective ability. This is in keeping with Islamic law on *jihad* not to fight beyond one’s ability. As the Qur’an states: “*So fear Allah as far as you are able.*” (Qur’an 64:16)

**True War.** True War, which is “fighting and killing in very deed as it is known to every Muslim,”<sup>552</sup> breaks down into two additional categories: the “Little *Jihad*” and

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<sup>551</sup> 1915 Fatwa, 23.

<sup>552</sup> 1915 Fatwa, 23.

the “Great *Jihad*.” The controlling definition of “True War” in Holy War is consistent with the primary definition of *jihad* from the *‘Umdat al-Salik* as “warfare against non-Muslims to establish the religion.”<sup>553</sup> From this comes the observation that, when discussing the kinetic aspects of Holy War, the term “holy war” is synonymous with the term “*jihad*” as defined in the section on True War. This is true notwithstanding Current Approach assurances that “Islamic tradition does not have a notion of holy war.”<sup>554</sup>

For decisionmakers and analysts, the “Little *Jihad*” is the more important of the two forms of True War because it is that form of *jihad* that does not require the ascent of the caliph to undertake *jihad*. Little *Jihad* envisions direct action by local authorities:

**The Little *Jihad*** is the local *Jihad* which some of the Islamic peoples are compelled to proclaim against their enemies of the infidels without needing to call to their assistance any other Islamic peoples. ... But all Muslims ought to aid their brothers in the little *Jihad* materially or spiritually as much as they are able, and if it is permitted to any people of the Muslims that they should not take part materially in the little *Jihad* for any hindrance whatever, it is not lawful to them to refrain entirely from helping, but they must certainly help although it be only spiritually. ... *The little Jihad may be proclaimed alone from the presence of the local Muslim chiefs, ...*<sup>555</sup> (Emphasis added)

There are consequences to the doctrinal recognition of Little *Jihad* that Current Approach advocates fail to disclose possibly because it undermines their argument that authority for calling for *jihad* rests exclusively in the hands of the Caliph. “Extremist” actions initiated against the United States in the name of *jihad* fall easily into the more

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<sup>553</sup> al-Misri, Book O “Justice,” at § o9.0 “*Jihad*.”

<sup>554</sup> Khlaled Abou El Fadl, *The Place of Tolerance in Islam*, eds. Joshua Cohen and Ian Lague, (Boston: Beacon Press, 2002), 19.

<sup>555</sup> 1915 Fatwa, 23-24.

permissive category of Little *Jihad*.<sup>556</sup> In assessing the Little *Jihad*, the concept should be understood in light of the Caliph's authority over the entire Islamic *Ummah*. In the Islamic context, *jihads* fought at the level of al-Qaeda and the Taliban in Afghanistan -- or of al-Qaeda in Iraq -- fall easily within the more permissive standards of the Little *Jihad* because the actions are regional within the *Ummah* and, therefore, local Muslim leaders are permitted to undertake *jihad* on their own authority. In large measure, whether or not those groups calling for *Jihad* against the United States have the proper authority will largely depend on whether or not they win -- or are perceived to be winning -- the war.

As for the Great *Jihad*, it is the global confrontation between the entire *dar al-Islam* and the *dar al-harb* and can only be undertaken under the authority of the Caliph. The 1915 Fatwa called for a **Great Jihad** that it proclaims to be a **Holy Jihad** that is understood in terms of **Holy War**:

**The Great Jihad.** It is the war which the Islamic world unitedly wages against the lords of infidelity from the enemies of Islam. And since the proclamation of the *Jihad* is one of the *rights of the Caliph*, it is strictly enjoined upon every one of all the people of the Faith who are scattered over the face of the earth to whom this invitation comes, *that he should take part in it by deed*. And an example of this is the *Jihad* which the Caliph has proclaimed today. And this is also named the **Holy Jihad**.<sup>557</sup> (Emphasis added)

### **Martyrdom**

The 1915 Fatwa is consistent with Islamic doctrine in its treatment of martyrdom for those participating in *jihad* who are killed:

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<sup>556</sup> **Author's Note.** In fact, as the discussion regarding the individual requirement to fight *jihad* when non-Muslim forces enter Muslim lands, the requirement becomes an individual duty that does not require permission from any authority.

<sup>557</sup> 1915 Fatwa, 24.

To those who participate by deed in the *Jihad*, whether it be the little or the great, there is great reward. And if they die they are without doubt martyrs. And we ask you, O God, the All-Powerful, that the nation of Mohammed (May God be gracious to Him and give him peace!) may know by Thy power the greatness of the reward of martyrdom and that their hearts may be inspired with the degree of its merit and of its greatness, O God! Amen.<sup>558</sup>

### **Forms of *Jihad***

Explaining Holy War and reminding believers of the rewards of paradise for martyrs, the 1915 Fatwa then explains the three forms of *jihad* to be fought based on individual and communal ability -- not preference -- to participate. The three forms are the “Individual *Jihad*,” the “*Jihad* by Bands,” and the “*Jihad* by Campaigns.” As with the discussion on Little and Great *Jihad*, Current Approach advocates base their observations of *jihad* almost exclusively on *jihad*-in-main definitions to the exclusion of other doctrinal concepts that leave decisionmakers and analysts with an under-inclusive understanding of the subject matter. Of principle interest to decisionmakers and analysts are concepts of *jihad* described in “Individual *Jihad*” and “*Jihad* by Bands” as they identify activities that are consistent with our current experience in places like Afghanistan, Iraq, Europe and even the United States.

**The Individual Jihad.** The Individual *Jihad* involves personal direct action that includes activities that range from targeted acts of assassination to acts of murder that, in-so-far as they are directed against the *harbi*, verge on the indiscriminate:

First the **individual *Jihad***, and it consists of the individual personal deed, and it may be by the use of cutting, killing instruments like the *Jihad* of the late Wurdanee who killed with his “*musdis*” Peter Galy Pasha the *infidel*, the English governor, and like the slaying of the chief of the English Police in India by one of our brothers there, and like the killing

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<sup>558</sup> 1915 Fatwa, 24-25.

of one of the officials arriving from Mecca by Abi Busir (May Allah be pleased with him) in the age of the Prophet (May Allah be gracious to Him and give Him peace!) and in like manner a similar thing took place when the Prophet (May Allah be gracious to Him and give Him peace!) commanded Abdullah the son of Atik that he and four of his companions should go to kill Abi Rafi, the chief of the Jews of Khaibar, ... O Lord, what is incumbent upon the Muslims today also, if there be found in the Islamic world those who fight like this fight? What will be the event if there shall go out from them some of the deliverers, and kill one of those who belong to the Triple Entente of the infidels who are known by their hostility to Islam, and *so purify the face of the earth from his existence*. O Allah, O our Lord, be a helper to us and cause the spirit to the *jihad* to live in our souls!<sup>559</sup> (Emphasis added)

As noted, the 1915 Fatwa gives examples that include contemporary assassinations of British colonial officials as well as specific examples from *sahih* hadith. With language like “and so purify the face of the earth from his existence,” individual *jihad* envisions large-scale acts of individual killing that take on genocidal proportions not unlike Darfur today. As one ponders martyrdom in such acts of *jihad*, one need only refer to any newspaper on any day to see examples of such activities in Iraq that range from targeted assassinations, to apparently indiscriminate killings, to suicide bombings. Individual *jihad* raises the chilling prospect of high volume independent direct actors whose actions would be exceptionally difficult to template and virtually impossible to predict. In the West, the “shoe bomber, the “DC sniper killings,” the 101<sup>st</sup> fragging, the “Van Gogh execution” or even the recent UK bombing (and bombing attempts) come to mind.

