Islam and Civilisational Renewal

A journal devoted to contemporary issues and policy research

ISLAM AND CIVILISATIONAL RENEWAL

AIMS AND SCOPE

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EDITORIAL

This latest issue of IAIS Malaysia's flagship journal, *Islam and Civilisational Renewal* (ICR), contains a focus article, six substantive articles (all with actionable policy recommendations), two viewpoints, six significant event reports and speeches, and a book review. I am confident our readers will benefit from this expert body of work, characterised by honest scholarship, depth of learning, and originality of thought.

Our focus article, by Daud Abdul-Fattah Batchelor (Visiting Fellow, IAIS), is entitled 'Exploring the Significance of some Cultural and Religious Factors in Domestic Violence among Muslim Immigrant Australians.' An assessment of how classical juristic opinions and *tafsir*, coupled with traditional cultural practices, have engendered domestic violence among some immigrant Muslim communities in Australia, Batchelor recommends that: 1) Australian Imams employ egalitarian interpretations of spousal roles in order to minimise domestic violence; 2) Muslim men from South Asia, Africa, and the Middle East adopt reformist attitudes towards marriage, spousal roles, disciplining, and consultation; 3) female Muslim leaders be more actively consulted on domestic violence issues; and 4) regular consultation occurs between religious and community leaders when combating domestic violence.

Our second article, 'The Role of Shariah in the Judicial System of Afghanistan,' is by Lutforahman Saeed (Kabul University). Taking a broad sweep of Afghanistan's Islamic history, Saeed explores the various ways in which shariah has been incorporated into the country's ever-evolving judicial system from earliest times down to the present. To maintain shariah's continued relevance, the author recommends that: 1) modern legal opinions be included within Afghanistan's shariah curriculum; 2) an inclusive legal curriculum be developed capable of closing the gap between Afghanistan's parallel (secular-shariah) legal systems; 3) well-equipped shariah research centres be established to address newly arising legal issues; and 4) important Arabic texts be translated into local Afghan languages.

Authors Omar Suleiman (Southern Methodist University, USA) and Elmira Akhmetova (International Islamic University, Malaysia) contribute our third article, 'The Expanded *Usul* of Violence by ISIS, al-Qaeda, and other Similar Extremist

Groups.' While modern Muslim terrorist organisations typically use interpretative frameworks rooted in violence to distort Islamic concepts like jihad, Suleiman and Akhmetova demonstrate the incompatibility of such an approach with Islam's classical tradition, which privileged the intention of the Creator when determining meaning. The authors recommend that: 1) a new mechanism be developed to facilitate the identification of extremist groups via their methodologies of violence; 2) education systems throughout the Muslim World promote more moderate understandings of Islam; 3) international media outlets and NGOs educate and inform non-Muslims about Islam; and 4) mainstream Muslim scholars and organisations actively discredit extremist ideologies.

Our fourth article, 'Jama'at-e-Islami and Tabligh Jama'at: A Comparative Study of Islamic Revivalist Movements,' is by Jan A. Ali and Faroque Amin (both of Ritsumeikan Asia Pacific University, Japan). While contrasting Jama'at-e-Islami's politically active approach to Islamic reformism with Tabligh Jama'at's more quietist emphasis on personal piety, Ali and Amin outline how each movement has nevertheless proven extremely successful, demonstrating the flexible and dynamic nature of modern Islamic revivalism. The authors conclude by recommending that: 1) policymakers recognise the success of movements like Jama'at-e-Islami and Tabligh Jama'at; 2) academic studies be more cognisant of the variations between different Islamic revival movements; 3) commentators cease to label Islamic revivalism as 'anti-modern', instead characterising it as either anti-secular or anti-Westernisation; 4) Islamic revivalism be recognised as a culturally and politically active force; 5) scholars abandon generalised characterisations of Islamic revival movements in favour of individualised studies; and 6) scholars consider how the global reach of many Islamic revivalist movements impacted upon their development.

Our fifth article, 'Gender Issues and the Search for a Hadith: A Journey in Scholarly Due Diligence,' is by Mohammad Omar Farooq (University of Bahrain). In what amounts to an interesting bit of detective work, Farooq identifies as fabricated the oft-cited passage within the Prophet's Farewell Sermon affirming gender equality alongside racial equality. Traceable to modern secondary literature, this accretion has been (unwittingly) adopted by liberal Muslim commentators seeking conformity with Western gender norms. Farooq recommends that: 1) scholars always check cited hadith against original collections to verify their substance; 2) hadith should never be cited from secondary sources; and 3) digital databases/archives of Islamic materials be used for verification purposes.

Our penultimate article, 'The Ash'ari Theological School and the Authority of Human Reason in Ethics,' is by Javad Fakhkhar Toosi (University of Malaya). A re-assessment of human reason's place within Ash'ari theology, this article argues that, contrary to prior perceptions, Ash'arism affirms the ability of human reason to discern moral values, provided doing so does not undermine the creation of actions

by God. In light of this argument, Toosi recommends that: 1) Ash'ari thought be more fully utilised in modern ethical debates; 2) Islamic studies programmes more fully acknowledge Ash'ari rationalism; and 3) an in-depth analysis be conducted into the variations between Ash'arite and Mu'tazite rationalisms.