**Jihad by Bands.** The next level, *Jihad* by Bands, is that form of *jihad* that most resembles brigandage or highway robbery. As the 1915 Fatwa notes, *Jihad* by Bands is the preferred form of *jihad* when fighting a superior force and represents the first

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<sup>559</sup> 1915 Fatwa, 25-26.

organized form of *jihad* in early Islamic warfare. The 1915 Fatwa urges potential *jihadis* to seek out such bands and to incorporate “secret formation” strategies:

The ***Jihad by Bands***. It may be described as a *Jihad* by bands known in our time by the name of Brigands, and it is known that the formation of bands or brigands was well known and notorious in Islam and the benefit of these bands was magnified in consideration of the fact that *the power of Islam was weak and the power of its enemies great. And it is enough for you that the Prophet began the Jihad by bands when permission was given to him for killing in the word of the Most High (Fight in the path of Allah with those who fight against you)*, and He was sending bands, when it was necessary, composed of private soldiers of those who were fighting the *Jihad* under the guidance of the leaders of good repute to combat some of the enemy. And He took great pains to choose the leaders of a band from those who were distinguished by their military endowments.

... although the *continual annihilation of the commerce* of the enemy is more profitable than the formation of bands.

The formation of bands in our time is of different kinds, and the most profitable of them is that which makes use of secret formations, and it is hoped that the Islamic world of today will profit very greatly from secret bands, and therefore it is in the degree of duty to him who wishes to participate in the *Jihad* that he should take council with people of experience in the formation of secret bands and gain profitable information of this kind. And these formations may take the *oath of excess* in which the Prophet (May Allah be gracious to Him and Him peace!) participated before sending them out originally.<sup>560</sup> (Emphasis added)

What is the “oath of excess?” Also, there is uncommon similarity between the organizing principles evidenced by groups like al-Qaeda, al-Qaeda in Iraq, the Taliban, and the Iraqi resistance to that form of *jihad* described as *Jihad by Bands*. This observation points to the possibility that there may be an entire body of doctrine, tradition and literature on a form of warfare that most immediately explains the motivations, tactics and activities that U.S. and Coalition forces confront on an ongoing basis in places like Afghanistan and Iraq. If true, it would also mean that enemy intentions could be better and more reliably predicted if templated against *jihad* doctrines of warfare along with those of insurgency. In fact, in his *Muqaddimah*, ibn Khaldun, the 14<sup>th</sup> Century

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<sup>560</sup> 1915 Fatwa, 26-27.

Maliki judge, likewise spoke of a specific form of warfare unique to the Arabs that also points to an idealized form of *jihad* by bands that he called the “technique of attack and withdrawal:”

Since the beginning of men’s existence, war has been waged in the world in two ways. One is by advance in closed formations. *The other is the technique of attack and withdrawal.* ...The advance in closed formation has been the technique of all the non-Arabs throughout their entire existence. The technique of attack and withdrawal has been that of the Arabs and the Berbers of the *Maghrib*.<sup>561</sup>

An important observation, when *Jihad by Bands* fails to meet the “in the cause of Allah” standard, it is quite literally brigandage, or highway robbery, or what Islamic law refers to as *hiraba* (gangsterism).<sup>562</sup> Hence, Islamic law points to a possible strategic communication strategy that relies on the language of Islamic law to characterize *jihadi* activities in terms of brigandage or gangsterism.

**Jihad by Campaigns.** Moving to the third category, *Jihad by Campaigns* must be authorized by either a Caliph or Emir, and most closely reflects major military operations in the conventional sense:

The *Jihad by Campaigns*, and the meaning of it is War upon well known principles, but the *leadership is either for the Caliph alone, or for a Muslim Emir* whom he shall appoint from before him. The *Pride of all creatures* was leading the host in many of his campaigns Himself, as took place in the campaign of Badr and in the campaign of Abdul-Ahad and others; or the leadership may be by means of an appointed deputy as befell in the Ottoman-Balkan war, where the deputy of the Caliph was the leader of the host.<sup>563</sup> (Emphasis added)

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<sup>561</sup> ibn Khaldun, 224.

<sup>562</sup> al-Misri, Book O “Justice,” o15.0-3.

<sup>563</sup> 1915 Fatwa, 28.

## The 1915 Fatwa Summation

The fatwa ends with a parting reminder to believers that *jihad* is a duty that requires a commitment that is based on capability not preference. One cannot do less when able to do more. Interestingly, the summation provides the only language that limits the scope of the *jihad* to “those” people who are actually enemies:

O brothers of the Religion! The time has come when you should know that the great **Holy War** has become a most imperative duty, and you ought to begin it and not to lose a single moment of the time, for the time is very short, and the life of Islam is on the verge of being swept away as by a flood. *And let every one of you choose one of these kinds of war, each one according to his condition and the manner of his life and the geographical and intellectual conditions of his country. . . .* “It is necessary to consider well, differentiating and distinguishing between the enemy from these peoples, and the one who is not an enemy, and the decrees of the Islamic law in this respect must be the guide for you to follow, and this honored verse is to be placed before you as a direction, and it is the saying of the Most High: *(They wished you to become infidels as they are infidels and that ye should be like them. Therefore, take no friends from among them until they flee their country in the path of Allah. And if they turn back, take them and kill them wherever you find them, and do not take from them any friend or helper except those who are allied with one of your peoples by covenant between you and them, or those who come to you, their hearts forbidding them either to fight you or to fight their own people; if Allah pleased, he would have made them rule over you, and they would have fought you; but if they depart from you, and do not fight against you and offer you peace, Allah doth desire to enter into confidence with you, and to preserve the confidence of their people, as often as they return to sedition they shall be subverted therein, and if they do not depart from you and offer you peace and restrain their hands, take them and kill them where-so-ever ye find them. Over these we have granted you manifest power.)*<sup>564</sup> (Emphasis added)

The 1915 Fatwa was an actual Islamic ruling on war that stated the conditions and requirements of *jihad* incumbent on all Muslims. When evaluating its stated limitations, it should be remembered that the Armenians were neither *harbi* nor in a state of rebellion. Rather, they were *dhimma* living under the protection of Islam. When measuring the 1915 Fatwa against Current Approach standards that seem more in line with Western sensitivities, it must be remembered that the 1915 Fatwa issued from the Seat of the

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<sup>564</sup> 1915 Fatwa, 28 - 29.

Caliphate and that the target audience was Muslim. In contrast, the Current Approach position lacks authority and the target audience is Western decisionmakers and analysts.

## THE QURANIC CONCEPT OF WAR

Pakistani Brigadier S. K. Malik's *The Quranic Concept of War*<sup>565</sup> was first published in Pakistan in 1979 under the direction of Pakistani Army Chief of Staff General Zia-ul-Haq with a preface that was written by Pakistani Advocate General Allah Bukhsh K. Brohi. What qualifies *The Quranic Concept of War* (QCW) as a *bona fide* Islamic ruling on war is that it was written by a Pakistani Army Brigadier under the direction of the Army Chief of Staff and includes a legal certification that the book conforms to Islamic and Pakistani law. Because QCW arguably reflects the current policy on Islamic warfare by a nuclear power, this monograph is analyzed for its understanding of Islamic rulings on war.

### Legal Sufficiency

As important as the Pakistani Brigadier's work is in its own right, it was promulgated by the Chief of Staff of the Army after being endorsed by the Advocate General who invested the document with a measure of state authority. In the forward to *Quranic Concepts of War*, Army Chief of Staff General Zia-al-Haq wrote:

This book brings out with simplicity, clarity and precision the Quranic philosophy on the application of military force, within the context of the totality that is JEHAD. The

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<sup>565</sup> See End Note 405.

professional soldier in a Muslim army, pursuing the goals of a Muslim state, CANNOT become 'professional' if in all his activities he does not take on 'the colour of Allah.'