Our final article, 'Challenges Facing Female Muslim Medical Practitioners (FMMP) in the University College Hospital (UCH), Ibadan, Nigeria,' is by Muritala Kewuyemi Kareem and Jamilah Adenike Adeogun (both of the University of Ibadan). Based on interviews conducted with FMMPs in Ibadan, this article details the discriminatory practices currently facing such women in the workplace. The authors recommend that: 1) the Nigerian government do more to uphold religious freedoms; 2) the management of UCH ensure their recruitment, employment, and promotion processes are fair, just, and objective; 3) FMMPs be given the space to practice their religion without intimidation or suspicion; 4) more effort be made by UCH management to accommodate issues like hijab and prayer; and 5) future advocacy and awareness of these issues be framed within the context of Article 18 of the Universal Declaration of Human Right and Section 38(1) of the 1999 Nigerian constitution, both of which provide for "freedom of thought, conscience, and religion".

In addition to these substantive articles, this issue also carries two insightful viewpoints: 'Halal Retailing: Closing the Last Mile in an End-to-End Halal Supply Chain,' by Marco Tieman (HELP University, Malaysia) and Barbara Ruiz-Bejarano (UNESCO University of Alicante); and 'Social Challenges in a Human-Robot Relationship,' by Shahino Mah Abdullah (IAIS Malaysia). We are also pleased to carry a review of Mona Hassan's *Longing for the Lost Caliphate: A Transregional History* (Princeton University Press), contributed by Owais Manzoor Dar (Jamkia Millia Islamia, India).

Finally, let me extend my heart-felt appreciation to all our authors. Their well-informed and enlightened contributions will, I feel sure, be of interest to scholars worldwide. I also thank my colleagues at IAIS Malaysia for their effort in the processing and publication of this issue.

Mohammad Hashim Kamali
Editor-in-Chief

THE EXPANDED *USUL* OF VIOLENCE BY ISIS, AL-QAEDA, AND OTHER SIMILAR EXTREMIST GROUPS

Omar Suleiman*
Elmira Akhmetova**

Abstract: This paper discusses the methodology of violence used by modern extremist groups that affiliate themselves with Islam, particularly al-Qaeda and ISIS. With the rise of groups claiming to wage jihad, the public has a difficult time discerning traditional concepts from modern aberrations. Furthermore, the groups themselves seem to be alike. The examination of the legal framework used by these groups to justify their violent practices shows a dishonest usage of the traditions they claim to defend. This becomes most obvious with the rise of ISIS, which claims to manifest concepts beyond jihad, such as *bay'ah* and *jizyah*. It is also highlighted in the paper that the selective readings of these groups take the most violent interpretations of numerous issues and reduces every target to a disbeliever worthy of being killed or subjugated. By discrediting their *usul* (interpretive principles), the claims they make for an entire tradition are called into question.

Keywords: ISIS, Al-Qaeda, jihadism, terrorism, violent extremism, Khawarij, *bay'ah*, *jizyah*, takfirism, *fiqh*, *usul al-fiqh*, hermeneutics.

Introduction

Yusayr ibn 'Amr narrates that he asked Sahl ibn Hunayf, "Did you hear the Prophet saying anything about the Khawarij?" Sahl said, "I heard him saying while pointing his hand towards Iraq: There will appear in it (i.e. Iraq) some people who will recite the Qur'an but it will not go beyond their throats, and they will go out from (leave) Islam as an arrow darts through the game's body."[1] The Prophet Muhammad spoke of this group with much disdain, while highlighting its inevitability and survival across ages.

Among the core features of the Kharijites was their expansion of interpretative frameworks giving them justification for violence. This is found in the description of 'Abd Allah ibn 'Umar, who stated that the Kharijites were those who took verses revealed about the disbelievers and assigned them to believers as an excuse for killing them.[2] This does not just mean that Kharijites

were guilty of unjust proclamations of *takfir*. It also demonstrates the looseness
with which they interpreted verses about *kuffar* (disbelievers) as a whole in order
to justify perpetual warfare against, in effect, anyone they wished to fight for
political gain, including Muslims. As such, the expansion of rulings in regard to
dealing with non-Muslims preceded the expansion of who should be considered
to be a non-Muslim. It then became an interpretive framework that merely
sought whatever decontextualised interpretation was possible to demonise and
justify brutality against a political opponent.

Challenging these views requires both courage and sound scholarship.
Amongst the most successful challengers to Kharijite thinking was 'Abd Allah
ibn 'Abbas, the cousin of the Prophet, known as one of the most eminent early
scholars of the Muslim *ummah*. With the appearance of the first Kharijites,
he sought permission from Caliph 'Ali ibn Abi Talib to debate them.[3] Ibn
'Abbas challenged the Kharijites on three major points. The first involved their
misunderstanding of a verse in the Qur'an that forbade men to judge, reserving
this for only God. In their interpretation, this verse referred to any judgment,
even simple arbitration. But such an interpretation, Ibn 'Abbas highlighted,
would contradict numerous other verses in the Qur'an (such as al-Māidah,
5:95) in which the ability of a man to judge between two parties is explicit.[4]
Secondly, Ibn 'Abbas challenged their criticism of 'Ali regarding his failure to
take war captives in the Battle of the Camel. Ibn 'Abbas pointed to the fact
that 'A'ishah, the wife of the Prophet, was present on the other side during
this battle; if, as they suggested, 'Ali took her as a captive, then they would be
closer to being disbelievers, because she is included among the Mothers of the
Believers.[5] Thirdly, Ibn 'Abbas rejected the Kharijite contention that, because
'Ali did not use the title Commander of the Believers, he might as well be
Commander of the Disbelievers. 'Ali was attempting to unite all Muslims, even
those who opposed him, and Ibn 'Abbas cited the fact that the Prophet erased
the title "Messenger of God" from the treaty of Hudaybiyah for the greater
goal of peace. Although Ibn 'Abbas' arguments were able to win over many
from the Kharijites, their trend of thinking would continue throughout history,
characterised by the repeated offense of utilising faulty *usul* to intentionally
decontextualise and unduly expand traditional concepts in the service of
violent ends.

Amongst such extremist groups in Muslim history, ISIS (the so-called Islamic
State of Iraq and the Levant) is unique, as it has declared itself to be a 'state'
and introduced modern aberrations of classical concepts, such as *takfir*, *bay'ah*
(the pledge to the caliph by his followers), *jizyah* (the tax due upon religious
minorities in exchange for protection), and *dhimmah* (the protected status of
religious minorities in an Islamic state). Other earlier groups merely expanded

the doctrine of jihad to include acts of terrorism. While al-Qaeda, for example, also employed *takfir* and *bay'ah*, they did so almost exclusively in terms of determining allegiance to Islam generally, and to their group specifically. *Takfir* was used by them to demote Muslim rulers from protected ruler status and civilians from protected civilian status. *Bay'ah* spoke to allegiance to the group by other sub-groups and fighters, as opposed to a demanded pledge from the average Muslim. However, ISIS arose with uniquely horrific forms of terror and expanded every possible term to extend its brutality and subjugation of those (primarily Muslims) within its reach. Terrorist groups that masquerade as flag-bearers of jihad today are not therefore monolithic. Although they commonly uphold certain core beliefs, such as viewing Islamic law through a lens of extreme violence, they differ markedly on details of ideology, thereby multiplying the sectarian factions amongst them.

A careful examination of extremist groups reveals that they have no interpretive framework matching any historical form of *usul al-fiqh* (principles of Islamic jurisprudence). Instead, they simply seek out the most violent possible interpretation of a text. Violence as an interpretive value is entirely foreign to traditional *usul al-fiqh*. The primary goal of the classical jurists was to seek the intent of God in matters of law, which for them required an insistence on being true to their *usul*. This perspective can be used to discredit the Islamic religious authority of modern extremists groups. This is especially important in the case of ISIS, which alleges to have revived the historical caliphate and establish a *dar al-hijrah* (land of migration, i.e. a place to escape with one's religion to safety and assured protection), both concepts of value to ordinary Muslims around the world. This paper accordingly examines the legal framework extremist groups use to justify their practices.

ISIS, al-Qaeda and Jihad

In February 2014, Abu Muhammad al-Maqdisi denounced ISIS as "hopelessly extremist and out of touch with reality."[6] In 2017, other religious scholars aligned with al-Maqdisi emphasised the tendency of ISIS towards "extreme violence and *takfir*," with some even likening them to Kharijites.[7]

Based on these statements, one may conclude that al-Maqdisi and his associates are moderates, at odds with the extremism extolled by ISIS. The reality, however, is that al-Maqdisi is the father of modern jihadist[8] theory, whose books on jihad are widely read and cited among modern-day extremist groups.[9] But, al-Maqdisi was not alone in his criticism of ISIS. Other prominent jihadist scholars joined him in their denunciation, including Abu Qatadah al-

Filastini and Hani al-Siba'i. This reproach created a major public rift among jihadis, pitting the younger jihadist scholars supporting ISIS against the old guard supporting al-Qaeda. In reality, however, the split between the two sides dated back to at least 2005 and Ayman al-Zawahiri's letter to Abu Musab al-Zarqawi, criticising his indiscriminate attacks on Iraqi Shi'ah civilians.[10]

Likewise, in 2017, Sherman Jackson explored the surprisingly substantive critique and renunciation of ISIS by the former Egyptian leaders of al-Jama'ah al-Islamiyah, which invoked a number of violations of shariah (Islamic law).[11] The value of so exploring the legalistic interpretive framework (or lack thereof) of ISIS and similar groups lies in its demonstration of just how foreign they are to Islam in its purest sense.

The scarcity of ISIS intellectual horsepower has been made evident by the fact that its top authority, Turki al-Bin'ali, is a 30-year old Bahraini scholar and prior student of al-Maqdisi.[12] It seems that ISIS adopted much of al-Qaeda's formulations on jihad. Certainly, the majority of earlier well-known jihadi scholars came to prominence under the banner of al-Qaeda and other non-state jihadi movements. Therefore, it is not surprising that there is general agreement amongst both ISIS and al-Qaeda of the centrality of jihad (including suicide bombings) within Islamic practice. ISIS reiterates that jihad is an individual duty, and that offensive jihad should be pursued against apostate unbelievers in their own lands, "in order to make God's word most high and until there is no persecution."[13]

Both al-Qaeda and ISIS make extensive use of the Qur'an, hadith, and sayings of medieval Islamic jurists to ground their opinions. Nearly every page of their publications feature references to various verses of the Qur'an and interpretations from well-known and widely respected exegetes and jurists, such as Ibn Taymiyah (1263-1328), Ibn Kathir (1300-1373), al-Qurtubi (1214-1273), and Ibn Hajar al-'Asqalani (1372-1449).[14] This is an attempt to assert that they are a decidedly Sunni undertaking with no room for innovation (*bid'ah*), which they claim to be at the forefront of eradicating.

But while the similarities between ISIS and al-Qaeda are obvious, a number of differences in thought also exist between the organisations, notably relating to issues like *takfir*. The most significant differences, however, resulted from ISIS making the transition from jihadi group to state entity, with all the complexities that arose therefrom. In late 2007, Abu 'Umar al-Baghdadi officially dissolved al-Qaeda in Iraq (AQI) in favour of ISIS. Although, at the time, ISIS was rightfully considered a 'paper state', with nearly no territory, it grew under its subsequent leader, Abu Bakr al-Baghdadi, who was appointed in 2010. The new reality of statehood that ensued created a set of problems not previously encountered by a jihadi group, putting ISIS in need of new intellectual

groundwork. Topics such as *bay'ah*, *dhimmah*, and the centralisation of jihad operations fell into this category.