I have read this book with great interest and believe that it has a useful contribution to make towards this understanding that we jointly seek as citizens of an Islamic State, soldier or civilian.<sup>566</sup>

Soon after the monograph's publication, al-Haq became Pakistan's chief executive. Pakistani Advocate General Brohi followed up al-Haq's endorsement with a commentary of his own in the monograph's preface:

Brigadier S.K. Malik has made a valuable contribution to Islamic jurisprudence by representing a comprehensive survey of the Quranic Approach to the Principles of War and Peace. His has been what a scholarly presentation of what may be considered as an "analytic *Re-Statement*" of the Quranic wisdom on the subject of war and peace.<sup>567</sup> (Emphasis added)

Brohi elevated the Pakistani General's monograph to the level of a Restatement<sup>568</sup> on Islamic law on issues of war and peace. Given the ongoing enmity between India and Pakistan, the Indian government takes great interest in QCW, going so far as to republish the monograph out of concern for the implications inherent to India's national security. In his analysis of QCW, Indian terror analyst N. S. Rajaram states that the monograph is required reading for Pakistani officials -- both civilian and military -- and that copies are

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<sup>566</sup> S.K. Malik, xi.

<sup>567</sup> S.K. Malik, xiii.

<sup>568</sup> **Author's Note:** In the field of jurisprudence, a Restatement is a description of a given area of law by experts that describe the present state of a law as well as trends and ideal paths of future evolution. For example, as defined in *Black's Law Dictionary, 6th Edition* with regard to American Restatements of the Law, they are defined as "a series of volumes authored by the American Law Institute that tell what the law in a general area is, how it is changing, and what direction the authors (who are leading legal scholars in each field covered) think this change should take ... The various Restatements have been a formidable force in shaping the discipline of the law covered, they are either frequently cited by courts and either followed or distinguished; they represent the fruit of the labor of the best legal minds in the diverse fields of law covered." *Blacks*, 1313.

routinely recovered from the bodies of killed Pakistani fighters in Kashmir.<sup>569</sup> Assessing QCW, Rajaram concludes:

This doctrine of total war is what Pakistan has been trying to put into practice in India through the ISI and its infiltrators -- and now the army. As a result, the Pakistani armed forces are no longer a professional military, but a religious army. It was General Zia who presided over this transformation. This was part of his program of 'Talibanization' ... In conclusion, though distinguished more by dogmatism than scholarship, *The Quranic Concept of War* is valuable as giving a unique insight into the behavior of Talibanized minds — past, present, and possibly future.<sup>570</sup>

While stated differently, Rajaram's assessment of the role QCW plays in the Islamic Republic does not contradict Brohi's assessment. Soon after QCW's publication, Pakistan transitioned to an Islamic Republic. While beyond the scope of this paper, it is worth noting that it was under al-Haq's leadership that the United States worked with Pakistan against the Soviet Union in Afghanistan. In scope, however, is the fact that the QCW reflects Pakistani military thinking then and possibly now and, hence, qualifies as an Islamic ruling on war. Certainly, QCW was written at the decisionmaking level by a government official; it was endorsed by a Chief of Staff who later became head of state; it passed legal scrutiny and was endorsed by a legal authority acting under color of authority and, according to Rajaram, is required reading and is broadly distributed throughout the Muslim world. Hence QCW offers genuine insight into the Islamic theory of war as actually understood and implemented by a modern Islamic state holding itself to an Islamic legal standard. Because the thirteen page preface renders an unrestricted legal endorsement of the Brigadier's theory of war that aligns the legal basis for an

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<sup>569</sup> Rajaram, N.S., "Pakistan's Mein Kampf," *Perspectives on Islam and Pakistan*," URL: <[http://members.tripod.com/pakjihad/pesrspectives\\_on\\_islam.htm#Concept](http://members.tripod.com/pakjihad/pesrspectives_on_islam.htm#Concept)>, accessed 09 September 2005.

<sup>570</sup> Rajaram.

Islamic ruling on war with the state policy seeking its implementation, Brohi's contribution to the debate rivals that of the monograph itself.

**Doctrinal Alignment.** Allah Bukhsh K. Brohi aligns the Islamic war fighting doctrine of QCW with state policy under color of legal authority. Al-Haq acknowledges Brohi's alignment:

The non-military citizen of a Muslim state must, likewise, be aware of the kind of soldier that his country must produce and the ONLY pattern of war that his country's armed forces may wage. ... For a task so sincerely undertaken and so devotedly executed, the author's reward is with the Lord.<sup>571</sup>

Affirming S. K. Malik's "valuable contribution to Islamic jurisprudence," Brohi concludes his review by blessing the author for his work: "May God bless his work and advance him, Amen."<sup>572</sup> Completing the alignment, S. K. Malik himself closes the link between the legal theory to conduct *jihad* and the Quranic philosophy that gives it authority in his Author's Note:

*As a complete Code of Life*, the Holy Quran gives us a philosophy of war as well. This divine philosophy is an integral part of the total Quranic Ideology. It is a philosophy that is controlled and conditioned by the Word of God from its conception till conclusion. No other military thought known to Man possesses this supreme characteristic; from it, flow its numerous other attributes. It is complete, perfect, comprehensive, balanced, practical and effective.<sup>573</sup> (Emphasis added)

For S. K. Malik, Zia al-Haq and Brohi, the seamless web that forms the "complete way of life" includes the laws and doctrines that speak to Islamic concepts of strategy and warfighting that emanate from Allah and are therefore understood to be commands.

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<sup>571</sup> S.K. Malik, xi.

<sup>572</sup> S. K. Malik, xxv.

<sup>573</sup> S. K. Malik, xxviii.

QCW is a doctrinally aligned policy statement that establishes an Islamic legal basis for Islamic warfare by a modern state actor. Remaining true to the title, QCW relies on citations to Quranic verses to lay the foundations for the Islamic concept of war. The same Quranic verses that S. K. Malik relies on to establish a Quranic basis for war are often the same ones left unaccounted for by the Current Approach. This should be borne in mind when assessing the relative merits of the Current Approach as against doctrinally accurate treatments like S. K. Malik's.

**The Legal Review.** Because Brohi's legal commentary provides the nexus between state military policy and Islamic law, it will be assessed to see whether it aligns with doctrinal Islamic law as discussed in the main thesis. As a Hanafi jurist, Brohi maintains that the only lawful basis for Muslim countries to conduct military operations is in furtherance of bringing Islam to the world. As such, Hanafi law characterizes Islamic warfare in defensive terms that protects the mission of Islam from the world of unbelief and war:

The wars in the theory of *Islamic law* are in the nature of an undertaking to advance Allah's purpose on earth and invariably they are *defensive* in character. It is the duty of a believer to carry forward the Message of Allah and to bring it to the notice of his fellow men in handsome ways. But if something *attempts to obstruct* him from doing so he is entitled, *as a measure of defence, to retaliate.*<sup>574</sup> (Emphasis added)

This use of the term "defensive" may seem inconsistent with more traditional understandings of the term as used in the West. Brohi expands on the Islamic concept of "defensive" warfare and in so doing disambiguates between the Islamic and Western use of the term:

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<sup>574</sup> S. K. Malik, xv.

Similarly, when a believer sees that someone is trying to obstruct another believer from traveling on the road that leads to Allah, spirit of *Jihad* requires that such a man who is imposing obstacles should be prevented from doing so and the obstacles placed before him should be removed, so that mankind may freely be able to negotiate its own path that leads to Heaven. To omit to do this is a *culpable omission*, if only because by not striving to clear or straighten the path we become passive spectators of the counter-initiatory forces imposing a blockade in the way of those who mean to keep their faith with Allah.<sup>575</sup> (Emphasis added)

Hence, defensive *jihad* may include activities that some non-believers may more readily associate with offensive activities -- or at least not purely defensive ones. By way of example, from a Western perspective, taking hostages and threatening to execute them if the French Government does not remove its no-scarves-in class law may appear as an offensive act of terrorist coercion to Westerners and yet a Muslim could reasonably characterize that same act, according to Brohi, as defending the straight path of Islam by removing “obstructions” and “obstacles” that impair believers. In this context, a *jihad* that strikes out in defense of what is right according to Islamic doctrine qualifies as a defensive act. As discussed in the thesis, for Shafi’i, Nyazee, and the *‘Umdat al-Salik*, *jihad* “to straighten the path” is a duty for which the failure to perform is a “culpable omission.” Brohi is emphatic on this point:

The justification for waging war in defence of what is right is that, he who is in the right, if he goes to war with the purist of intentions, will be assisted by the Lord to prevail against those who having defied God’s law have virtually created chaos in the land -- for God doth not love the mischief makers.<sup>576</sup>

Hence, in keeping with the traditional doctrinal understanding, Brohi equates failure to follow Islamic law with disbelief and “chaos in the land,” or, as stated in some translations of the Qur’an, “tumult and oppression” as stated in Verse 8:39 “*And fight on*

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<sup>575</sup> S. K. Malik, xiv.