Bay'ah

In January 2007, ISIS issued a dispatch entitled "Informing Mankind of the Birth of the Islamic State," which argued for the legitimacy of its new caliph, Abu 'Umar al-Baghdadi.[15] In particular, it emphasised that the method by which Abu 'Umar al-Baghdadi had been elected was the shariah-based mechanism of *bay'ah* (oath of allegiance). The dispatch made the case that the only legal justification for assuming power in Islam rested with selection by an elite group of influential electors, known in classical *fiqh* as *ahl al-hall wa'l-'aqd* (lit. those who loose and bind). While limiting the *ahl al-hall wa'l-'aqd* to those waging jihad against the Americans and Shi'a in Iraq, ISIS claimed 60 percent of local Sunni tribal shaykhs had given their approval to the appointment of Abu 'Umar al-Baghdadi as caliph.[16] Furthermore, Abu 'Umar al-Baghdadi was deemed qualified as head of state because he satisfied the seven qualifications of a caliph stipulated by shariah.[17] But ISIS also argued that, as caliph, it became *fard* (religiously mandatory) for all other jihadi groups to give their *bay'ah* to Abu Umar al-Baghdadi. Soon thereafter reports began to emerge of the killing of jihadis who refused to give *bay'ah* to the ISIS leader.

As a result, a debate emerged between al-Qaeda affiliated jihadi scholars and ISIS regarding various types of *bay'ah* and their applicability in this specific case. In 2007, Osama bin Laden had supported ISIS (then still the Islamic State of Iraq, ISI) and urged other jihadi groups in Iraq to pledge their *bay'ah* to Abu 'Umar al-Baghdadi. But, since the state remained little more than a paper state, no serious legal discussion of *bay'ah* ensued. This lull continued into early 2012, when a reinvigorated ISIS, now under the leadership of its new caliph, Abu Bakr al-Baghdadi, expanded its efforts into Syria. This series of events caused the topic of *bay'ah* to resurface amongst jihadi scholars.

In 2013, a number of pro-ISIS scholars (including Abu Ja'far al-Hattab, Bin'ali, and Abu al-Hasan al-Azdi) brought a new angle to the dispute. There are, they said, two kinds of *bay'ah* in Islam: a 'restricted' *bay'ah* (given to the leader of a militant group for a limited term and only in matters of jihad) and an 'unrestricted' *bay'ah* (offered to a head of state for an unlimited term and unrestricted in scope). Abu Qatadah and al-Maqdisi issued statements against giving unrestricted *bay'ah* to Abu Bakr al-Baghdadi, arguing that ISIS lacked "political capability",[18] even though, back in 2007, bin Laden had argued against political capability as a condition for establishing the Islamic Emirate. He had

said that, if that were so, "Islam would never achieve a state." In April of 2014, Turki al-Bin'ali wrote a 15-page rebuttal, outlining why political capability is a non-factor in determining the validity of ISIS.[19]

Finally, in a last-ditch effort to prevent ISIS expansion, Zawahiri brought an interesting intervention to the argument. He provided evidence that ISIS officials had previously given *bay'ah* to al-Qaeda in 2010 and that, therefore, Mullah 'Umar was in fact the rightful caliph. Since this appointment predated that of Abu 'Umar al-Baghdadi, ISIS was founded upon an invalid *bay'ah*. Although ISIS officials disavowed Zawahiri's claim, the damage was done. The split between pro-al-Qaeda and pro-ISIS constituents became pronounced, with Zawahiri's move even prompting some ISIS supporters to switch their allegiance to al-Qaeda.[20]

Nevertheless, ISIS continued to use *bay'ah* as a tool of expansion. In late 2014, a series of *bay'ah* pledges were issued online via audio statements from jihadists in Saudi Arabia, Yemen, the Sinai Peninsula in Egypt, Libya and Algeria. Shortly thereafter, Abu Bakr al-Baghdadi accepted these pledges of support and declared ISIS territory had expanded into those areas.[21] This move was only possible as a result of disavowing political capability as a requirement for the establishment of an Islamic State; the reality on the ground clearly continued to show that ISIS had no control whatsoever in those countries. But, according to Abu Bakr al-Baghdadi, the very fact someone from there had given him *bay'ah* was sufficient to expand his territory into those lands. Potentially, therefore, anyone in those lands who refused to obey the local ISIS-appointed 'governor' was rebelling against the state and could be captured, imprisoned, or even killed. While classical texts could be used to back this claim, the reality on the ground would differ starkly from the situations persisting at the time those texts were written.[22]

The Issue of *Takfir*

While al-Qaeda loosely applied *takfir* only to those it deemed to be associated with the West, ISIS used the term far more extensively, to the point that Zawahiri and al-Maqdisi criticised Zarqawi for targeting the Shi'a as apostates (below). In early jihadist works, this topic is treated in detail. Al-Qaeda in Iraq (AQI) cited the example of Abu Bakr, Islam's first caliph, and his fight against Arab tribes who refused to pay *zakah* (obligatory alms). Abu Bakr considered these tribes to be apostates based on their deeds, not words. By analogy, AQI argued that anyone who supported the American occupation of Iraq could be labelled as apostate. Defining "support for the occupation" in exceptionally

general terms, they included anyone who assisted the occupiers, even verbally, including Muslims who may "have no thoughts against Islam, and there might be no suspicions surrounding him."[23] In practical terms, this expansive definition enabled jihadists to justify the execution of nearly every Iraqi. Zarqawi further used this foundation to claim that all Shi'a were collectively apostates and could be killed without the shariah-sanctioned requisite opportunity for correction or repentance. This equated to a new, collective type of *takfir* in which an entire demographic could be deemed apostate.

This view had, however, been rejected years earlier by London-based jihadist, Abu Basir al-Tartusi. In his book *Qawa'id fi takfir* (Rules for Excommunication, 1994), Tartusi asserted that, even though a person may generally fall into unbelief or perform an act that is unbelief, such does not automatically equate to apostasy. In accordance with the known shariah mandate, each individual must go through rigorous due process before capital punishment is meted out.[24]

In an early ISIS publication, "Some of our Fundamentals" (2007), Abu 'Umar al-Baghdadi elucidated his view on apostates by stating:

> We do not hereticise any Muslim who prays in the direction of our qibla [Mecca] on account of sins, such as fornication, drinking alcohol, and theft, so long as he does not consider it to be licit. Our position on faith is a middle way between the extremist Kharijites and the lax Murji'ites; whoso utters the two professions of faith and manifests to us Islam—so long as he does not engage in one of the nullifiers of Islam—we accord him the treatment accorded Muslims, and we entrust his soul to God, who is most high. [Our position on faith is furthermore] that unbelief is of two kinds, greater and lesser, and that a judgment [of unbelief] falls on whoever commits it [whether] in creed, word, or deed. However, expelling the specific individual among them and judging him to be destined for hell forever is conditional upon the establishment of the conditions of heresy (*takfir*) and the absence of factors prohibiting it.[25]

In this quote, Abu 'Umar al-Baghdadi seemingly agrees with Tartusi regarding the existence of a methodology for *takfir*. However, in the same article, Baghdadi deemed the leaders of those who participate in the political process (seemingly referring to the Muslim Brotherhood) as apostates, stating that in this respect there is no difference between a government official and a branch director. The masses that participate in the political process, however, can be excused based on ignorance. Also, apostasy can be extended to anyone who aids the occupiers in any way whatsoever.[26]

The 13th issue of ISIS's English-language magazine, *Dabiq*, was dedicated to
the topic of *ra'fidah*, a derogatory term used for the Shi'a.[27] In the article, "The
Rafidah, from Ibn Sana' to the Dajjal," the Shi'a were equated with Jews; their
founder is identified as Ibn Saba' (a well-known hypocrite at the time of the
Prophet Muhammad) and they are deemed apostate in their entirety. A section
of the article entitled "The Rafidah According to the Jihad Claimants," was
dedicated to discussing the opposing views of pro-al-Qaeda jihadists and ISIS
regarding the apostasy of the Shi'a, with two pro-al-Qaeda jihadist positions
being addressed. The first holds that the Shi'a cannot categorically be considered
apostates due to the ignorance of the masses, while the second argues that past
scholars did not make *takfir* of all Shi'a, but only those who went to extremes in
theological matters. The ISIS response was that such subgroups are now extinct,
and all current Shi'a are *ra'fidah*—those who curse the Prophet's companions
and engage in grave worship. The authors of the article supported their stand
with quotations from, among others, Muhammad ibn 'Abd al-Wahhab, Ibn
Taymiyah, Muhammad ibn 'Abd al-Latif al-Shaykh and Shaykh Hamd al-
Humaydi. Zawahiri and al-Maqdisi, as well as the nationalist Taliban, were
explicitly called out for their soft positions towards the Shi'a, being accused
of perverting the truth and holding the deviant belief that Shi'a are Muslims.
Finally, a long quote from Zarqawi's correspondence with Zawahiri concludes
the argument that the Shi'a, due to their heretical beliefs and deviant practices,
are apostates who need to be fought.

Understanding the Jihadists' Interpretive Framework

After reading many jihadist works, it is difficult to discern a shared, cohesive
interpretive methodology, or *usul*. Claiming that they adopt a strict constructionist/
literalist orientation is too simplistic. Many jihadists have clearly utilised human
reasoning when interpreting divine texts. But, since jihadists do not publish their
hermeneutic methodology as pre-modern jurists did, we are left to analyse trends
and interpretive patterns in their writings and speeches.

First, it is clear that they leverage the writings of pre-modern jurists as the
foundation of their work. They take such writings out of context, however,
allowing them to mix both conquest-style *fatawa* and anti-Crusader or anti-
Mongol *fatawa* into their worldview. Their articles and speeches are awash with
references to these *fatawa*, in many cases more often than references to the
Qur'an and hadith.

Second, they filter out pre-modern scholars associated with heretical sects.
This includes anyone connected to the Mu'tazilah, Murji'a, Khawarij, or any

other group that, from the jihadist perspective, deviate from the 'straight path.' In essence, this creates a 'blessed list' of pre-modern scholars that one can select from, including the likes of al-Qurtubi, Ibn Taymiyah, and Ibn al-Qayyim, among others. Yet even among these, there may be differences of opinion, some of which contradict the jihadist programme.

A third principle, especially for pro-ISIS jihadists, is the selection of the most violent reading possible of a text from amongst the 'blessed list' of pre-modern scholars. The following examples illustrate the point:

1. Al-Mawardi provides multiple interpretations of verse 9:29 of the Qur'an regarding a non-Muslim's *jizyah* payments to the caliphate. The verse states that *jizyah* should be given "in a state of humiliation" (*wa hum saghirun*). Mawardi provides two opinions from classical exegetes regarding the meaning of "state of humiliation": it either means that *dhimmis* are lowly or that the laws of Islam apply to them.[28] In *The Study Qur'an*, it states that the term was interpreted to mean that the *jizyah* should be rendered in a state of humility, but also identified an opinion that paying *jizyah* is itself tantamount to "being humbled".[29] From among these opinions, the jihadists opt for the harshest, allowing the most brutal forms of subjugation of *dhimmis* in their territory.