<sup>576</sup> S. K. Malik, xx.

*until there remains no more tumult or oppression and they remain submissive only to Allah” and Verse 2:191 “And slay them wherever ye catch them, and turn them out from where they have turned you out; for tumult and oppression are worse than slaughter....”*

Claims that Islam embarks on *jihad* for defensive purposes should be assessed in light of a taxonomy that defines basic terms differently. In the Islamic taxonomy, a *jihad* conducted to secure Islam’s rightful status as the law of the land -- in all lands -- can be assessed as defensive. This understanding is not unique to Brohi but rather finds support reaching as far back as the original Islamic treatment on international policy, as recorded in al-Shaybani’s 8<sup>th</sup> Century Hanafi treatise *Islamic Law of Nations (Shaybani’s Siyar)*. In the translator’s commentary, Majid Khadduri explains that defensive *jihad* is conducted in furtherance of an Islamic notion of peace that can only be realized when the entire world is transformed to the *dar al-Islam*:

The state of war should, accordingly, come to an end when the *dar-al-harb* had disappeared. At such a stage the *dar al-Islam*, as the abode of peace, would reign supreme in the world. It may be argued, therefore, that the ultimate objective of Islam is the achievement of permanent peace rather than the perpetuation of war. Thus the *jihad*, in Islamic theory, was a temporary legal device designed to achieve Islam’s ideal public order by transforming the *dar al-harb* into the *dar al-Islam*.<sup>577</sup>

An Islamic concept of defense is put in the service of Islamic notions of peace. Being conceptually different from Western notions of defense and peace does not make them wrong. Decisionmakers and analysts need to know when commonly understood terms have differentiating doctrinal meanings. Additionally, Islamic concepts of war and peace do not appear to be based on the current situation but rather on a realized future end state. In other words, *jihad* defends the established future end state (the *dar al-Islam*) from events today (actions that sustain the *dar al-harb*) that impede its realization.

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<sup>577</sup> al-Shaybani, 17.

**The Doctrinal View is In.** Brohi's discussion of international affairs faithfully reflects the historic Islamic understanding that the world is divided into two irreconcilable camps; the world of Islam and peace - the *dar al-Islam* - and the world of disbelief and war – the *dar al-harb*. As the *dar al-harb* is a world of rebellion and defiance against Allah, there can never be a basis for anything more than temporary accommodation:

Islam views the world as though it were bipolarized in two opposing camps -- *Darul Salam* facing *Darul Harb* -- the first one is submissive to the Lord in cooperating with God's purpose *to establish peace*, order and such other preconditions of human development, but the second one on the other hand is engaged in perpetuating defiance of the same Lord. Such a state of affairs which engages anyone in rebellion against God's will is termed as "*Fitna*" – which would literally mean *test* or *trial*.<sup>578</sup> (Emphasis added)

**The International System is Out.** Conceptually, the Islamic world order and that of the modern international order are mutually exclusive. Even when not rejected, Brohi's endorsement of the Islamic order must be reconciled with the reality of the current international order in a way that establishes the current order's subordination to that of the Islamic. Not surprisingly, Brohi argues along the same line as Nyazee (in the thesis) when saying that Islam is emerging from a period of weakness but is entering a period of strength. Such arguments-from-inability conform to Islamic requirements not to exceed one's ability and hence do not violate doctrinal tenets of Islam. In its current state of weakness, Brohi argues that Islam must function under the nation-state paradigm until its vitality can support the (re)establishment of the Muslim *ummah*:

It is true that in modern society the maintenance of international order and peace in the international community of mankind proceeds upon the premises of sovereign equality of 'nation-states' whose number at present is 151. And this number is reached by taking notice of the *territorial* aspect of structure of a modern nation-state. The idea of the

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<sup>578</sup> S. K. Malik, xviii-xix.

*Ummah* of Mohammad, the Prophet of Islam, is incapable of being realized within the frame-work of territorial states much less an enduring basis of viewing the world as having been polarized between the *world of Islam* and the *world of war*. Islam, in my understanding, does not subscribe to the concept of the territorial state and it would be recalled that even Iqbal in his lectures on “The Reconstruction of Religious Thought in Islam” went so far as to suggest that, Muslim states, to begin with, be treated as territorial states and that too only as an *interim measure* since these are later on to be incorporated into commonwealth of Muslim *states*.<sup>579</sup> (Emphasis added)

Brohi’s comment reveals an absence of fidelity to the concept of either the sovereign state or the prevailing international system. This attitude is reflected in the Islamic school-text where contemporary 7th grade American Muslims are taught that:

Muslims dream of establishing the power of Islam in the World. Muslims of all types and backgrounds agree that the Islamic system is the best for humanity in this life.<sup>580</sup>

In an Islamic political system, the leader of the community, the Kalifa, is the head of the whole Ummah, not just one country or another.<sup>581</sup>

**Questions of Sovereignty.** To link S. K. Malik’s view to Islamic doctrine, Brohi aligns it with core doctrine that all Sovereignty rests exclusively with Allah. For Brohi:

The law of war and peace in Islam is as old as the Quran itself. Indeed, the term used by the Muslim Jurists for international law is *Sayyar* which is plural of *Seerat* shows that it is the conduct of the state in relation to another state which is what international law regulates. *In Islamic international law this conduct is, strictly speaking, regulated between Muslims and non-Muslims, there being, viewed from the Islamic perspective, no other nations.* The modern international law although it was very vitally influenced by Islam traverses a different ground altogether. It is a law which regulates the conduct of various nations inters (sic) on the basis of *sovereign equality of all nations*. In Islam, of course, *no nation is sovereign since Allah alone is the only sovereign in Whom all authority vests*.<sup>582</sup>

Learned author after having summed up the above mentioned rules proceeds to offer his appreciation of the excellence and comprehensiveness of the rules he discerns in the scheme of Islamic International Law: in his words:

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<sup>579</sup> S. K. Malik, xx.

<sup>580</sup> Emerick, 377.

<sup>581</sup> Emerick, 381.

<sup>582</sup> S. K. Malik, xxii.

This enumeration demonstrates that the fundamental postulates of the Muslim “law of war” are particularly pertinent, repeating and, sometimes, in their substance, *going beyond the norms decreed by the rules of the Hague and the Geneva Conventions*. We have described them in their raw state and in their positive traditional formulation, and have thus perhaps not emphasized an essential factor in the economy of the system: *the absolute identity of law and religion*. Because of his responsibility as an individual the Muslim violating rule might expose himself, perhaps to worldly, and certainly to divine, punishments. Within the double perspective of eternity and relativity, we have had to concentrate our attention on the latter, though it is less important in the eyes of the believer. Legal scholars, searching for guiding principles of their speculation in and from the sources of the faith and the example of the Prophet, established, as early as the 2<sup>nd</sup>/8<sup>th</sup> and 3<sup>rd</sup>/9<sup>th</sup> centuries, imperative norms which regulated internal and international conflicts. It is worth recalling them for they could be inspirational, not only to certain political leaders in the contemporary Muslim world, but also to participants in various diplomatic conferences, on arms limitation, on protection of human rights in times of violence, *and on the reaffirmation of the international humanitarian law of armed conflicts*. Indeed, *the Muslims believe these rules to be divine and even the most skeptical outside observers must recognize that they are, at the very least, eternal.*<sup>583</sup>

**Was the International System Ever Really In?** With the ongoing pervasive role of Islam in Muslim society, could it be that the Islamic world never stopped viewing the world along the lines identified by Brohi? He is certainly stating the classic Islamic position. As discussed in the thesis regarding Constitutions in predominantly Muslim countries, there is a recurring reference to the larger “Arab” nation that may genuinely reflect a conformance to the Muslim concept of the *ummah* that Brohi referred to earlier as a “commonwealth of Muslim states.”<sup>584</sup> Ridiculed by Western commentators predisposed to read into such language statist ideas of a “superstate,” they may simply miss the fact that such language speaks to an actual doctrinal and historic understanding of the understood relationship between man, the state and Allah in the Islamic world. Also, subsequent to the publication of S. K. Malik’s monograph, numerous Muslim

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<sup>583</sup> S. K. Malik, xxiv-xxv.