2. Regarding the Islamic ruling on killing non-combatants during warfare, al-Zawahiri argues in "Jihad, Martyrdom and Killing of Innocents" that, in classical *fiqh*, there were three opinions on killing non-combatants: outright prohibition, outright legitimacy, and permissibility as long as there is a need or obligation to do so. Zawahiri favours the last opinion, seemingly the middle-ground opinion. But, further analysis reveals that these cases refer to extreme situations, such as when civilians are used as shields. Using these opinions to justify 9/11-style attacks is clearly inappropriate and arguably leans towards the most violent interpretation— or, at least, perceives a pre-modern interpretation through the lens of violence.[30]

3. Regarding suicide operations, jihadists overrule the forbidding of suicide using past juristic opinions privileging human intentionality. Thus, pre-modern jurists justified a soldier putting himself in grave danger, even in cases where being killed was a near certainty. Using this as a foundation, jihadists have stated that there is a difference between killing oneself out of depression and hopelessness and killing oneself out of a noble sacrifice to further Islam. They therefore extend past juristic opinions to include

suicide operations, even though it is clear such opinions did not address this issue.[31] Of the different opinions on the matter, jihadists again opt for the most violent interpretation, contradicting the expected outcome of a literalist approach.

4. Jihadists insist that offensive jihad is a pillar of the religion. While it is true that the majority of pre-modern jurists accepted offensive jihad as a matter of pre-empting hostile action, Sufyan al-Thawri and Abu Hanifah took a different position. Thawri said: "Fighting against the associators (non-believers, i.e. those who associate others with God's divinity) is not an obligation unless they start the fight; then it is an obligation to fight back (against them)." On the other hand, al-Sarakshi and al-Shafi'i held the opinion that jihad must be waged until "all polytheists turn to Islam and all the People of the Book give the *jizyah* (the tax equivalent non-Muslim subjects pay to the Muslim state)."[32] Of course, of these two opinions, jihadists opt for offensive jihad as an individual duty, but while adding that it includes "going after the apostate unbelievers by attacking [them] in their home territory, in order to make God's word most high and until there is no persecution." The term "persecution" is understood to refer to idolatry.[33]

5. Jihadists take the most violent opinion regarding the opportunity for repentance in the case of apostasy. Pre-modern jurists agreed that apostates have an opportunity to repent, that the Imam must invite them to the right path based on rational and textual evidence. Only after they have been given time and opportunity to repent can capital punishment be invoked.[34] Contrary to mainstream opinion, however, AQI argued on the authority of Ibn Taymiyah that Muslims, when not in a position of power and control, should kill apostates without giving them an opportunity to repent.[35] This is not only a likely misrepresentation of Ibn Taymiyah, but a dishonest elimination of the entire concept of repentance-based immunity.

Countering Violent Extremism

The reality of jihadist groups is that, while they masquerade as ideological, they are simply violent. They read violence into everything, while masking their dishonest interpretations with numerous supplementary texts that seemingly support their initially flawed conclusions. By exposing this flawed *usul*, their opinions are inherently discredited.

The problem with programmes created to counter these groups, on the other hand, is that they are usually funded and administered by the same state actors that originated the violence and chaos that set the stage for terrorists groups to prosper. These same programmes are also often used to silence opponents, usually mainstream Muslim scholars and organisations that have earned the ire of state actors by standing between them and the appropriation of Islamic texts. Mainstream Muslim scholars and organisations will not hesitate to condemn the excesses of both Islamic terrorist groups and Muslim governments. In the process, they often become the targets of both. Moreover, some of the authors cited here offer outlooks on the history and ideology of jihadists that serve to validate the authority of ISIS, al-Qaeda, and the like by suggesting that their extrapolations are indeed orthodox. The community that upholds orthodoxy while rejecting these extrapolations are vulnerable to extremism and, therefore, must be heavily policed, paving the way for a deeply prejudicial industry that contributes to the same terror it claims to be combating.[36]

Conclusion and Policy Recommendations

After inspecting various jihadi views, the question naturally arises: are al-Qaeda and ISIS Islamic? Their extensive use of divine texts and respected medieval scholars might suggest the affirmative. Moreover, in a controversial March 2015 article in *The Atlantic*, entitled "What ISIS Really Wants," Graeme Wood stated: "The reality is that the Islamic State is Islamic. *Very* Islamic. Yes, it has attracted psychopaths and adventure seekers, drawn largely from the disaffected populations of the Middle East and Europe. But the religion preached by its most ardent followers derives from coherent and even learned interpretations of Islam."[37] But, in the past jurists utilised a cohesive interpretive framework known as *usul al-fiqh*. As the theoretical and methodological system underlying the way legal norms and rules are derived and applied, *usul* includes topics such as the sources of legislation, how to resolve apparent conflicts in the divine texts, linguistics, and other interpretive methods.[38] Violence (or even passivity for that matter) as an interpretive value is noticeably absent from any *usul al-fiqh* work, past or present. It is for this reason that one may find a jurist holding opinions that seem to be harsh in one area and lenient in another. The primary goal of classical juristic activity was to seek the intent of God in matters of law, which required insistence on being true to *usul*. However, for modern-day jihadists, violence cannot be an explicit element of their interpretive framework, since it may contradict their own principles of hyper-textualism and of avoiding *bid'ah* (religious innovation), leaving them open to the criticism of inventing a

new version of Islam. This demonstrates how groups like al-Qaeda and ISIS are inauthentic and incoherent in the legal sense.

Finally, this paper proposes the following policy recommendations to tackle the issue of violent interpretations of Islam in the modern world:

- Extremist groups such as al-Qaeda and ISIS commonly use classical texts to provide authoritative backing for their extremist actions and crimes against humanity. Thus, there is an urgent need to develop a new mechanism for identifying extremist groups by examining their methodology of violence. The construction of these guidelines should be through independent scholarly intervention, not that of governmental agencies or counter-terrorism programmes that only further stigmatise mainstream Muslims.

- Extremists and terrorists who perceive Islam through a lens of violence do not represent an authentic image of that religion. Extremism and militancy, by individuals or organisations, can be lessened through moderate understandings of authentic Islamic principles. Moderation and balance (*wasatiyyah*) must be implemented to achieve good governance in the Muslim World.

- Islam and terrorism must be brought into conversation with one another to defeat extremist groups that manipulate religion and create a wholesome understanding of how an Islamic society is meant to function.

- Defeating ISIS and other extremist groups will not guarantee the end of extremism and terrorism in the Muslim World. Rather, instead of replying to extremism with extremism, Muslim scholars should discredit extremist interpretations of Islam. Mainstream Muslim scholars and organisations should not hesitate to condemn the excesses of both supposedly Islamic terrorist groups and Muslim governments.

Notes

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1.   Abu Abdullah Muhammad Bin Ismail al-Bukhari, *Sahih al-Bukhari*, vol. 9, trans. Muhsin Khan (Riyadh: Darussalam Pub. & Distr., 1997), 52, hadith no. 6934.
2.   Ibid., vol. 9, 49.
3.   'Abd al-Razzaq al-San'ani, *Musannaf 'Abd al-Razzaq al-San'ani*, vol. 10, 2nd ed., ed. Habiburrahman A'zami (Beirut: al-Maktab al-Islami, 1983), 157, hadith no. 18678.
4.   Ibn 'Abbas specifically cited this verse: "O you who believe, do not kill the game while you are in a state of Ihram, and whosoever of you kills it intentionally, then the penalty is an offering equivalent to the one he killed, as judged by two just men among you" (Q. al-Ma`idah, 5:95). See Ahmad ibn al-Husayn al-Bayhaqi, *Al-Sunan al-Kubra*, vol. 8, ed. Muhammad 'Abd al-Qadir 'Ata (Beirut: Dar al-Kutub al-'Ilmiyah, 2003), 309, hadith no. 16740.
5.   Q. Al-Ahzab, 33:6; Al-San'ani, *Musannaf 'Abd al-Razzaq al-San'ani*, vol. 10, 157, hadith no. 18676.
6.   Cole Bunzel, 'The Caliphate's Scholar-in-Arms,' *Jihadica*, 9 July 2014. Available at: http://www.jihadica.com/the-caliphate%E2%80%99s-scholar-in-arms/ (Accessed on: 25 November 2019).
7.   Cole Bunzel, 'From Paper State to Caliphate: The Ideology of Islamic State,' *The Brookings Project on U.S. Relations with the Islamic World,* no.19 (March 2015), 30.
8.   The terms jihadist and jihadism are usually applied to these groups, yet a practicing Muslim will naturally find them objectionable due to the implied misuse of the doctrine of jihad. The term is retained here only because of its prevalence in the academic literature.
9.   William F. McCants and Jarret Brachman, *Militant Ideology Atlas: Research Compendium* (New York: Combating Terrorism Center, 2006), 333. The *Militant Ideology Atlas* is a project that identifies influential jihadi thinkers through "citation analysis." There is a problem with this metric, however, in that it fuels many racist Countering Violent Extremist initiatives. It is cited here simply for this data point.
10. Wladimir van Wilgenburg, '"Fight Them Until There Is No Fitnah": The Islamic State's War with al-Qaeda,' *Terrorism Monitor*, vol. 13, i. 4 (20 February 2015). Available at: https://jamestown.org/program/fight-them-until-there-is-no-fitnah-the-islamic-states-war-with-al-qaeda/ (Accessed on: 25 November 2019).
11. Sherman Jackson, 'Fundamentalist vs. Fundamentalist: An Islamist Critique of ISIS,' *YouTube* 1:12, Department of Religious Studies at McMaster University. Available at: https://youtube.com/watch?v=A1Gj_tOHGz4 (Accessed on: 25 November 2019).
12. Bunzel, 'From Paper State to Caliphate,' 11.
13. Ibid., 10.
14. Often times, pre-modern jurists are referred to as a means of promoting the Islamic authenticity of a specific opinion, perhaps because they pre-date the advent of colonialism in Muslim lands.
15. Uthman ibn Abd al-Rahman al-Tamimi, *Ilam al-anam bi-milad Dawlat al-Islam*

(Informing Mankind of the Birth of the Islamic State) (Muassasat al-Furqan, 2007), 41.

16. Bunzel, 'From Paper State to Caliphate,' 18-9.

17. In classical *fiqh*, the seven conditions to the Caliphate are: 1. A just nature, 2. Knowledge of *ijtihad* (independent legal reasoning), 3. Good health, 4. Sound limbs, 5. Capable judgement for administration, 6. Courage and bravery, 7. Of the family of the Quraysh (al-Mawardi 12)

18. Bunzel, 'From Paper State to Caliphate,' 26-7.

19. Turki al-Bin'ali, *Al-Qiyafah fi 'Adam Ishtirat al-Tamkin al-Kamil li al-Khilafah* (Baghdad: Islamic State in Iraq and Sham, n.d).