<sup>584</sup> S. K. Malik, xx.

countries signed on to the “Cairo Declaration on Human Rights in Islam of 1990” (“Cairo Declaration”).

As Brohi states, Islam rejects concepts of national sovereignty at the conceptual level. For a state to assume sovereign status in its own right -- or for a state to promulgate law on its own authority -- is to make claims to sovereign authority that belongs exclusively to Allah. Claiming this status gives rise to the charge of *shirk*,<sup>585</sup> the worst crime in Islamic law. This is the basis for “extremist” claims that democracy is a blasphemy against Allah. As noted, this is what ‘Abdur Rahman I. Doi, meant in his treatise *Shari’ah: The Islamic Law*, when he said:

But the fundamental principles on which rests the Islamic legal system is that the laws of Islam are not passed in a heated assembly by men who ardently desire the legislation in their interests against men who oppose it in their interest. ... The difference between other legal systems and the *Shari’ah* is that under the *Shari’ah* its fountainhead is the Qur’an and *Sunnah* ... The Qur’an and *Sunnah* are the gifts given to the entire *Ummah*. Therefore the *Ummah* as a whole is collectively responsible for the administration of Justice. This is the reason why any legislative or consultative assembly in any Muslim land has no power of encroachment on any legal right of the members of the *Ummah* and those who live with them in peaceful co-existence.<sup>586</sup>

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<sup>585</sup> al-Misri, Book P – “Enormities,” at p1.0: p1.0 Ascribing Associates to Allah Most High (*SHIRK*) -

p1.1 Ascribing associates to Allah Most High means to hold that Allah has an equal, whereas He has created you, and to worship another with Him, whether it be stone, human, sun, moon, prophet, sheikh, jinn, star angel, or other.

p1.2 Allah Most High says:

- (1) “Allah does not forgive that any should be associated with Him, but forgives what is other than that to whomever He wills” (Koran 4:48)
- (2) “Surely, whoever ascribes associates to Allah, Allah has forbidden him paradise, and his refuge is hell” (Koran 5:72)
- (3) “Of a certainty, worshipping others with Allah is a tremendous injustice” (Koran 31:13)

p1.3 The Koranic verses concerning this are very numerous, it being absolutely certain that whoever ascribes associates to Allah and dies in such a state is one of hell’s inhabitants, just as whoever believes in Allah and dies as a believer is one of the inhabitants of paradise, even if he should be punished first.”

<sup>586</sup> Doi, 6.

Doi's statement reflects the logical consequence of a legal system anchored in divine law. For this reason, Islamic law makes no meaningful distinction between the laws of Allah and the laws of man and hence can make no meaningful downstream distinctions that would separate church from state or religion from politics. Doi's views are reflected in contemporary 7th grade curricula for American Muslim students:

There is no separation of Masjid and state for the object of the Islamic state is the establishment of the *Deen* of Allah.

By contrast, the object of many Western countries, guided by a mix of secularism and ethno-religious nationalism, is the dominance of their nations over others and gathering of riches. ("*Survival of the fittest*" and "*Might makes right*" are their mottos.)

Muslims know that Allah is the Supreme Being in the universe; therefore, ***His laws and commandments must form the basis for all human affairs***. If we didn't follow Allah's commandments, but then still called ourselves Muslims, we would be hypocrites like the followers of many other religions today.<sup>587</sup> (Emphasis added)

An argument can be made that the 7th grade school text is in conflict with basic American concepts of constitutional forms of governance. Rejecting Western notions of state and international governance, Muslim jurisdictions facially participate in international forums but substantively opt out of them. As noted above, the United Nations International Declaration of Human Rights is a good example. Like most countries, almost all Muslim countries ratified the UN Declaration. Not as well known is that most of those same Muslim countries subsequently signed the Cairo Declaration that subordinates the UN International Declaration of Human Rights to *Shari'a* law and in so doing subsumes human rights to Islamic law. In effect, the *Shari'a* law exception swallows the International Declaration of Human Rights rule.<sup>588</sup> Current Approach

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<sup>587</sup> Emerick, 381.

<sup>588</sup> **Author's Note.** The relevant Islamic law on the rights of non-Muslims was discussed in part in this paper's section on "Requirements of *Jizya*" which included at footnotes 336 & 337 that actually redacts a portion of the law of non-Muslims in an Islamic state. To get a

advocates that purport to explain the “moderate” view on Islamic rulings on war remain silent on the Cairo Declaration; its hollowing out of the most basic concepts of human rights; and on the fact that most Muslim countries, including our “moderate” friends and allies, have been formal signatories since its inception.

Because Brohi’s assessment is that of a legal expert acting under color of authority, it takes on a state action quality that distinguishes it from similar statements made by Western academics or itinerant non-state actors. Hence, Current Approach rebuttals should be assessed based on their ability to counter authoritative positions that have demonstrated traction among countries inside the *dar al-Islam*. For this reason, decisionmakers and analysts should treat “moderate” arguments that fail to meet the “have demonstrated traction inside the *dar al-Islam*” threshold as distractions to the proper analysis of the enemy in the WOT.

In validating S. K. Malik’s QCW, Brohi based his assessment on traditional concepts of Islamic law, as defined in doctrine and practiced through history. Brohi’s *imprimatur* makes QCW a *bona fide* Islamic ruling on war. Hence, S.K. Malik’s Quranic concept of war brings with it a measure of authority and authenticity that cannot be easily discounted. Branding it a “Restatement,” Brohi makes clear that S. K. Malik’s concept of Islamic war reflects an ongoing non-innovative (non-*bid’a*) understanding of the nature of warfare as traditionally understood in the *dar al-Islam*.

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sense for how International legal standards are facially accepted yet functionally discounted, compare the “Cairo Declaration” to the relevant Shari’a law – a portion of which is at footnotes 336 & 337. The “Cairo Declaration” can be located at the United Nations UNESCO portal at [http://portal.unesco.org/shs/en/ev.php-URL\\_ID=4686&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/shs/en/ev.php-URL_ID=4686&URL_DO=DO_TOPIC&URL_SECTION=201.html).

### **The Brigadier's Argument in Chief**

Pakistani Brigadier S. K. Malik's monograph starts by laying down the Quranic and historical basis for the Islamic theory of war that builds to Chapter 6 "The Ethics of War" and culminates at Chapter 7 "The Strategy for War." From that point, QCW transitions to a series of case studies that analyze Muhammad's military expeditions as recorded in the Qur'an and hadith. As the monograph's title suggests, every position taken by S. K. Malik is supported by multiple overlapping references to the Qur'an. With Brohi's comment that war in furtherance of Islam's sacred mission is a sacred duty, S. K. Malik states that in the Islamic ethic of warfare, any war successfully fought in "the cause of Allah" can be justified precisely because it *is jihad* waged in "the cause of Allah:"

In Islam, a war is fought for the cause of Allah. A Muslim's cause of war is just, noble, righteous and humanitarian. A victory in Islam is a victory for the cause of Islam.<sup>589</sup>

Establishing *jihad* as a sacred duty, S. K. Malik transitions to Quranic concepts of strategy in war. Because failure to effectively prosecute *jihad* is a "culpable omission," Islamic military strategy is understood in terms of total war involving all elements of state power:

Let us now make an attempt to study the Quranic concept of strategy. ... It aims at attaining the overall mission assigned to the Islamic State, and military strategy is one of the means available for it to do so. It is waged at the individual as well as collective level; and at internal as well as external fronts.<sup>590</sup>

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<sup>589</sup> S. K. Malik, 50.