20. A notable example is Abu al-Mundhir al-Shinqiti, an anonymous Mauritanian scholar who initially supported ISIS's claim to have established a state and not just a battlefield command. Later, Shinqiti changed his stance after learning of Zawahiri's claim that Mullah 'Umar was in fact the first caliph, countering claims that Mullah 'Umar was disqualified because he was not from the tribe of Quraysh. Several ISIS supporters responded with a series of lectures and papers. See Bunzel, 'From Paper State to Caliphate,' 34.

21. Ibid.,' 32.

22. ISIS has also expanded to "virtual *bay'ahs*," as discussed by Philipp Holtman: "In IS' vision, online bay'at, i.e. given or documented online, are supposed to stimulate rites of passage, which immerse IS-sympathisers ever deeper into jihadi ideology and increase a feeling of shared brotherhood, communality and obedience, eventually turning them into active supporters and actors. IS hopes that the feeling of obligation will create enough psychological pressure to lead to single attacks, such as lately in Ottawa, Canada." See Philipp Holtmann, 'Different Functions of IS Online and Offline Pledges (*bay'at*): Creating a Multifaceted Nexus of Authority,' *Jihadology*, 15 November 2014. Available at: https://jihadology.net/2014/11/15/guest-post-the-different-functions-of-is-online-and-offline-plegdes-bayat-creating-a-multifaceted-nexus-of-authority/ (Accessed on: 25 November 2019).

23. Mohammed M. Hafez, 'The Alchemy of Martyrdom: Jihadi Salafism and Debates over Suicide Bombings in the Muslim World,' *Asian Journal of Social Science* 38, no. 3 (2010): 367.

24. See ibid., 369: "Tartusi lists eight conditions that preclude individual charges of takfir even when it is obvious that the actions or beliefs of the individual involved constitute unequivocal cardinal sins, generally speaking. These can be summarised as lacking proper knowledge of what constitutes cardinal sins in Islam due to lack of mental maturity associated with young age, retardation, or insanity; ignorance, misunderstanding, and misinterpretation of the proper doctrine, or improper socialisation in the faith; coercion by unbelievers; and dilemmas in which believers have to choose between greater and lesser forms of impiety."

25. Bunzel, 'From Paper State to Caliphate,' 38.

26. Ibid., 39.

27. ISIS, 'Dabiq 13,' *Islamic State in Syira and Sham*, 1 February 2016. ISIS differentiates between the Shi'a and the *ra'fidah*. The Shi'a constitute a more general category, including the extinct sect of people who historically preferred

'Ali over Abu Bakr as first caliph (yet while still accepting the latter's caliphate as legitimate). The *ra'fidah*, on the other hand, are those who curse the *sahabah* (the Prophet's companions) and participate in grave worship.

28. 'Ali ibn Muhammad al-Mawardi and Asadullah Yate (trans.), *Al-Ahkam As-Sultaniyyah: The Laws of Islamic Governance* (London: Ta-Ha Publ, 1996), 208.

29. Seyyed H. Nasr (ed.), *The Study Quran: A New Translation and Commentary* (New York: HarperOne, 2017), 426, verse 9:29.

30. See Hafez, 'The Alchemy of Martyrdom', 374. Other jihadists, such as al-Maqdisi and Tartusi, disavowed the killing of non-combatants. They explained that classical texts take extreme caution concerning the harming of non-combatants, only allowing it in extreme circumstances. Tartusi's line of argumentation is that the well-known *shar'i* evidence prohibiting the taking of a life is unequivocal (*qat'iyah*). The use of divine texts that are subject to multiple interpretations cannot override such unequivocal evidence—the rulings of fallible human beings cannot override the commands of an infallible Creator.

31. Ibid., 371.

32. Abdul Hamid A. Abu Sulayman, *Towards an Islamic Theory of International Relations: New Directions for Methodology and Thought* (New Delhi: Al-Ittehad Publications, 2010), 9-10.

33. Bunzel, 'From Paper State to Caliphate,' 10.

34. Wael B. Hallaq, *Sharia: Theory, Practice and Modern Transformations* (Edinburgh: Cambridge Press, 2009), 319.

35. Hafez, 'The Alchemy of Martyrdom,' 367. On this issue, Zawahiri rebuked Zarqawi in a 2005 letter, where he states: "And if the attacks on Shia leaders were necessary to put a stop to their plans, then why were there attacks on ordinary Shia? Won't this lead to reinforcing false ideas in their minds, even as it is incumbent on us to preach the call of Islam to them and explain and communicate to guide them to the truth?" See *West Point Combating Terrorism Center's*, "Zawahiri's Letter to Zarqawi," Available at: https://ctc.usma.edu/harmony-program/zawahiris-letter-to-zarqawi-original-language-2/ (Accessed on: 25 November 2019).

36. Younis, Tarek, 'Counter-Radicalisation: A Critical Look into a Racist New Industry,' *Yaqeen Institute*, March 2019. Available at: https://yaqeeninstitute.org/tarekyounis/counter-radicalization-a-critical-look-into-a-racist-new-industry/#.Xdw2_ZNKg1h (Accessed on: 25 November 2019)

37. Graeme Wood, 'What ISIS Really Wants,' *The Atlantic,* March 2015. Available at: https://www.theatlantic.com/magazine/archive/2015/03/what-isis-really-wants/384980/ (Accessed on: 25 November 2019).

38. Hallaq, *Sharia*, 50-65.