<sup>590</sup> S. K. Malik, 54.

Restating Allah’s promise to frustrate the enemy and bring courage to believers,<sup>591</sup> S. K. Malik says Islamic military strategy starts with -- and is constrained by -- the direction given by Allah in the Qur’an:

In all the situations referred to above, we see that whenever Almighty Allah wishes to frustrate and destroy the designs of His enemies, He does so by strengthening the hearts of the Believers, and by sending down calm and tranquility upon them as from Himself. ... But what should we do to impose our will and decision upon the enemy? To find answers to this question, let us make another probe into the Book.<sup>592</sup>

Relying exclusively on the Qur’an for his strategic concepts of war, S. K. Malik’s focus is on the battles that occurred during the period of Muhammad’s revelation starting with Muhammad’s experience at the Battle of Badr as revealed in the 8<sup>th</sup> Surah:

*‘I am with you: give firmness to the Believers: I will instill terror into the hearts of the Unbelievers.’* (Anfal: 12)<sup>593</sup>

Then, from the battle of Ohad in the 3<sup>rd</sup> Surah, the Qur’an explains the Muslim defeat and provides guidance on future courses of action. In exchange for following Allah’s prescription, believers are promised:

*Soon shall We cast terror into the hearts of the Unbelievers.* (Al-i-Imran: 151)<sup>594</sup>

From the 33<sup>rd</sup> Surah, Verse 26 relates how Allah instilled terror into the hearts of the Banu Quraiza for their alleged treachery leading to their surrender and slaughter:

*And those of the people of the Book who aided them, Allah did take them down from their strongholds and cast terror into their hearts, (so that) some ye slew, and some ye made*

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<sup>591</sup> **Author’s Comment.** As a military superpower that continues to meet with frustration in its dealings in the Middle East, decision makers need to account for how this obvious frustration plays in a culture that is promised that Allah will bring just such frustration. For the strategic message to resonate that the Coalition is losing the war, all “extremists” need do is maintain the violence and allude to Allah’s promises of frustration and defeat to those bringing ‘tumult and oppression’ to the *dar al-Islam*.

<sup>592</sup> S. K. Malik, 56-57.

<sup>593</sup> S. K. Malik, 57.

<sup>594</sup> S. K. Malik, 57.

*prisoners. And He made you heirs of their lands, their houses, and their goods, and of a land which ye had not frequented (before). And Allah has power over all things. (Ahzab: 26-27)*<sup>595</sup>

The Pakistani Brigadier illustrates proper Quranic concept of war by pointing to the repetitive and unique role terror plays in its execution. The discussion culminates with Verse 8:59-60:

We see that, on all these occasions, when God wishes to impose His will upon His enemies, He chooses to do so by casting terror in their hearts. But, what strategy does He prescribe for the Believers to enforce their decision upon their foes? *“Let not the Unbelievers think,”* God commands us directly and pointedly, *“that they can get the better (of the Godly): they will never frustrate them. Against them make ready your strength to the utmost of your power, including steeds of war, to strike terror into the hearts of the enemies of Allah and your enemies, and others besides, whom ye may not know, but whom Allah doth know.”* (Anfal: 59-60)<sup>596</sup>

For the Brigadier, the four verses demonstrate a pattern that favors terror in wars prescribed by Allah. His argument has merit. Certain requirements flow from a divinely ordained strategy of terror to “prepare ... for war to the utmost in order to *strike terror into the hearts of the enemy, known or hidden*, while guarding against being terror stricken by the enemy.”<sup>597</sup> Certain consequences follow as well. If S. K. Malik’s concept of Islamic war is accurate, then the object of Islamic warfare should not be understood in terms of kinetic-based force-centric engagement models but rather its focus is on the core belief structures – the faith -- of the enemy with the objective being that of complete demoralization. If true, this raises the prospect that modern day “extremists” may be in step with Islam’s most basic theories of war as they have been understood

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<sup>595</sup> S. K. Malik, 57.

<sup>596</sup> S. K. Malik, 57-58.

<sup>597</sup> S. K. Malik, 58.

since the time of Muhammad's revelations. Certainly this is the Pakistani Brigadier's conclusion:

The whole philosophy revolves around the human heart, his soul, spirit and Faith. In war, our main objective is the opponent's heart or soul, our main weapon of offense against this objective is the strength of our own souls, and to launch such an attack, we have to keep terror away from our own hearts.<sup>598</sup>

Intuitively, if terror is the object of Islamic warfighting doctrine, then its main effort will not be associated with those activities leading to the actual conduct of battlefield operations but rather with what the West associates with pre-operational or even peacetime activities. Avoiding direct engagements in the same fashion as Muhammad in his early campaigns, one would expect a successful terror campaign to serve as the decision point to proceed to conventional military operations. In other words, the point at which Islamic concepts of war have already achieved their success criteria will generally occur at a point before most military planning cycles in the West have initiated. In the Quranic concept of war, the main battle, or the "war of muscle" as S. K. Malik calls it, is to be executed only after its outcome is a *fait accompli*. As the Brigadier argued:

*The Quranic strategy comes into to play from the **preparation stage**, and aims at imposing a direct decision upon the enemy. Other things remaining the same, our preparation for war is the true index of our performance during war. We must aim at creating a wholesome respect for our Cause and our will and determination to attain it, in the minds of the enemies, well before facing them on the field of battle. **So spirited, zealous, complete and thorough should be our preparation for war that we should enter upon the 'war of muscles' having already won the 'war of will'**. Only a strategy that aims at **striking terror into the hearts of the enemies from the preparation stage can produce direct results and turn Liddell Hart's dream into a reality.**<sup>599</sup> (Emphasis added)*

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<sup>598</sup> S. K. Malik, 58.

<sup>599</sup> S. K. Malik, 58.

For “extremists,” it seems that events like 11 September, the Madrid Bombings and the recent London bombings represent either building or culminating events of S. K. Malik’s war of will leading to his war of muscle. Girded by actual lessons from the Qur’an on the preferred method of warfare for Muslim forces and applying this theory to today’s geopolitical context, the Pakistani Brigadier arrives at a policy statement that reflects the current Islamic concept of war. The statement could not be more clearly stated:

***Terror struck into the hearts of the enemies is not only a means; it is an end in itself. Once a condition of terror into the opponent’s heart is obtained, hardly anything is left to be achieved. It is the point where the means and the end meet and merge. Terror is not a means of imposing decision upon the enemy; it is the decision we wish to impose upon him.*** Psychological and physical dislocation is, at best, a mean, though, by no means, conclusive for striking terror into the hearts of the enemies. Its effects are related to the physical and spiritual stamina of the opponent but are seldom of a permanent and lasting nature. An army that practices the Quranic philosophy of war in its totality is immune to psychological pressures. When Liddell Hart talks of imposing a direct decision upon the enemy through psychological dislocation alone, he is taking too much for granted.<sup>600</sup> (Emphasis added)

Brigadier Malik’s book *The Quranic Concept of War* may well be the most authoritative and broadly read book on contemporary Islamic theories of war inside the Islamic world and yet it is practically unknown inside the American national security community. As with the Pakistani and Indian officer corps, if understanding the nature of the threat is a critical element of military information, then the *Quranic Concept of War* should be required reading for all current and future decisionmakers and analysts with responsibility for the WOT.

Pakistan is an ally. Pakistan was an ally when they trained Afghani and *muhjahedin* forces to fight against the Soviets. Zia-ul-Haq, Allah Bukhsh K. Brohi and S. K. Malik were members of the senior Pakistani leadership responsible for much of the

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<sup>600</sup> S. K. Malik, 59-60.

training of the forces used to defeat the Soviets. Hence, there should be no hyperbole associated with N. S. Rajaram's observation that *Quranic Concepts of War* is "Pakistan's program of *jihad* as explained in its official manifesto of terror" as well as being a "Talibanization Manual."<sup>601</sup> Viewing WOT activities through the prism of QCW brings with it a comprehensible coherence to our understanding of events that is otherwise lacking. In fact, it goes a long way to bringing clarity, context, and definition to the very WOT events that currently elude the national security community and media elites.

**Frustrated by Self-Induced Frustrations.** In a 15 May 2005 article, *New York Times* journalist James Bennet gave voice to frustrations common to decisionmakers, analysts and think tank experts:

This surge in the killing of civilians reflects how mysterious the long-term strategy remains ...

It is not surprising that reporters, and evidently American intelligence agents, have had great difficulty penetrating this insurgency. What is surprising is that the fighters have made so little effort to advertise unified goals.

Counter-insurgency experts are baffled, wondering if the world is seeing the birth of a new kind of insurgency; if, as in China in the 1930's or Vietnam in the 1940's, it is taking insurgents a few years to organize themselves; or if, as some suspect, there is a simpler explanation.<sup>602</sup>

Of course, the Coalition is neither fighting China in the 1930's nor the Vietnamese in the 1940's. Analogy is a great analytical tool when it is not a crutch. If national security analysts spent as much time studying the current war on its own merits as it does looking for the "right" analogical model, the national security community would be better served. If the form of warfare described in the 1915 Fatwa and QCW has

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<sup>601</sup> Rajaram.

<sup>602</sup> James Bennet, "The Mystery of the Insurgency," *The New York Times*, 15 May 2005.

merit, the United States may be fighting an enemy whose warfighting doctrines reflect classical concepts of *jihad* that we simply choose not to recognize and consequently do not understand. The enemy in the WOT states to the entire world that he fights *jihad* in the cause of Islamic objectives. Conceding his inability to understand the motivational drivers associated with the enemy in the WOT, the *Times*' academic expert is still not swayed from rendering the predictably confident -- yet baseless -- conclusion:

Instead of saying, 'What's the logic here, we don't see it,' you could speculate, there is no logic here," said Anthony James Joes, a professor of political science at St. Joseph's University in Philadelphia and the author of several books on the history of guerrilla warfare. The attacks now look like "wanton violence," he continued. "And there's a name for these guys: Losers." ... "The insurgents are doing everything wrong now," he said. "Or, anyway, ***I don't understand why they're doing what they're doing.***"<sup>603</sup>

Not recognizing Islamic warfare's reliance on terror, decisionmakers, analysts and the elite media openly confess to not understanding the nature of the enemy or his objectives. This is what the 'extremists' mean when citing to the Qur'an that the enemies of Allah would meet with frustration?<sup>604</sup> While the general response is to scoff at such rhetoric, failure to understand the basis of the message is not cost free. The Current Approach does nothing to help overcome this knowledge deficit and arguably sustains it. In fact, common to almost all Current Approach arguments is the view that *jihad* does not even mean holy war. If this thesis achieves nothing else, it would point to the

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<sup>603</sup> Bennet, "The Mystery of the Insurgency," 15 May 2005.

<sup>604</sup> For example:

- *"That, and also because Allah is He who makes feeble the plans and stratagems of the unbelievers."* (Qur'an 8:18)
- *"It may be that Allah will restrain the fury of the unbelievers, for Allah is the strongest in might and punishment."* (Qur'an 4:84)
- *"And Allah turned back the unbelievers for all their fury. No advantage did they gain, ..."* (Qur'an 33:25)

fundamental failure of Current Approach claims that have succeeded at keeping the national security community from understanding that the enemy in the WOT are *jihadis* fighting *jihad* in its most classical form – *jihad* by bands.<sup>605</sup> The fact that we are fighting predominantly Muslim Middle Easterners (who self-identify as *jihadis*) in the Muslim Middle East should have made this more intuitive than it has been. Current Approach explanations that keep decisionmakers and analysts from looking to Islam for answers have the effect of disarming those decisionmakers -- regardless of intent.

**A Non-Western Perspective.** An observation that generates greater currency beyond the West's boundaries than within, Indian terrorism commentator N. S. Rajaram notes the West's inability to grasp the nature of the Islamist threat, preferring instead to redefine the issue along the Underlying Causes model that are acceptable to Western sensibilities in terms reducible to pre-established, matrixed solution sets:

This tenacious hold of religion is something that the West has failed to understand. When Muslims behave in a way that cannot be explained in rational terms -- at least as understood in the West -- they look for economic or social reasons.

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<sup>605</sup> **Author's Comment.** Islamic tactics successfully applied against Western Forces. **On General Kutisov.** Known for other great military feats, he rose through the Russian Army fighting Turks, Chechens, and other Muslim forces that constantly threatened Russia's southern flank. These forces fought using traditional Islamic concepts of fighting. When Kutisov was given command of the Imperial Army, with Clausewitz on his staff no less, he engaged and gave ground to Napoleon as the Grand Armée occupied Moscow. When Moscow was taken, Kutisov's army appeared to disintegrate. Called partisans then, they seemed to morph easily into what national security analysts often referred to as dead-enders. Using tactics that bear uncommon familiarity to what we see in Iraq today, Kutisov managed to do with Islamic military tactics what no Western theory of war succeeded at doing – defeat the forces of Napoleon. Using Muslim tactics, the 450,000 man army that entered Russia left with less than 10,000. There is another battle worthy of review. **The Battle of Manzikurt in 1071.** It is where the Byzantines were beaten by the Seljuk Turks. Most see it as the beginning of the end for the Byzantines due to the loss of strategic depth. What makes Manzikurt important is not how the engagement was lost but rather how the military was so undermined by domestic/court intrigue that the actual battle was a *fait accompli*. It was the defeat at Manzikurt that gave rise to Urban II's call for Crusade in 1095.

Until recently, most Western analysts were inclined to regard Islamic Fundamentalism as an aberration -- a departure from the ‘true’ teachings of Islam, which they held was a religion of peace and brotherhood. *To a large extent this is still true of academics in the West. Unlike some Indian scholars who sought explanation for it in the scripture of Islam itself, Western analysts tried to explain it in political and economic terms in keeping with their own secular-humanistic orientation.*<sup>606</sup> (Emphasis added)

In the same article, hardly religious and written by a Hindu, Rajaram argues that America’s pervasive secular orientation to international governance is a uniquely Western characteristic that blinds it from fully comprehending non-Western cultural concepts of governance preferring instead to force a reversion to strictly materialistic explanations of events – all stemming exclusively from social and economic deprivation models<sup>607</sup> that service the Underlying Causes approach. There is the broad suggestion in his comment that Western bureaucrats are mirror-imaging their own expectancies. Rajaram’s point is not that the West has turned away from God but rather that Western analysts and decisionmakers have forgotten how to think outside of strictly Western materialist terms and hence have demonstrated a peculiar inability to conceptualize the nature of threats driven by non-material drivers. Al-Qaeda also understands this to be a fatal U.S. vulnerability.

Analysis that does not recognize the role of intangibles like confidence, faith, will and morale -- except as fields in a templated PowerPoint briefing -- cannot be relied on to generate an understanding of “extremists” whose entire *modus vivendi* emanates from that domain of intangibles. As defined in the 1915 Fatwa’s speech war, as well as by S. K. Malik in his pre-operation terror campaigns, the psychological has primacy over the kinetic -- the information operation over that of the operation -- in *jihad* warfare.

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<sup>606</sup> Rajaram.

<sup>607</sup> Rajaram.

Everything Coalition forces confront in Iraq bears that out. The 2003 Madrid bombings meet the textbook criteria for success as describe by the Pakistani Brigadier. Terror was the “direct decision imposed” on the Spaniards and so complete was its success, the “war of muscle” proved wholly unnecessary. All this and yet U.S. (and British) decisionmakers publicly proclaim that there is no rational basis to explain the enemy’s actions.

There is every indication that *jihadis* take the information operation thing very seriously. They plan to win it. They expect to win it. They may be winning it. A leading indicator that a country may be targeted by such an information campaign could be, for example, when a non-Muslim country feels compelled to use language of heightened deference to issues relating to Islam that it does not afford its own culturally equivalent symbols on threat of violence. For example, treating the Qur’an more deferentially than the Bible in a Western culture brings with it a symbol of deference that Muslims expect of submitted *dhimmis*?

The Pakistani Brigadier concludes his oration on Islamic warfare with a restatement of the indispensable role of terror that extends beyond the battlefield and ends with a chilling reminder that such a strategy applies to nuclear war:

Terror cannot be struck into the hearts of an army by merely cutting its lines of communications or depriving it of its routes or withdrawal. ***It is basically related only if the opponent’s Faith is destroyed. Psychological dislocation is temporary; spiritual dislocation is permanent.*** Psychological dislocation can be produced by a physical act but this does not hold good of the spiritual dislocation. ***To instill terror into the hearts of the enemy, it is essential, in the ultimate analysis, to dislocate his Faith.*** An invincible Faith is immune to terror. A weak Faith offers inroads to terror. The Faith conferred upon us by the Holy Qur’an has an inherent strength to ward off terror from us and enable us to strike terror into the enemy. ***Whatever the form or type of strategy directed against the enemy, it must, in order to be effective, be capable of striking terror into the hearts of the enemy.*** A strategy that fails to attain this condition suffers from inherent drawbacks and weaknesses; and should be reviewed and modified. ***This rule is fully applicable to nuclear as well as conventional wars.*** It is equally true of the strategy of nuclear deterrence in fashion today. To be credible and effective, the strategy of

deterrence must be capable of striking terror into the hearts of the enemy.<sup>608</sup> (Emphasis added)

This last citation is the concluding paragraph of Chapter 7 “The Strategy for War.” Because of Pakistan and India’s ongoing hostility, their status as nuclear powers, not to mention stated “extremists” goals of acquiring and using Weapons of Mass Destruction (WMD), the Brigadier’s statement that the Quranic concept of war applies to nuclear wars should be taken at face value. While decisionmakers and analysts uncritically discount “extremist” assertions that Islam is permissive of the use of WMD because Current Approach advocates say so, an Islamic Republic has been on record since 1979 as confirming that Islamic law can support permissive use of WMD in furtherance of terror against non-Muslims.

### **CONCLUSION TO REAL ISLAMIC RULINGS ON WAR**

Both the 1915 Fatwa and QCW represent modern day Islamic rulings on war that actually bore the mantle of state policy in Muslim states under color of Islamic legal authority. Both of them reflect the doctrinal Islamic views discussed in the thesis and practiced through history. They both arise out of -- and conform to -- mainstream Hanafi principles of international policy. At no point do they aligned with Current Approach concepts of *jihad* or make reference to the “greater” *jihad* to support the rulings rendered. Rather, they predictably conform to doctrinal notions of *jihad* as a duty reflecting a

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<sup>608</sup> S.K. Malik, 58-60.

requirement of Allah that is defined as “warfare against non-Muslims to establish the religion.” Denying an enemy’s motivational drivers can lead to a serious underestimation of both his strength and ability to sustain his efforts. The national security community should bear this in mind when assessing the true costs associated with non-recognition (verging on denial) of an enemy’s stated doctrine. Current Approach attempts to “reposition” Islam along liberal lines acceptable to the West should not be accepted without first demonstrating an actual ability to counter Islam’s doctrinal impediments.

## APPENDIX H

### THE LEGAL PEDAGREE ON TREATMENT OF PRISONERS

This Appendix will provide additional language in support of the treatment of prisoners as stated in the thesis. From the thesis, the *‘Umdat al-Salik* states that the treatment of prisoners is as follows:

o9.13 When a child or woman is taken captive, they become slaves by the fact of capture, and the woman’s previous marriage is immediately annulled.

o9.14 When an adult male is taken captive, *the caliph considers the interests of Islam and the Muslims* and decides between the prisoner’s death, slavery, release without paying anything, or ransoming himself in exchange for money or for a Muslim captive held by the enemy.<sup>609</sup> (Emphasis added)

The pedigree of the rule on the treatment of prisoners can be traced back to, among other sources, the 9<sup>th</sup> century treatise on Islamic rules of war, Shaybani’s *Siyar*.

Reading like a deposition, the *Siyar* states:

94. I asked: If male captives of war were taken from the territory of war, do you think the Imam should kill them all or divide them as slaves among the Muslims?
95. He replied: The Imam is entitled to a choice between taking them to the territory of Islam to be divided among the warriors and killing them while in the territory of war.
96. I asked: What is preferable?
97. He replied: The Imam should examine the situation and decide *whatever he deems to be advantageous to the Muslims*.
98. I asked: If killing them were advantageous to the Muslims, do you think the Imam should order their killing?
99. He replied: Yes.
100. I asked: If all of them became Muslims, would he be entitled to kill them?

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<sup>609</sup> al-Misri, Book O “Justice,” at o9.0 “Jihad,” at §§ o9.13-14 “The Rules of War.”

101. He replied: He should not kill them if they became Muslims; they should be regarded as booty to be divided among the Muslims.
102. I asked: If they did not become Muslims, but they claimed that they had been given safe conduct and a few Muslims declared that they had given such a pledge to them, would such a claim be accepted?
103. He replied: No.
104. I asked: Why?
105. He replied: Because both [merely] stated their own claim.<sup>610</sup>

On the final disposition of prisoners, the ruling indicates that the prisoners have already been captured and are in the custody and control of the Muslim forces when judgment is rendered. As for female prisoners, there is not much left to doubt concerning their status. The *'Umdat al-Salik* draws its authority from among the Qur'an and Shaybani. From the Qur'an, women (and children) are property by right of conquest:

*“Prophet! We have made lawful to thee thy wives to whom thou hast paid their dowers, and those whom thy right hand possesses out of the prisoners of war whom Allah has assigned to thee...”* (33:50)

Female prisoners are gifts from Allah. Because gifts, in the normal understanding, are freely given without encumbrances, her pre-existing status is nullified. Shaybani's *Siyar* discusses the legal basis for the annulment of marriages by explaining its necessity in order to keep devout Muslims from having to concern themselves with issues of adultery -- a serious crime in Islamic law:

250. I asked: If one of the two - husband or wife - were captured and taken to the territory of Islam and the other were captured later?
251. He replied: Their marital status would no longer be valid.
252. I asked: Why?
253. He replied: If one of the two spouses were taken to the territory of Islam before the other, the wedlock would be broken.
254. I asked: Why is that so?
255. He replied: If the wife had been allotted to the share of one of the Muslims and she became a Muslim, do you not think that he would have the right to have intercourse with her to marry her if he so desired?
256. I said: Yes indeed.

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<sup>610</sup> al-Shaybani, 100-101.

257. He said: Do you not think that her wedlock was dissolved? If her husband, who in territory of war, had still preserved the marital bond with her and her wedlock with him were not terminated, the Muslim would have no right to have sexual intercourse with her or to marry her, but she would be lawful to the latter if her wedlock with her former husband had been broken. It has been related to us that Allah's saying, "Do not marry ... married women, except those whom your right hand possesses [i.e., slave women]," (Q. IV, 28.)<sup>611</sup>

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<sup>611</sup> al-Shaybani, 117.

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